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

12 In the Matter of the Accusation Against:

Case No. 1A-2018-7

13 LU ZHAN, L.Ac.
7125 El Poste Drive
14 Buena Park, California 90620

A C C U S A T I O N

15 Acupuncturist License Number AC 4440,
16 Respondent.

17
18 **PARTIES**

19 1. Benjamin Bodea (Complainant) brings this Accusation solely in his official capacity
20 as the Executive Officer of the California Acupuncture Board (Board).

21 2. On November 25, 1992, the Acupuncture Board issued Acupuncturist License
22 Number AC 4440 to Lu Zhan, L.Ac. (Respondent). That license was in full force and effect at all
23 times relevant to the charges brought herein and will expire on May 31, 2024, unless renewed.

24 **JURISDICTION**

25 3. This Accusation is brought before the Board under the authority of the following
26 laws. All section references are to the Business and Professions Code (Code) unless otherwise
27 indicated.

28 //

1 4. Section 4927 of the Code states:

2 As used in this chapter, unless the context otherwise requires:

3 (a) “Board” means the Acupuncture Board.

4 (b) “Person” means any individual, organization, or corporate body, except that
5 only individuals may be licensed under this chapter.

6 (c) “Acupuncturist” means an individual to whom a license has been issued to
7 practice acupuncture pursuant to this chapter, which is in effect and is not suspended
8 or revoked.

9 (d) “Acupuncture” means the stimulation of a certain point or points on or near
10 the surface of the body by the insertion of needles to prevent or modify the perception
11 of pain or to normalize physiological functions, including pain control for the
12 treatment of certain diseases or dysfunctions of the body and includes the techniques
13 of electroacupuncture, cupping, and moxibustion.

14 5. Section 4937 of the Code provides, in pertinent part:

15 An acupuncturist’s license authorizes the holder thereof:

16 (a) To engage in the practice of acupuncture.

17 (b) To perform or prescribe the use of Asian massage, . . . herbs, plant, animal,
18 and mineral products, and dietary supplements to promote, maintain, and restore
19 health. Nothing in this section prohibits any person who does not possess an
20 acupuncturist’s license or another license as a healing arts practitioner from
21 performing, or prescribing the use of any modality listed in this subdivision.

22 (c)

23 (d) For purposes of this section, “plant, animal, and mineral products” means
24 naturally occurring substances of plant, animal, or mineral origin, except that it does
25 not include synthetic compounds, controlled substances or dangerous drugs as
26 defined in Sections 4021 and 4022, or a controlled substance listed in Chapter 2
27 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

28 (e) For purposes of this section, “dietary supplement” has the same meaning as
defined in subsection (f) of Section 321 of Title 21 of the United States Code, except
that dietary supplement does not include controlled substances or dangerous drugs as
defined in Section 4021 or 4022, or a controlled substances listed in Chapter 2
(commencing with Section 11053) of Division 10 of the Health and Safety Code.

STATUTORY PROVISIONS

6. Section 4955 of the Code provides, in pertinent part:

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

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

(a) . . . (c).

1 (d) Aiding or abetting in, or violating . . . directly or indirectly, the violation of
2 the terms of this chapter or any regulation adopted by the board pursuant to this
3 chapter.

4 (e) . . . (h).

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

7 (j) . . . (l).

8 7. Section 4955.1 of the Code provides, in pertinent part:

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

12 (a) . . . (d).

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

15 8. Section 4955.2 of the Code provides, in pertinent part:

16 The board may deny, suspend, revoke, or impose probationary conditions upon
17 the license of any acupuncturist if . . . she is guilty of committing any one of the
18 following:

19 (a) Gross negligence.

20 (b) Repeated negligent acts.

21 (c)

22 9. Section 810, subdivision (a)(2), of the Code provides, in pertinent part:

23 (a) It shall constitute unprofessional conduct and grounds for disciplinary
24 action, including suspension or revocation of a license or certificate, for a health care
25 professional to do any of the following in connection with their professional
26 activities: (2) Knowingly prepare, make, or subscribe any writing, with intent to
27 present or use the same, or to allow it to be presented or used in support of any false
28 or fraudulent claim.

REGULATORY PROVISIONS

10 10. California Code of Regulations, title 16, section 1399.453, states:

11 An acupuncturist shall keep complete and accurate records on each patient who
12 is given acupuncture treatment, including progress made as a result of the
13 acupuncture treatments.

COST RECOVERY

14 11. Section 4959 of the Code provides, in pertinent part:

15 (a) The board may request the administrative law judge, under his or her

1 proposed decision in resolution of a disciplinary proceeding before the board, to
2 direct any licensee found guilty of unprofessional conduct to pay to the board a sum
not to exceed actual and reasonable costs of the investigation and prosecution of the
case.

3 (b) The costs to be assessed shall be fixed by the administrative law judge and
4 shall not in any event be increased by the board. When the board does not adopt a
5 proposed decision and remands the case to an administrative law judge, the
administrative law judge shall not increase the amount of any costs assessed in the
proposed decision.

6 (c) When the payment directed in the board's order for payment of costs is not
7 made by the licensee, the board may enforce the order for payment in the superior
8 court in the county where the administrative hearing was held. This right of
enforcement shall be in addition to any other rights the board may have as to any
licensee directed to pay costs.

9 (d) In any judicial action for the recovery of costs, proof of the board's decision
10 shall be conclusive proof of the validity of the order of payment and the terms for
payment.

11 (e) All costs recovered under this section shall be considered a reimbursement
12 for costs incurred and shall be deposited in the Acupuncture Fund.

