

**BEFORE THE  
CALIFORNIA ACUPUNCTURE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

|   |   |                      |
|---|---|----------------------|
| In the Matter of the Petition to Revoke | ) | Case No. D1-2013-168 |
| Probation Against:                      | ) |                      |
|   | ) |                      |
| Michael Guen                            | ) |                      |
| 130 Steiner Court                       | ) |                      |
| Santa Rosa, CA 95404                    | ) |                      |
|   | ) |                      |
| Acupuncture License No. AC-4412         | ) |                      |
|   | ) |                      |
| Respondent.                             | ) |                      |
| _____                                   | ) |                      |

**DECISION AND ORDER**

The attached Default Decision and Order is hereby adopted by the California Acupuncture Board, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on August 16, 2017.

IT IS SO ORDERED July 17, 2017.



\_\_\_\_\_  
Hildegard Aguinaldo, L.Ac., Chair  
Acupuncture Board  
Department of Consumer Affairs  
State of California

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9 **BEFORE THE**  
**ACUPUNCTURE BOARD**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**  
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12 In the Matter of the Petition to Revoke  
Probation Against:

13 **MICHAEL JOHN GUEN**

14 **130 Steiner Court**  
15 **Santa Rosa, CA 95404**

16 **Acupuncture License No. AC 4412**

17 Respondent  
18

Case No. D1-2013-168

OAH No. 2017041094

**DEFAULT DECISION**  
**AND ORDER**

[Gov. Code §11520]

19 On or about March 21, 2017, an employee of the Acupuncture Board (Board), served by  
20 Certified Mail a copy of the Petition to Revoke Probation No. D1-2013-168, Statement to  
21 Respondent, Notice of Defense in blank, Request for Discovery, and Government Code sections  
22 11507.5, 11507.6, and 11507.7 to the address of record of Michael John Guen (Respondent),  
23 which was and is 130 Steiner Court, Santa Rosa, CA 95404. On or about April 12, 2017,  
24 Respondent signed and returned a Notice of Defense. (Exhibit Package<sup>1</sup>, **Exhibit 1**: Petition to  
25 Revoke Probation, related documents, Declaration of Service, and Notice of Defense.)  
26

27 <sup>1</sup> The evidence in support of this Default Decision and Order is separately contained in the  
28 "Exhibit Package."

1 On or about April 26, 2017, via certified mail, Respondent was served at his address of  
2 record at 130 Steiner Court, Santa Rosa, CA 95404, with a Notice of Hearing informing him that  
3 a hearing would be held on June 1, 2017 at the Office of Administrative Hearings at 1515 Clay  
4 Street, Suite 206, Oakland, California 94612. The United States Postal Service tracking results  
5 confirm that the certified mail was delivered on April 29, 2017 (Exhibit Package, **Exhibit 2:**  
6 Notice of Hearing, proof of service, U. S. Postal Service tracking results.)

7 The matter was called for hearing at the date, time and location as set forth in the Notice of  
8 Hearing. Deputy Attorney General Joshua M. Templet of the Attorney General's Office appeared  
9 on behalf of the Complainant. There was no appearance by or on behalf of Respondent. At 1:15  
10 p.m., Administrative Law Judge Jill Schlichtmann declared the matter a default, and at the request  
11 of Complainant's counsel, the matter was remanded to the agency for action under Government  
12 Code section 11520. (Exhibit Package, **Exhibit 3:** Findings and Declaration of Default; Order of  
13 Remand.)

#### 14 FINDINGS OF FACT

##### 15 I

16 Complainant Benjamin Bodea is the Executive Officer of the Board. The charges and  
17 allegations in Petition to Revoke Probation No. D1-2013-168 were at all times brought and made  
18 solely in the official capacity of the Board's Executive Officer.

##### 19 II

20 On or about October 14, 1992, the Board issued Acupuncture License No. AC 4412 to  
21 Respondent. The Acupuncture License expired on February 29, 2016, and has not been renewed.  
22 (Exhibit Package, **Exhibit 4:** Certificate of License.)

