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8 **BEFORE THE**
9 **ACUPUNCTURE BOARD**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Petition to Revoke
12 Probation Against:

Case No. D1-2016-291

PETITION TO REVOKE PROBATION

12 **Wu Ying, L.Ac.**
13 **3790 Edgeview Drive**
14 **Pasadena, CA 91107**

15 **Acupuncturist License No. AC 16095,**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Benjamin Bodea (Complainant) brings this Petition to Revoke Probation solely in his
20 official capacity as the Executive Officer of the Acupuncture Board, Department of Consumer
21 Affairs (Board).

22 2. On or about April 30, 2014, the Acupuncture Board issued Acupuncturist License
23 Number 16095 to Wu Ying, L.Ac. (Respondent). The Acupuncturist License was in effect at all
24 times relevant to the charges brought herein and will expire on June 30, 2025, unless renewed.

25 3. In a disciplinary action titled *In the Matter of the Accusation Against Wu Ying*, Case
26 No. 1A-2016-291, the Acupuncture Board issued a decision, effective May 24, 2023, in which
27 Respondent's Acupuncturist License was revoked. However, the revocation was stayed, and

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1 Respondent's Acupuncturist License was placed on probation for a period of three (3) years with
2 certain terms and conditions. A copy of that decision is attached as Exhibit A and incorporated
3 by reference.

4 JURISDICTION

5 4. This Petition to Revoke Probation is brought before the Board under the authority of
6 the following laws. All section references are to the Business and Professions Code unless
7 otherwise indicated.

8 5. Section 4928.1 of the Code states:

9 Protection of the public shall be the highest priority for the Acupuncture Board in
10 exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of
11 the public is inconsistent with other interests sought to be promoted, the protection of the
12 public shall be paramount.

13 6. Section 4955 of the Code states:

14 The board may deny, suspend, or revoke, or impose probationary conditions
15 upon, the license of any acupuncturist who is guilty of unprofessional conduct.

16 Unprofessional conduct shall include, but not be limited to, the following:

17 (a) Using or possessing any controlled substance as defined in Division 10
18 (commencing with Section 11000) of the Health and Safety Code, dangerous drug, or
19 alcoholic beverage to an extent or in a manner dangerous to the acupuncturist, or to
20 any other person, or to the public, and to an extent that the use impairs the
21 acupuncturist's ability to engage in the practice of acupuncture with safety to the
22 public.

23 (b) Conviction of a crime substantially related to the qualifications, functions,
24 or duties of an acupuncturist, the record of conviction being conclusive evidence
25 thereof.

26 (c) False or misleading advertising.

27 (d) Aiding or abetting in, or violating or conspiring in, directly or indirectly, the
28 violation of the terms of this chapter or any regulation adopted by the board pursuant
29 to this chapter.

30 (e) Except for good cause, the knowing failure to protect patients by failing to
31 follow infection control guidelines of the board, thereby risking transmission of
32 blood-borne infectious diseases from licensee to patient, from patient to patient, and
33 from patient to licensee. In administering this subdivision, the board shall consider
34 referencing the standards, regulations, and guidelines of the State Department of
35 Public Health developed pursuant to Section 1250.11 of the Health and Safety Code
36 and the standards, regulations, and guidelines pursuant to the California Occupational
37 Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5
38 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other

1 blood-borne pathogens in health care settings. As necessary, the board shall consult
2 with healing arts boards within this division, including, but not limited to, the Medical
3 Board of California, the California Board of Podiatric Medicine, the Dental Board of
California, the Board of Registered Nursing, and the Board of Vocational Nursing
and Psychiatric Technicians, to encourage appropriate consistency in the
implementation of this subdivision.

4 The board shall seek to ensure that licensees are informed of the responsibility
5 of licensees and others to follow infection control guidelines, and of the most recent
6 scientifically recognized safeguards for minimizing the risk of transmission of
blood-borne infectious diseases.

7 (f) The use of threats or harassment against any patient or licensee for providing
8 evidence in a disciplinary action, other legal action, or in an investigation
contemplating a disciplinary action or other legal action.

9 (g) Discharging an employee primarily for attempting to comply with the terms
10 of this chapter.

11 (h) Disciplinary action taken by any public agency for any act substantially
12 related to the qualifications, functions, or duties of an acupuncturist or any
13 professional health care licensee.

14 (i) Any action or conduct that would have warranted the denial of the
15 acupuncture license.

16 (j) The violation of any law or local ordinance on an acupuncturist's business
17 premises by an acupuncturist's employee or a person who is working under the
18 acupuncturist's professional license or business permit, that is substantially related to
19 the qualifications, functions, or duties of an acupuncturist. These violations shall
20 subject the acupuncturist who employed the individuals, or under whose
21 acupuncturist license the employee is working, to disciplinary action.

22 (k) The abandonment of a patient by the licensee without written notice to the
23 patient that treatment is to be discontinued and before the patient has had a reasonable
24 opportunity to secure the services of another practitioner.

25 (l) The failure to notify the board of the use of any false, assumed, or fictitious
26 name other than the name under which the licensee is licensed as an individual to
27 practice acupuncture.