13 **BACKGROUND FACTS**

14 12. Patient A,¹ a middle-aged male physician, first presented to Nanjing Acupuncture
15 Clinic ("Nanjing" or the "clinic") in 2003. At that time, he complained of "Loss of body weight
16 (Body weight decreased to 108 lb, was 125 lb), poor appetite, insomnia, depression. Pain under
17 right side of rib cage, liver area." He was depressed and tired all the time and reportedly had bile
18 duct stenosis (narrowing) and "sand-like gallstones" in his gallbladder. He was diagnosed with
19 "Qi and Blood deficiency. Liver and Kidney Yin deficiency. Liver Yang hyperactive."² He
20 was prescribed a formula for 14 days of "Bai Hua She Cao 10g, Pu Gong Ying 10g, Xuan Fu Hua
21 10g, Ban Lan Gen 8g, Shi Hu 10g, Chen Pi 5g, Gan Jiang 3g, Da Zao 20g."³

22 ¹ For privacy, the patient in this pleading is identified as Patient A. The patient's full
23 name will be disclosed to Respondent upon a timely request for discovery pursuant to
Government Code §11507.6.

24 ² Qi signifies vital energy, Yin means negative, dark, and feminine, and is the opposite of
25 yang in Traditional Chinese medicine (TCM).

26 ³ These are herbal prescriptions mixed by Respondent and/or her husband, Ming Kui. Bai
27 Hua She Cao is oldenlandia diffusa (an herb), Pu Gong Ying is dandelion, Xuan Fu Hua is inula
(a flower), Ban Lan Gen is Isatis root, Shi Hu is dendrobium (an orchid), Chen Pi is citrus peel,
28 Gan Jiang is dried ginger, and Da Zao is jujube (a Chinese date).

1 13. Patient A continued to be treated with Respondent and her husband Ming Kui,
2 another licensed acupuncturist⁴ he treated with at Nanjing throughout the years. During the
3 patient visits, he would consistently complain about being underweight. On or about September
4 25, 2015, his weight was reported to be 120 pounds.

5 **FIRST CAUSE FOR DISCIPLINE**

6 (Gross Negligence)

7 14. Respondent is subject to disciplinary action under Code section 4955.2, subdivision
8 (a), in that she committed acts and omissions of gross negligence in her care and treatment of
9 Patient A. The circumstances are as follows:

10 15. On or about April 8, 2016, Patient A was seen by Respondent, who charted in the
11 progress note that the patient's chief complaint was that he was underweight, depressed, and was
12 experiencing emotional stress and anxiety; however, his weight had not been documented since
13 September 2015, nor is any other information documented regarding his anxiety and depression.
14 His diagnosis of Qi and blood deficiency and liver and kidney yin deficiency remained the same.
15 According to the patient's progress note, his treatment consisted of a seven-day formula of "Tai Zi
16 Shen 10g, Lian Zi 12g, Shan Zha 10g, Gu Ya 10g, Bai He 10g, Shan Yao 20g, Long Yan Rou
17 15g, Da Zao 25g."⁵ He was also provided pills for seven days of "Lao Liu, Xin Jin, Zheng Qi, Gu
18 Tong, Xin Ma, Duo, Bao He, Mian Yi, Huang Mian Yi, and Fu Zheng."⁶ He was noted to have
19 purchased "Ginseng x 42, Lu Rog x 63, and Tai Pan x 21"⁷ but was instructed to take them only if
20 needed; however, Respondent failed to document what conditions these treatments were for.

21 _____
22 ⁴ Ming Kui received his Acupuncture License Number AC 4540 on August 26, 1993.

23 ⁵ The ingredients in this formula are as follows: Tai Zi Shen is crown prince ginseng, Lian
24 Zi is lotus seeds, Shan Zha is Hawthorn berries, Gu Ya is rice sprout, Bai He is lily bulb, Shan
25 Yao is Chinese yam, Long Yan Rou is the dried flesh from the fruit of Dimocarpus longan, and
26 Da Zao is a Chinese date.

27 ⁶ These pills contained Lao Liu and Xin Jin which are unknown, Zheng (is defined as a
28 comprehensive summary of the cause, location, nature, and development tendency of an illness at
a certain stage during its course), and Qi is vital energy, Gu Tong, Xin Ma, and Duo are
unknown, Bao He is a herbal formula, Mian Yi, Huang Mian Yi and Fu Zheng are unknown.

⁷ Ginseng is panax root, Lu Rong is deer antler, and Tai Pan is dried human placenta.

1 Additionally, there is no documented informed consent in the patient records explaining the risks,
2 benefits and/or any potential complications of the acupuncture or herbal treatments he was
3 receiving, nor is there a written signed consent form from the patient on this or any other visit.

4 The patient billing record for this visit reflects that he was charged for acupuncture with
5 electrical stimulation for 15 minutes (Current Procedure Terminology [“CPT”] code 97813). This
6 required Respondent to indicate the acupuncture point location, to document that
7 electrostimulation was used, and which points were connected; however, Respondent failed to
8 document this in the progress note. He was also billed for an additional 15 minutes of
9 acupuncture (CPT code 97814), which requires reinsertion of needle(s), indicating the
10 acupuncture point location(s), documenting that electrostimulation was used and which points
11 were connected; however, Respondent failed to document this treatment in the patient’s progress
12 note. The patient was further billed for: infrared therapy (CPT code 97026), which requires
13 documenting location target and time of exposure; massage (CPT code 97124) which requires
14 documenting the area targeted and time applied; and physical therapy (CPT code 97010)⁸ that
15 requires documenting the area targeted and the time applied. Respondent, however, failed to
16 document this information in the progress note, and none of these treatments are listed in the
17 progress note. The total charges for these alleged treatments not substantiated by the progress
18 note was \$290 (two hundred ninety dollars).