##### 23 III

24 Business and Professions Code section 118 states, in pertinent part:

25 "(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a  
26 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by  
27 order of a court of law, or its surrender without the written consent of the board, shall not, during  
28 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its

1 authority to institute or continue a disciplinary proceeding against the licensee upon any ground  
2 provided by law or to enter an order suspending or revoking the license or otherwise taking  
3 disciplinary action against the license on any such ground."

4 IV

5 California Government Code section 11520 states, in pertinent part:

6 "(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the  
7 agency may take action based upon the respondent's express admissions or upon other evidence  
8 and affidavits may be used as evidence without any notice to respondent . . . ."

9 V

10 On or about March 21, 2017, Respondent was served with a Petition to Revoke Probation,  
11 alleging causes for discipline against Respondent. The Petition and accompanying documents  
12 were duly served on Respondent. Respondent filed a Notice of Defense. Respondent was served  
13 with a Notice of Hearing scheduled for June 1, 2017 at the Office of Administrative Hearings.  
14 There was no appearance by or on behalf of Respondent. The matter was remanded to the Board  
15 for action under Government Code section 11520.

16 VI

17 The allegations of the Petition are true as follows:

18 In its Decision in Case No. 1A-2013-168, the Board ordered Respondent to complete a  
19 psychological evaluation in response to its finding that he engaged in sexual misconduct with a  
20 patient. Timely fulfillment of the condition is necessary to confirm that Respondent does not  
21 present a risk to public safety. Respondent has failed to submit to a psychological evaluation  
22 within 90 days from the effective date of that Decision, as required by the terms of his probation.

23 Term 2 of Respondent's probation, "Psychological Evaluation," requires Respondent to  
24 undergo a psychological evaluation by a Board-approved psychologist. The original 90-day  
25 deadline to complete the evaluation was January 15, 2017 (this was calculated based on a period  
26 of tolling of Respondent's probation while he was out of the country). The Board notified  
27 Respondent of the deadline during his initial probation meeting on December 1, 2016, and also  
28 mailed him documentation of the same. Board staff then approved an extension of the deadline

1 until February 15, 2017. Board staff mailed Respondent documentation of the approved  
2 extension, which included the following notice:

3         Should you not meet this deadline and successfully complete this requirement, you  
4         will be in violation of your probation and your file will be referred back to the  
5         Attorney General's Office to begin revocation proceedings.

6         Respondent scheduled an evaluation after the extended deadline, on February 17, 2017.  
7         Then, a day before his scheduled evaluation, Respondent called the evaluating psychologist and  
8         cancelled his appointment. On February 21, 2017, Board staff mailed Respondent a Notice of  
9         Probation Violation. (Exhibit Package, **Exhibit 5**: Declaration of Cricket Borges, Acupuncture  
10         Board Enforcement Analyst.)

11         Respondent's failure to timely submit to a psychological evaluation constitutes a violation  
12         of Term 2 of his probation as well as unprofessional conduct pursuant to Business and  
13         Professions Code section 4955.

14         The Board seeks cost recovery pursuant to Code section 125.3 in the amount of \$4,650.00  
15         (Exhibit Package, **Exhibit 6**: Declaration of Costs.)

16                                 DETERMINATION OF ISSUES

17         Pursuant to its authority under Government Code section 11520, the Board finds  
18         Respondent is in default. The Board will take action without further hearing and, based on  
19         Respondent's express admissions by way of default and the evidence before it, contained in  
20         Exhibits 1-6, finds that the allegations in Petition to Revoke Probation No. D1-2013-168 are true.

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ORDER

IT IS SO ORDERED that Acupuncture License No. AC 4412, heretofore issued to Respondent Michael John Guen, is revoked.

Respondent is ordered to reimburse the Acupuncture Board the amount of \$4,650.00 for its investigative and enforcement costs.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on \_\_\_\_\_.

\_\_\_\_\_  
FOR THE ACUPUNCTURE BOARD

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EXHIBIT 1