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

12 In the Matter of the First Amended Accusation
Against:

Case No. 1A-2015-199

13 **WEI XIA XUE, L.AC.**
14 6254 Main Branch Road
San Ramon CA 94582

FIRST AMENDED ACCUSATION

15 Acupuncturist License No. AC 16192

16 Respondent.
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19 **PARTIES**

20 1. Benjamin Bodea (Complainant) brings this First Amended Accusation solely in his
21 official capacity as the Executive Officer of the Acupuncture Board, Department of Consumer
22 Affairs.

23 2. On September 25, 2014, the Acupuncture Board issued Acupuncturist License
24 Number AC 16192 to WEI XIA XUE, L.Ac. (Respondent). The Acupuncturist License was in
25 full force and effect until October 18, 2019, when Respondent was prohibited from practicing by
26 Order of the Superior Court of California, County of Alameda. Respondent's license expired on
27 January 31, 2020, has not been renewed, and now been cancelled.
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JURISDICTION

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2 3. This First Amended Accusation is brought before the Acupuncture Board (Board),
3 Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code (Code) unless otherwise indicated.

5 4. Section 4928 provides that the Board shall administer and enforce the laws pertaining
6 to licensing acupuncturists in California.

7 5. Section 4928.1 makes protection of the public the Board’s highest priority.

8 6. Section 4955 empowers the Board to deny, suspend, revoke, or impose probationary
9 conditions upon, the license of an acupuncturist guilty of unprofessional conduct, which
10 includes, pursuant to subsection (d), “Aiding or abetting in, or violating or conspiring in,
11 directly or indirectly, the violation of the terms of this chapter or any regulations adopted by
12 the board pursuant to this chapter.” (Chapter 12, Division 2 of the Code.)

13 7. Section 4955.1 of the Code states:

14 “The board may deny, suspend, revoke, or impose probationary conditions
15 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:

16 “(a) Securing a license by fraud or deceit.

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

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

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

21 “(e) Failing to maintain adequate and accurate records relating to the provision
22 of services to their patients.”

23 8. Section 4956 of the Code states in pertinent part:

24 “A plea or verdict of guilty or a conviction following a plea of nolo
25 contendere made to a charge which is substantially related to the qualifications,
functions, or duties of an acupuncturist is deemed to be a conviction within the
26 meaning of this chapter.

27 “The board may order a license suspended or revoked, or may deny a license,
28 or may impose probationary conditions upon a license, when the time for appeal
has elapsed, or the judgment of conviction has been affirmed on appeal, or when
an order granting probation is made suspending the imposition of sentence

1 irrespective of a subsequent order under the provisions of Section 1203.4 of the
2 Penal Code allowing the person to withdraw his or her pleas of guilty and to enter
3 a plea of not guilty, or setting aside the verdict of guilty, or dismissing the
4 accusation, complaint, information, or indictment.”

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7 9. Section 490 of the Code states:

8 “(a) In addition to any other action that a board is permitted to take against a
9 licensee, a board may suspend or revoke a license on the ground that the licensee
10 has been convicted of a crime, if the crime is substantially related to the
11 qualifications, functions, or duties of the business or profession for which the
12 license was issued.

13 “(b) Notwithstanding any other provision of law, a board may exercise any
14 authority to discipline a licensee for conviction of a crime that is independent of
15 the authority granted under subdivision (a) only if the crime is substantially related
16 to the qualifications, functions, or duties of the business or profession for which
17 the licensee’s license was issued.

18 “(c) A conviction within the meaning of this section means a plea or verdict
19 of guilty or a conviction following a plea of nolo contendere. An action that a
20 board is permitted to take following the establishment of a conviction may be
21 taken when the time for appeal has elapsed, or the judgment of conviction has been
22 affirmed on appeal, or when an order granting probation is made suspending the
23 imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
24 the Penal Code.

25 “(d) The Legislature hereby finds and declares that the application of this
26 section has been made unclear by the holding in *Petropoulos v. Department of
27 Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has
28 placed a significant number of statutes and regulations in question, resulting in
29 potential harm to the consumers of California from licensees who have been
30 convicted of crimes. Therefore, the Legislature finds and declares that this section
31 establishes an independent basis for a board to impose discipline upon a licensee,
32 and that the amendments to this section made by Chapter 33 of the Statutes of
33 2008 do not constitute a change to, but rather are declaratory of, existing law.”

34 10. Section 493 of the Code states:

35 “(a) Notwithstanding any other law, in a proceeding conducted by a board
36 within the department pursuant to law to deny an application for a license or to
37 suspend or revoke a license or otherwise take disciplinary action against a person
38 who holds a license, upon the ground that the applicant or the licensee has been
39 convicted of a crime substantially related to the qualifications, functions, and
40 duties of the licensee in question, the record of conviction of the crime shall be
41 conclusive evidence of the fact that the conviction occurred, but only of that fact.

42 “(b) (1) Criteria for determining whether a crime is substantially related to
43 the qualifications, functions, or duties of the business or profession the board
44 regulates shall include all of the following:

45 (A) The nature and gravity of the offense.

46 (B) The number of years elapsed since the date of the offense.

47 (C) The nature and duties of the profession.

48 (2) A board shall not categorically bar an applicant based solely on the type
49 of conviction without considering evidence of rehabilitation.

1 “(c) As used in this section, ‘license’ includes ‘certificate,’ ‘permit,’
2 ‘authority,’ and ‘registration.’”

3 “...”

4 11. Section 529 of the Penal Code state:

5 “(a) Every person who falsely personates another in either his or her private
6 or official capacity, and in that assumed character does any of the following, is
7 punishable pursuant to subdivision (b):

8 “(1) Becomes bail or surety for any party in any proceeding whatever, before
9 any court or officer authorized to take that bail or surety.

10 “(2) Verifies, publishes, acknowledges, or proves, in the name of another
11 person, any written instrument, with intent that the same may be recorded,
12 delivered, or used as true.

13 “(3) Does any other act whereby, if done by the person falsely personated,
14 he might, in any event, become liable to any suit or prosecution, or to pay any sum
15 of money, or to incur any charge, forfeiture, or penalty, or whereby any benefit
16 might accrue to the party personating, or to any other person.”

17 “...”

18 **COST RECOVERY**

19 12. Section 4959 of the Code allows the Board to request that the proposed decision of an
20 administrative law judge in resolution of any disciplinary proceeding before the Board include a
21 direction that the licensee found guilty of unprofessional conduct pay the Board the actual and
22 reasonable costs of investigation and prosecution of the case.

23 **FACTUAL ALLEGATIONS**

24 13. On April 17, 2014, the Board received an application for examination from
25 Respondent Wei Xia Xue, as the necessary precursor to granting an acupuncture license to an
26 applicant who graduated from a foreign educational institution. The application, signed by
27 Respondent on April 5, 2014, attested to the facts asserted in the application, including
28 Respondent’s claim that she graduated from Heilongjiang University of Chinese Medicine and
that the credentials she presented certifying her satisfaction of the Cardio-Pulmonary
Resuscitation and Clean Needle Technique training requirements were valid.

14. Based on the representations in Respondent’s application, the Board issued
Acupuncture License No. AC 16192 to Respondent on September 25, 2014.

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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 or suspending Acupuncturist License Number AC 16192, issued to WEI XIA XUE, L.Ac.;
2. Ordering WEI XIA XUE to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 4959; and
2. Taking such other and further action as deemed necessary and proper.

DATED: May 15, 2023

Original Signature on File

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