19 16. On or about April 13, 2016, Patient A was billed for an office visit, two 15-minute
20 acupuncture treatments with electrical stimulation, infrared therapy, massage, and physical
21 therapy for a total of \$380 (three hundred eighty dollars); however, there is no corresponding
22 patient record for this alleged visit.

23 17. Two days later, on or about April 15, 2016, Patient A presented to Respondent for a
24 visit. On that date, the patient was noted to have anxiety about being underweight and was taking
25 anti-depression medication; however, Respondent failed to document what medication he was
26 taking, when he started taking it who prescribed it, and his weight had not been documented since

27 ⁸ In this context, physical therapy is a supervised modality of any physical agent applied
28 to produce therapeutic changes to biologic tissue, including but not limited to thermal, acoustic,
light, mechanical, or electric energy.

1 2015. The patient was billed for two 15-minute sessions of acupuncture with electrical
2 stimulation, infrared therapy, massage, and physical therapy and was billed two hundred ninety
3 dollars (\$290); however, Respondent failed to document any of the required information for those
4 treatments in the progress note and no other treatments are noted in the progress note other than
5 the purchased items, the formula, and pills. The patient wrote a check for \$132.12 that was made
6 out to Respondent.

7 18. On or about April 20, 2016, Patient A was billed for an office visit, two acupuncture
8 treatments for 15 minutes each, infrared therapy, massage, and physical therapy for a total of
9 \$380 (three hundred eighty dollars); however, there is no corresponding patient record for this
10 alleged visit and the charges are not substantiated.

11 19. Two days later, on or about April 22, 2016, Patient A saw Respondent for another
12 visit. The patient had the same chief complaint as previously documented; however, the
13 Respondent failed to document if the patient was still taking the anti-depression medication
14 documented on the prior visit and failed to document his weight. The patient's treatment was
15 another seven-day regimen of the same formula and pills with no other treatments documented;
16 however, he was charged for two acupuncture sessions for 15-minutes each, infrared therapy,
17 massage and physical therapy, but the required information is not documented nor are these
18 treatments listed in the progress note. The patient was billed two hundred ninety dollars (\$290)
19 for these alleged treatments and wrote a check for \$734 that was made out to Respondent.

20 20. One day later, on or about April 23, 2016, Patient A was billed for an office visit, two
21 15-minute acupuncture treatments with electrical stimulation, infrared therapy, massage, and
22 physical therapy for a total of three hundred eighty dollars (\$380); however, there is no
23 corresponding patient record for this alleged visit.

24 21. On or about April 27, 2016, Patient A was billed for an office visit, two 15-minute
25 acupuncture treatments with electrical stimulation, infrared therapy, massage, and physical
26 therapy for a total of \$380 (three hundred eighty dollars); however, there is no corresponding
27 patient record for this alleged visit.

28 22. Two days later, on or about April 29, 2016, Patient A was seen by Respondent and

1 was documented to have the same chief complaint and received the same exact treatments of the
2 purchased items, formula, and pills; however, Respondent failed to document if the patient was
3 still taking the anti-depressant medication and failed to document his weight. No other treatments
4 are documented for this visit in the progress note. The patient wrote a check for \$734 that was
5 made out to Respondent.

6 23. One day later, on or about April 30, 2016, Patient A was billed for an office visit, two
7 15-minute acupuncture treatments with electrical stimulation, infrared therapy, massage, and
8 physical therapy for a total of \$380 (three hundred eighty dollars); however, there is no
9 corresponding patient record for this alleged visit as he was seen by Respondent the prior day.

10 24. On or about May 4, 2016, Patient A was billed for an office visit, two 15-minute
11 acupuncture treatments with electrical stimulation, infrared therapy, massage, and physical
12 therapy for a total of \$380 (three hundred eighty dollars); however, there is no corresponding
13 patient record for this alleged visit.

14 25. Two days later, on or about May 6, 2016, Patient A was seen by Respondent with the
15 same documented chief complaint, diagnosis, and treatment administered. No other treatments
16 are documented in the progress note other than the purchased items, formula and pills. The
17 patient wrote a check for \$748 that was made out to Nanjing Acupuncture.

18 26. One day later, on or about May 7, 2016, Patient A was billed for an office visit, two
19 15-minute acupuncture treatments with electrical stimulation, infrared therapy, massage, and
20 physical therapy for a total of \$380 (three hundred eighty dollars); however, there is no
21 corresponding patient progress note for this alleged visit as the patient had seen Respondent a day
22 earlier.

23 27. On or about May 11, 2016, Patient A was billed for an office visit, two 15-minute
24 acupuncture treatments with electrical stimulation, infrared therapy, massage and physical
25 therapy for a total of \$380 (three hundred eighty dollars); however, there is no corresponding
26 patient progress note for this alleged visit.

27 28. Two days later, on or about May 13, 2016, Patient A was seen by Respondent for
28 another office visit with the same chief complaint, diagnosis, and treatments with formula and

1 pills. No other treatments are documented in the progress note. The progress note states that the
2 patient "is afraid of being underweight;" however, the Respondent failed to document his weight,
3 which had not been recorded since September 2015, even though this was one of his chief
4 complaints on every visit.

5 29. One day later, on or about May 14, 2016, Patient A was billed for an office visit, two
6 15-minute acupuncture treatments with electrical stimulation, infrared therapy, massage, and
7 physical therapy for a total of \$380 (three hundred eighty dollars); however, there is no
8 corresponding patient progress note for this alleged visit as Respondent had been seen him one
9 day earlier.

10 30. On or about May 18, 2016, Patient A was billed for an office visit, two 15-minute
11 acupuncture treatments with electrical stimulation, infrared therapy, massage, and physical
12 therapy for a total of \$380 (three hundred eighty dollars); however, there is no corresponding
13 patient progress note for this alleged visit.