28 7. Section 4955.1 of the Code states:

The board may deny, suspend, revoke, or impose probationary conditions upon
the license of any acupuncturist if he or she is guilty of committing a fraudulent act
including, but not be limited to, any of the following:

(a) Securing a license by fraud or deceit.

(b) Committing a fraudulent or dishonest act as an acupuncturist.

(c) Committing any act involving dishonesty or corruption with respect to the
qualifications, functions, or duties of an acupuncturist.

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1 (d) Altering or modifying the medical record of any person, with fraudulent
intent, or creating any false medical record.

2 (e) Failing to maintain adequate and accurate records relating to the provision
3 of services to their patients.

4 **REGULATORY PROVISIONS**

5 8. California Code of Regulations, title 16, section 1399.434 states, in pertinent part,
6 as follows:

7 To be approved by the Board, an acupuncture and Asian medicine educational and
8 training curriculum shall consist of at least 2,050 hours of didactic and laboratory training
9 and at least 950 hours of supervised clinical instruction. The curriculum shall include the
following coursework that contains the following criteria:

10 ...

11 (h) Clinical Practice 950 hours

12 The curriculum in clinical practice shall consist of at least 950 hours in clinical
13 instruction, 75% of which shall be in a clinic owned and operated by the school, which
includes direct patient contact where appropriate in the following:

14 (1) Practice Observation (minimum 150 hours)--supervised observation of the clinical
practice of acupuncture and Asian medicine with case presentations and discussion;

15 (2) Diagnosis and evaluation (minimum 275 hours)--the application of Eastern and
16 Western diagnostic procedures in evaluating patients;

17 (3) Supervised practice (minimum 275 hours)--the clinical treatment of patients with
18 acupuncture and Asian medicine treatment modalities listed in Sections 4927(d) and
4937(b) of the Code.

19 (4) During the initial 275 hours of diagnosis, evaluation and clinical practice, the
20 clinic supervisor shall be physically present at all times during the diagnosis and treatment
21 of the patient. Thereafter, for a second period of 275 hours the clinic supervisor shall be
22 physically present at the needling of the patient. The clinic supervisor shall otherwise be
in close proximity to the location at which the patient is being treated during the clinical
instruction. The student shall also consult with the clinic supervisor before and after each
treatment.

23 **FIRST CAUSE TO REVOKE PROBATION**

24 **(Failure to Submit Certified Transcripts Demonstrating**

25 **Successful Completion of All Requirements for Licensure)**

26 9. At all times after the effective date of Respondent's probation as ordered in Case No.
27 1A-2016-291, Probation Condition 2 provided as follows:

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1 Respondent must provide certified transcripts of all courses completed at Alhambra
2 Medical University, Alhambra, California, through December 31, 2012, in a sealed
3 envelope to the Acupuncture Board of California by close of business February 15, 2023,
4 for the Board's review.

5 Determination as to whether Respondent's certified course transcripts demonstrate
6 successful completion of all courses required to satisfy the Board's licensure requirements
7 during his attendance at Alhambra Medical University, Alhambra, California, through
8 December 31, 2012, is solely within the Board's discretion.

9 The Board's determination that Respondent failed to successfully complete all
10 courses required to satisfy the Board's licensure requirements during his attendance at
11 Alhambra Medical University, Alhambra, California, through December 31, 2012, will
12 result in immediate revocation of Respondent's Acupuncturist License.

13 The Board's determination that Respondent successfully completed all courses
14 required to satisfy the Board's licensure requirements during his attendance at Alhambra
15 Medical University, Alhambra, California, through December 31, 2012, will result in
16 Respondent being placed on probation for three (3) years on the following terms and
17 conditions:

18 10. Respondent's probation is subject to revocation because he failed to comply with
19 Probation Condition 2, referenced above. The facts and circumstances regarding this violation are
20 as follows:

21 11. On or about January 24, 2023, Respondent signed a Stipulated Settlement and
22 Disciplinary Order, acknowledging that he had fully discussed the Stipulated Settlement and
23 Disciplinary Order with his attorney, that he understood the stipulation and the effect it would
24 have on his Acupuncturist License, and that he was entering into the stipulated settlement
25 voluntarily, knowingly, and intelligently. Respondent agreed to be bound by the Decision and
26 Order of the Acupuncture Board.

27 12. On or about June 5, 2023, the Board sent Respondent correspondence advising him
28 that the Board had adopted the Stipulated Settlement and Disciplinary Order, effective May 24,
2023, and that his license was revoked, the revocation was stayed and his license was placed on
probation with terms and conditions for three (3) years. Respondent was further advised that
pursuant to Probation Condition 2, the Board had received, and was reviewing, Respondent's
transcripts from Alhambra Medical University (AMU).