14 31. On or about May 19, 2016, the patient wrote a check for \$1,018.48 that was made out
15 to Ming Kui.

16 32. On or about May 20, 2016, Respondent saw Patient A for a follow-up visit. She
17 noted that the patient had the same chief complaint, diagnosis, and treatment. His weight was
18 finally recorded at 113 pounds,⁹ and no other treatments are documented in the progress note. He
19 was worried that "he may have serious problems," and she recommended that he seek medical
20 advice, but failed to document further information in this regard yet continued to sell him the
21 purchased items, formula, and pills.

22 33. One day later, on or about May 21, 2016, Patient A was billed for an office visit, two
23 15-minute acupuncture treatments with electrical stimulation, infrared therapy, massage, and
24 physical therapy for a total of \$380 (three hundred eighty dollars); however, there is no
25 corresponding patient progress note for this alleged visit as he had been seen by Respondent the
26 prior day.

27 _____
28 ⁹ When Respondent last recorded the patient's weight in September 2015, he reportedly weighed 120 pounds.

1 34. On or about May 25, 2016, Patient A was billed for an office visit, two 15-minute
2 acupuncture treatments with electrical stimulation, infrared therapy, massage and physical
3 therapy for a total of \$380 (three hundred eighty dollars); however, there is no corresponding
4 progress note for this alleged visit.

5 35. Two days later, on or about May 27, 2016, Patient A was seen by Respondent who
6 noted the same chief complaints, diagnosis and treatment of formula and pills with no other
7 treatment documented in the progress note. Respondent further noted that "Patient made
8 threatening comments," and she "recommended [the] patient to stop coming to [the] clinic" and
9 noted that the patient "apologized" with no additional information. The patient wrote a check for
10 \$392.24 that was made out to "Cash" with no notation of what it was for.

11 36. One day later, on or about May 28, 2016, Patient A was billed for an office visit, two
12 15-minute acupuncture treatments with electrical stimulation, infrared therapy, massage, and
13 physical therapy for a total of \$380 (three hundred eighty dollars); however, there is no
14 corresponding progress note for this alleged visit as he had been seen by Respondent the previous
15 day.

16 37. On or about June 3, 2016, Patient A saw Respondent, who noted the same chief
17 complaint, diagnosis, and treatment of formula and pills with no other treatments documented in
18 the progress note. Respondent noted that the patient "apologized for his wrong behavior in
19 writing" with no further information in that regard, and the writing the patient allegedly wrote is
20 not contained in the records produced by Respondent. The patient wrote a check for \$817 that
21 was made out to "Cash" with no notation of what it was for.

22 38. It is unknown what specific charges the patient was billed after May 28, 2016, as
23 Respondent failed to produce billing records for June to December 2016 or any treatments he
24 allegedly received in 2017.

25 39. On or about June 10, 2016, the patient was seen by Respondent for the same chief
26 complaints, diagnosis, and treatment of formula and pills only with no other treatments
27 documented in the progress note. The Respondent charted in the progress note that the patient
28 "made threatening comments again. Recommended patient to stop coming to this clinic. Patient

1 apologized," with no further information. The patient wrote a check for \$754 that was made out
2 to "Cash" with no notation of what it was for.

3 40. On or about June 17, 2016, Patient A was seen by Respondent with the same
4 complaints, diagnosis, and treatment with the same formula and pills with no other treatments
5 documented in the progress note. Respondent noted that he "has anxiety due to worry about
6 being underweight;" however, the patient's weight had not been documented since May 20, 2016.
7 The patient wrote a check for \$768 that was made out to "Cash" with no notation of what it was
8 for.

9 41. On or about June 24, 2016, Patient A was seen by Respondent with the same
10 complaints, diagnosis and was treated with formula that was slightly different that added Yi Ren
11 (coix seed), Xiao Mai (wheat), Dang Shen (codonopsis root) and Bai Zhu (sunflower) and
12 eliminated Tai Zi Shen, Lian Zi, Long Yan Rou and Da Zao with no documented explanation.
13 The pills he received were the same as before; no other treatments are documented in the progress
14 note, and his weight was not recorded again. The patient wrote a check for \$782 that was made
15 out to "Cash" with no notation of what it was for.

16 42. On or about July 1, 2016, through August 5, 2016, the patient was seen by
17 Respondent with the same complaints, diagnosis, and treatment with formula and pills with no
18 other treatments documented in the progress note. The patient continued to complain of being
19 underweight; however, Respondent failed to record his weight since May 20, 2016. He continued
20 to purchase the items, formula and pills as he had on all of the prior visits, but on the August 5
21 visit, Tai Pan was replaced with Lu Sun (asparagus) with no documented explanation. The
22 patient wrote checks for each of these visits.

23 43. On or about August 12, 2016, the patient was seen by Respondent, who charted the
24 same complaints, diagnosis, and treatment with formula and pills. No other treatments were
25 documented in the progress note. Respondent notes that the patient is taking anti-depression
26 medication, but failed to document what medication he was taking, if he had been taking it
27 continuously since previously noted or any other information in this regard. The patient wrote a
28 check for \$824 that was made out to "Cash" with no notation of what it was for.

1 44. On or about August 19 and 26, 2016, the patient was seen by Respondent who noted
2 the same complaints, diagnosis, and treatment with formula and pills with no other treatments
3 documented in the progress note. Respondent failed to document the patient's weight, that had
4 not been recorded since May 20, 2016. The patient wrote checks for \$824 each, one made out to
5 "Cash" with no notation of what it was for and the other to Nanjing Acupuncture.

6 45. From on or about September 2, 2016, through October 7, 2016, Respondent saw the
7 patient and noted the same complaints, diagnosis, and treatment with formula and pills with no
8 other treatments documented in the progress note. The formula was modified on the September 2
9 visit to add Long Yan Rou (longan fruit), Bai Bian Dou (hyacinth bean), and Da Zao (jujube)
10 with no documented explanation. On each of these visits, the patient wrote a check for \$824 that
11 was made out to Nanjing Acupuncture or cash with no notation of what they were for.

12 46. On or about October 14, 2016, the patient was seen by Respondent, who noted the
13 same complaints, diagnosis, and treatment with formula and pills with no other treatments
14 documented in the progress note. The patient continued to purchase the same items, formula,
15 and pills that he had on the prior visits, except on this visit, Lu Sun was replaced by Tai Pan with
16 no documented explanation. The patient's weight was recorded to be 115 pounds. The patient
17 wrote a check for \$802 that was made out to Nanjing Acupuncture.

18 47. On or about October 21, 2016, the patient was seen by Respondent who noted the
19 same complaints, diagnosis, and treatment with formula and pills with no other treatments
20 documented in the progress note. The formula was modified to add Tai Zi Shen (psuedostellaria
21 root), Chen Pi (citrus peel), and Gan Jiang (dried ginger) and eliminated Dang Shen, Bai Zhu, and
22 Da Zao with no documented explanation. Respondent noted that "Patient has anxiety, always
23 worries about body weight. Recommended patient to see a specialist."

24 48. On or about October 27, 2016, the patient wrote a letter to Respondent and her
25 husband, Ming Kui, to complain that their treatment made him worse.

26 49. On or about October 28, 2016, the patient was seen by Respondent who noted the
27 same complaints, diagnosis, and treatment with formula and pills with no other treatments
28 documented in the progress note; however, his pills were modified to add Xing Xiao (herbal

1 formula), Ye Kang and Qiang Kang II with no documented explanation. The patient gave
2 Respondent the letter he had written the prior day regarding his concerns. Respondent noted in
3 the progress note that the patient “made threaten comments, then apologized for his behavior in
4 writing. Strongly recommended patient to stop coming to this clinic. Patient agreed to find
5 another TCM doctor.” Respondent, however, failed to document any other information in this
6 regard in the progress note and failed to include the hand-delivered letter or the patient’s alleged
7 written apology that day in the patient’s chart. The patient wrote a check for \$775 that was made
8 out to “Cash” with no notation of what it was for.

9 50. Two days later, on or about October 30, 2016, Patient A sent Respondent an email:
10 "Dear Dr. Kui and Dr. Zhan: I still feel, very, very, very sorry to both of you, because my stupid
11 and wrong letter cause a lot of stress and hurt to you. So I would like to pay you the
12 compensation fee. Please tell me how much is appropriate? 200, or 500 dollars or more. Your
13 reply will be highly appreciated." This appears to be the first of the patient’s written apologies,
14 making it suspect of when Respondent drafted the October 28, 2016 progress note.

15 51. On or about October 31, 2016, Patient A sent Respondent another email stating, "1.
16 Medical agreement: I completely agree your treatment. I voluntarily to receive your treatment
17 and medical care. You have no any liability of medical or legal issue about me. 2. My daughter
18 have no right or permission from me to represent me regarding my treatment from you. I
19 GUARANTEE that she has no right or permission from me to bother you or do anything to
20 against you at all if I die.” That same day, the patient wrote a check to Dr. Kui for \$200 and
21 wrote "Gift" in the memo area. This appears to be the second written apology from the patient,
22 making the entry in the October 28, 2016 progress note suspect.

23 52. On or about November 1, 2016, the patient wrote a letter stating that his daughter, son
24 and he now have full rights to take action against Respondent, essentially withdrawing his prior
25 release of liability email sent the prior day.

26 53. On or about November 4, 2016, the patient returned to the clinic and Respondent
27 noted the same chief complaint, diagnosis and treatments with formula and pills with no other
28 treatments documented in the progress note. Respondent noted that "Patient's family members

1 also apologized. Patient acted irrationally: he was crying, down on both knees demanding herbs.
2 He refused to leave unless he received all the herbs he wanted. Patient promised to release all
3 liabilities of this clinic." Respondent, however, failed to document any other information in this
4 regard, and the writings she refers to are not contained in the patient's certified records received
5 by the Board. The Respondent continued to provide the patient with the purchased items, formula
6 and pills. The patient wrote a check for \$908 to Ming Kui.

7 54. On or about November 11, 2016, Respondent saw the patient again and noted the
8 same complaints, diagnosis, and treatment with formula and pills with no other treatments
9 documented in the progress note. Respondent further noted that the patient "constantly worries
10 about loss of weight, experiences anxiety. Recommend patient to consult specialist and switch to
11 another TCM doctor;" however, Respondent had told that patient that previously the prior month,
12 yet continued to treat him and sell him the purchased items, formula and pills. The patient wrote
13 a check for \$894 that was made out to Respondent.

14 55. On or about November 18, and 25, 2016, Respondent saw the patient and noted the
15 same complaints, diagnosis, and treatment with same items, and no other treatments are
16 documented in the progress note. The patient wrote checks for \$468 and \$894, made out to
17 "Cash" with no notation of what they were for.

18 56. On or about December 2, 9, and 16, 2016, the patient saw Respondent who noted the
19 same complaints, diagnosis, and treatment with formula and pills with no other treatments
20 documented in the progress note. On the December 2 and 9 visits, Respondent again noted that
21 the patient switched to another TCM doctor, yet she continued to treat him and sell him herbal
22 medications. On those two visits, the patient wrote checks for \$905 and \$894 that were made out
23 to "Cash" with no notation of what they were for.