13. On or about June 28, 2023, the Board sent Respondent correspondence in which it
outlined the sequence of events relating to the receipt of the transcripts that were under review by

1 the Board. Specifically, the correspondence reiterated that Condition 2 of the Stipulated
2 Settlement and Disciplinary Order required Respondent to provide sealed official transcripts of
3 his education and training directly from AMU by no later than February 15, 2023; that the Board
4 had received official sealed transcripts from AMU on February 6, 2023, as well as a declaration
5 from Respondent on or about February 9, 2023, disputing the accuracy of the sealed transcripts
6 that were provided to the Board by AMU; that the Board had granted Respondent until the close
7 of business on July 23, 2023, to submit corrected sealed official transcripts from AMU for the
8 Board's review; and that Respondent's failure to submit sealed official transcripts by July 23,
9 2023, would result in the Board proceeding with the evaluation of Respondent's education and
10 training using the transcript received by the Board on February 6, 2023.

11 14. On or about July 19, 2023, Respondent's counsel wrote to the Board advising that
12 Respondent had no further documentation or information to submit.

13 15. On or about July 25, 2023, the Board sent Respondent correspondence setting forth
14 the Board's findings following a compliance review of his probation. In that correspondence, the
15 Board advised Respondent as follows with respect to Condition 2 of his probation:

16 The Board received certified transcripts on February 6, 2023, prior to the deadline of
17 February 15, 2023. The Board also received formal statements from you and your attorney
18 identifying a dispute between you and Alhambra Medical University regarding the accuracy
19 and completion of your transcripts. Due to this notification, the Board provided a second
20 opportunity for you to provide corrected transcripts by July 23, 2023. However, the Board
21 received notification that a second set of transcripts would not be provided to the Board.
22 The official transcripts do not demonstrate a completion of all required courses to meet
23 licensure requirements. **Therefore, you are in violation of this term.** (Emphasis in
24 original.)

25 16. On or about July 26, 2023, the Board sent Respondent correspondence advising him
26 that after reviewing Respondent's Application and transcripts, the Board determined that he did
27 not meet the minimum qualifications to take the California Acupuncture Licensing Examination
28 (CALE) due to his failure to complete the required curriculum. Specifically, the Board informed
Respondent that the sealed Official Transcript submitted by AMU and received by the Board on
February 6, 2023, reflected neither a graduation date nor completion by Respondent of the
minimum of 950 hours in clinical instruction, as required pursuant to California Code of
Regulations, title 16, section 1399.434, subdivision (h).

1 17. Respondent's failure to submit Certified Transcripts demonstrating successful
2 completion of all requirements for licensure is a violation of Condition 2 of Respondent's
3 probation and constitutes cause for revocation of Respondent's Acupuncturist License.

4 **SECOND CAUSE TO REVOKE PROBATION**

5 **(Violation of Probation)**

6 18. At all times after the effective date of Respondent's probation as ordered in Case No.
7 1A-2016-291, Probation Condition 14 provides:

8 If Respondent violates probation in any respect, the Board may, after giving Respondent
9 notice and the opportunity to be heard, revoke probation and carry out the disciplinary order
10 that was stated. If an accusation or petition to revoke probation is filed against Respondent
11 during probation, the Board shall have continuing jurisdiction until the matter is final, and
12 the period of probation shall be extended until the matter is final. No petition for
13 modification or termination of probation shall be considered while there is an accusation or
14 petition to revoke probation pending against Respondent.

15 19. Additionally, at all times after the effective date of Respondent's probation as ordered
16 in Case No. 1A-2016-291, Probation Condition 16 provides:

17 If Respondent should petition for early termination or modification of probation, or if
18 an Accusation and/or Petition to Revoke Probation is filed against the Respondent
19 before the Board, or Respondent should ever apply or reapply for a new license or
20 certification, and/or file a petition for reinstatement of a license, before the Board or
21 any other health care licensing action agency in the State of California, all of the
22 charges and allegations contained in the Accusation No. 1A-2016-291 shall be
23 deemed to be true, correct, and fully admitted by Respondent for the purpose of any
24 Statement of Issues or any disciplinary proceeding seeking to deny, restrict, or revoke
25 licensure or any petition proceeding seeking to reinstate licensure or modify
26 probation.

27 20. Respondent's probation is subject to revocation because he failed to comply with
28 Probation Condition 2, referenced above. The facts and circumstances regarding this violation
are as follows:

21 21. The facts and allegations set forth in the First Cause to Revoke Probation are
22 incorporated herein by reference as if fully set forth.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Acupuncture Board issue a decision:

1. Revoking the probation that was granted by the Acupuncture Board in Case No. 1A-2016-291 and imposing the disciplinary order that was stayed thereby revoking Acupuncturist License No. 16095 issued to Wu Ying, L.Ac.;

2. Revoking or suspending Acupuncturist License No. 16095, issued to Wu Ying, L.Ac.;

3. Ordering Respondent, Wu Ying, L.Ac., if placed on probation, to pay the Acupuncture Board the costs of probation monitoring; and,

4. Taking such other and further action as deemed necessary and proper.

DATED: AUGUST 22, 2023

Original Signature on File

BENJAMIN BODEA
Executive Officer
Acupuncture Board
Department of Consumer Affairs
State of California
Complainant

LA2023603138