24 57. On or about December 23, 2016, Respondent saw the patient and noted he had the
25 same complaints, diagnosis, and treatment with formula and pills with no other treatments
26 documented in the progress note. She documented that the patient weighed 116.5 pounds on this
27 visit and added one pack each of Ricebean and Yi Ren to the items the patient purchased with no
28 documented explanation for the addition, and instructed him to "take only if needed."

1 58. On or about December 30, 2016, the patient saw Respondent who charted in the
2 progress note the same complaints, except that he was now complaining of diarrhea and said he
3 takes medications for it; however, she failed to document any other information in this regard
4 including when the diarrhea began and what medication he was taking. Her diagnosis and
5 treatment with formula and pills were the same as before, with no other treatments documented in
6 the progress note, but the patient no longer purchased the one pack each of Ricebean and Yi Ren
7 on this visit without any documented explanation. On this same day, Patient A wrote a check in
8 the amount of \$830 that was made out to “Cash” with no notation of what it was for.

9 59. On or about January 6, 2017, the patient saw Respondent who noted the same
10 complaints, diagnosis and treatment with formula and pills with no other treatments documented,
11 but the formula had been modified to include Dang Shen (codonopsis root) and Shan Yao
12 (Chinese yam), and removed Tai Zi Shen and Long Yan Rou from the formula with no
13 documented explanation. The patient continued to complain of diarrhea.

14 60. On or about January 13, 2017, the patient saw Respondent who noted the same
15 complaints, including diarrhea, diagnosis, and treatment with formula and pills with no other
16 treatments documented in the progress note. The patient continued purchasing the other items,
17 formula and pills on each visit.

18 61. On or about January 17, 2017, the patient presented to Southern California Kaiser
19 Permanente Medical Group (“Kaiser”) after he slipped a week earlier and twisted his ankle. He
20 complained of low back pain and a wound to his right lower leg since September 2016 that had
21 been very painful for the last few weeks. His weight was recorded as 111 lbs. 8.8 oz. The patient
22 was referred to a dermatologist for the leg wound, which was cleaned, patted dry, dressed and
23 wrapped.

24 62. On or about January 20, 2017, the patient saw Respondent who noted the same
25 complaints, diagnosis, and treatment with the purchased items, formula, and pills with no other
26 treatments documented in the progress note. Respondent noted that the “Patient has depression
27 and anxiety. Patient complains about diarrhea. He takes IMODIUM x 3/day and other
28 medication for diarrhea. Recommended patient to consult a specialist;” however, Respondent

1 failed to document what specialist she was recommending to him and for which condition (e.g.,
2 the depression and anxiety, the diarrhea or the weight issue). She further failed to document what
3 “other medication for diarrhea” he was taking in the progress note.

4 63. On or about January 27, 2017, Respondent saw the patient and noted the same
5 complaints, diagnosis, and treatment with the purchased items, formula, and pills with no other
6 treatments or modifications of his formula or pills documented in the progress note. Respondent
7 noted that the patient “has been taking diarrhea medication. Recommended patient to seek
8 professional help.” On this same date, the patient wrote a check for \$922 that was written out to
9 “Cash” with no notation of what it was for.

10 64. On or about February 3, 2017, the patient saw Respondent who noted the same
11 complaints, diagnosis, and treatment with formula and pills with no other treatments documented
12 in the progress note, and he purchased the same items, formula and pills as he had before. On this
13 same day, the patient wrote a check for \$908 that was written to “Cash” with no indication of
14 what it was for.

15 65. On or about February 10, 2017, Respondent saw the patient and noted the same
16 complaints, including diarrhea, diagnosis and treatment with formula and pills with no other
17 treatments documented; however, the formula was changed to add Wu Wei (black plum) and Wu
18 Wei Zi (schisandra berry) with no documented explanation. In addition, his pill formula changed
19 adding Xin Ma, Gu Tong and removing Xing Xiao with no documented explanation. Respondent
20 charted in the progress note that the patient worries about loss of weight and diarrhea. She further
21 noted that “Patient wounded right leg in the yard a couple of months ago. Wound looks infected.
22 Recommended patient to consult a specialist and see a doctor for leg wound.” Respondent,
23 however, failed to document any other information concerning the leg wound, how it occurred, or
24 how the patient could have been seen almost every week for months after the injury occurred, yet
25 it was not documented in the patient’s chart prior to this date. The patient also wrote a check for
26 \$796 that was written to “Cash” on this visit with no notation of what it was for.

27 66. On or about February 17, 2017, the patient saw Respondent who noted the same
28 complaints, diagnosis, and treatment with formula and pills with no other treatments documented,

1 except that Qiang Kang II x 18, Ye Kang x 18, and Xing Xiao x 34 was added to his pill regimen
2 with no documented explanation in the progress note. On this visit, Respondent noted that the
3 patient has a “leg infection” and that she recommended that he seek medical treatment. The
4 patient also wrote a check on this visit for \$849 that was made out to “Cash” with no notation of
5 what it was for.

6 67. On or about February 24, 2017, the patient saw Respondent who noted the same
7 complaints, diagnosis, and treatment with formula and pills with no other treatments documented,
8 except that the items the patient had been purchasing removed the Qiang Kang II, Ye Kang, and
9 Xing Xiao that was added on the prior visit with no documented explanation in the progress note.
10 On this visit, the patient wrote a check for \$1,098 that was written out for “Cash” with no
11 notation of what it was for.

12 68. On or about March 2, 2017, Respondent saw the patient and charted the same
13 complaints, diagnosis and treatment with formula and pills with no other treatments documented
14 in the progress note; however, Gu Tong was added to the pills with no documented explanation.
15 Respondent noted that the patient worries about not gaining weight, but she had not recorded his
16 weight since December 23, 2016. She further notes that the patient’s “Leg wound needs medical
17 care. Recommended patient to seek medical treatment.” On this visit, the patient wrote a check
18 for \$880 that was written out to “Cash” with no indication of what it was for.

19 69. On or about March 10, 2017, the patient saw Respondent who noted the same
20 complaints, diagnosis and treatment with formula and pills with no other treatments documented
21 in the progress note, and his weight is not documented. Respondent noted “Right leg wound has
22 infection, recommended patient to seek medical treatment.” On this visit, the patient wrote a
23 check for \$671 to Respondent.

24 70. On or about March 17, 2017, the patient saw Respondent who noted the same
25 complaints, including the diarrhea that had been noted in every visit since December 30, 2016,
26 diagnosis and treatment with formula and pills with no other treatments documented in the
27 progress note; however, Xing Xiao was removed from his pill regimen. Respondent again noted
28 that the patient’s leg wound was infected and again recommended he seek medical treatment. On

1 this visit, the patient wrote a check for \$1,182 to Respondent.

2 71. On or about March 24, 2017, the patient saw Respondent who charted the same
3 complaints, diagnosis and treatment with formula and pills with no other treatments documented
4 in the progress note. Respondent noted that the patient's right leg wound has an infection and
5 that he is taking diarrhea medication and recommended that he seek immediately medical
6 treatment; however, it is unclear if the recommendation was for the leg infection, his continuing
7 diarrhea, or both. Respondent continued to provide him with the same purchased items, formula
8 and pills. On this visit, the patient wrote a check for \$782 to Respondent.

9 72. On or about March 31, 2017, Respondent saw the patient and noted the same
10 complaints, diagnosis and treatment with formula and pills with no other treatments documented
11 in the progress note. Respondent noted that the patient's right leg wound shows signs of infection
12 and that she recommended that the patient to seek medical treatment, but continued to provide the
13 patient with the same purchased items, pills and formula. On this visit, the patient wrote a check
14 for \$1,082 to Respondent.

15 73. On or about April 5, 2017, or so the patient submitted a routine fecal sample to
16 Kaiser.

17 74. On or about April 7, 2017, the patient saw Respondent who charted the same
18 complaints, diagnosis and treatment with formula and pills with no other treatments documented
19 in the progress note. She noted that his right leg has an infection and again recommended that the
20 patient seek medical treatment; however, she continued providing him with the same purchased
21 items, pills and formula. On this visit, the patient wrote a check for \$782 to Respondent.

22 75. On or about April 13, 2017, the patient was notified by Kaiser that his fecal globin 1
23 sample tested positive for blood in his stool, "which can be an early marker of colon cancer, but is
24 also a test that can be positive because of non-cancerous conditions such as hemorrhoids." He
25 was advised "that it is important to get a colonoscopy to fully evaluate his colon and to look for
26 any signs of colon cancer as soon as possible and that a referral for a colonoscopy has been
27 submitted, which is recommended to be scheduled within 14 days" but the patient was not able to
28 schedule it at that time.

1 76. On or about April 14, 2017, the patient saw Respondent, who charted the same
2 complaints, including diarrhea and being underweight, diagnosis and treatment with formula and
3 pills with no other treatments documented in the progress note. Respondent further noted the
4 patient is taking diarrhea medication, his right leg wound shows signs of infection and that she
5 recommended that he seek medical treatment; however, she continued to provide the patient with
6 the same purchased items, pills and formula. On this visit, the patient wrote a check for \$782 to
7 Respondent.

8 77. On or about April 21, 2017, the patient saw Respondent who noted the same
9 complaints, diagnosis and treatment with formula and pills with no other treatments documented
10 in the progress note. Respondent again noted that the patient has diarrhea and worries about
11 losing weight; however, she failed to record the patient's weight since December 23, 2016.

12 78. On or about April 28, 2017, Respondent saw the patient who noted the same
13 complaints, diagnosis and treatment with formula and pills with no other treatments documented
14 in the progress note. Respondent noted she advised the patient "not to take too many pills for
15 diarrhea;" however, she failed to document how many diarrhea pills the patient was taking a day.
16 Respondent also noted that the patient's right leg wound shows signs of infection and that he
17 should seek medical treatment; however, the patient's infection was noted over a month earlier
18 with no further information documented. On this visit, the patient wrote a check for \$782 to
19 Respondent.

20 79. On or about May 5, 2017, the patient saw Respondent who noted the same
21 complaints, diagnosis and treatment with formula and pills with no other treatments documented
22 in the progress note. Respondent noted that the patient "mentioned he had been taking more than
23 30 pills for diarrhea each day (Huang Lian x 12 + Fu An x 12 + Imodium x 3 + Zheng Lu x 3)"
24 but failed to document where the Huang Lia,¹⁰ Fu An and Zheng Lu pills came from as it is not
25 any of the ingredients of the purchased items, formula or pills he was receiving from the clinic.
26 She further recommended that he not take too many pills and to see a specialist, but continued to

27 ¹⁰ Huang Lian is derived from the rhizome of the perennial herb *Coptis chinensis* and is
28 used in TCM for diarrhea, vomiting, abdominal fullness, jaundice, high fever, toothache, diabetes,
and eczema.

1 sell him the same purchased items, formula and pills. On this visit, the patient wrote a check for
2 \$782 to Respondent.

3 80. On or about May 12, 2017, the patient saw Respondent who noted the same
4 complaints, diagnosis and treatment with formula and pills with no other treatments documented
5 in the progress note. Respondent noted that the patient feels anxious and has anxiety and worries
6 about being underweight; however, his weight had not been recorded since December 2016.
7 Respondent further noted that the patient's "leg wound is swollen" and recommended the "patient
8 to seek medical treatment in a major hospital;" but she continued to provide him with the same
9 purchased items, formula and pills. Respondent further failed to document if the patient was still
10 taking 30 diarrhea pills daily.

11 81. On or about May 19, 2017, Respondent saw the patient who noted the same
12 complaints, diagnosis and treatment with formula and pills with no other treatments documented
13 in the progress note; however, Xing Xiao and Lei Wan (omphalia) were added to his pill regimen
14 with no explanation. Respondent noted that the patient's "Leg wound has infection and swelling.
15 Recommended patient to seek medical treatment in a major hospital," but continued to sell him
16 the purchased items, formula and pills. She also failed to document if the patient had decreased
17 the diarrhea pills he was taking daily. On this visit, the patient wrote a check for \$60 to Nanjing
18 Acupuncture.

19 82. On or about May 27, 2017, the patient saw Respondent who noted the same
20 complaints, diagnosis and treatment with formula and pills with no other treatments documented
21 in the progress note. Respondent noted that the patient still has diarrhea and that his "Leg wound
22 is swollen and affecting thigh. Recommended patient to seek medical treatment in a major
23 hospital;" however, she continued to sell him the same purchased items, formula, and pills.
24 Respondent further failed to document his weight, which had not been recorded since December
25 2016. On this visit, the patient wrote a check for \$782 to Respondent.

26 83. On or about June 2, 2017, the patient saw Respondent who noted the same
27 complaints, diagnosis and treatment with formula and pills with no other treatments documented
28 in the progress note. Respondent noted that the patient's "leg is red and swollen up to thigh" and

1 “strongly suggested patient to seek medical treatment from major hospital.” However, the
2 Respondent continued to sell him the same purchased items, formula, and pills. On this visit, the
3 patient wrote a check for \$762 to Respondent.

4 84. On or about June 7, 2017, the patient saw Respondent, who noted the same
5 complaints, diagnosis and treatment with formula and pills with no other treatments documented
6 in the progress note; however, Mian Yu and Fu Zheng were excluded from the pills for no
7 documented reason. Respondent noted that the patient’s “leg has infection. Whole leg is red and
8 swollen. Patient said he made appointment with Kaiser for treatment,” but she continued to sell
9 him the same purchased items, formula, and pills. On this visit, the patient wrote a check for
10 \$786 to Ming Kui, Respondent's husband who, according to the progress note, did not treat the
11 patient that day. This appears to be the last patient visit.

12 85. On or about June 12, 2017, Patient A presented to the emergency room at Kaiser for
13 chronic bilateral lower extremity lymphedema and abdominal discomfort.¹¹ The patient stated
14 that approximately 10 years ago an abdominal ultrasound suggested he may have biliary
15 malignancy but he did not follow through with his physicians’ recommendations at that time, and
16 according to family, has been taking Chinese herbal medicine and self-treating. He was admitted
17 to the hospital for abnormal weight loss and was diagnosed as having a possible abdominal
18 malignancy as his stomach was distended and he had bilateral edema (swelling) in his legs. His
19 weight was recorded as 132 lbs. 7.9 oz. His health problems included anemia (iron deficiency),
20 cirrhosis of the liver, colitis, colon polyp and a history of hepatitis B. A vascular surgery consult
21 was requested for the leg swelling that was noted to be more in the thighs and scrotum, and he
22 had an open right leg wound. His wound was again cleaned, dried, and covered with a sterile dry
23 gauze secured with a Kerlix wrap dressing. The patient had a computerized tomography (CT)¹²

24 ¹¹ Lymphedema is swelling in an arm or leg caused by a lymphatic system blockage that
25 may be accompanied by pain or discomfort. Exercise, wrapping, massage, and compression can
help the condition.

26 ¹² A computerized tomography scan, also known as a CT or CAT scan, combines a series
27 of X-ray images taken from different angles around the body and uses computer processing to
create cross-sectional images (slices) of the bones, blood vessels and soft tissues inside the body.
28

1 scan of his liver which showed cirrhotic¹³ changes that they believed was related to the herbal
2 medications he had been taking as he had a previously normal liver. There are numerous
3 publications that discuss that hepatotoxicity¹⁴ induced by herbs is common. In one publication,
4 60 different herbal drugs and herbal supplements had reported potential hepatotoxicity, and in
5 another publication, traditional Chinese herbs predominated in the cause of drug-induced acute
6 liver failure (ALF), which was found to be a major cause of ALF in China. During his
7 hospitalization, the patient was diagnosed with ascites (too much fluid build up in the abdomen)
8 and had approximately 5.5 liters of fluid drained. The patient was discharged on June 15, 2017,
9 and was instructed to follow-up routinely, which he did.

10 86. During the course of Respondent's care and treatment of Patient A, she failed to
11 document in the patient's chart that she informed the patient of the risks, benefits and/or potential
12 complications of taking the herbal pills, formula, and items they prescribed and sold to him at any
13 time during her care and treatment as alleged herein. She further failed to take and document
14 periodic vital signs, including the patient's weight, pulse, temperature, and blood pressure among
15 other things in the progress notes.

16 87. During the course of Respondent's care and treatment of Patient A as alleged herein,
17 the progress notes fail to document the progression-regression of the condition(s) the patient was
18 being treated for, making the duplication of the alleged treatments extremely difficult, if not
19 impossible as treatments will periodically be modified depending on the progression or regression
20 of the treated condition(s). After an initial series of acupuncture sessions and/or herbal
21 prescriptions, additional treatments should only occur based on progressively greater,
22 incremental, objective gains – such is not the case here as Respondent continued to provide
23 treatments even after the patient's condition continued to deteriorate. Further, Respondent should
24 have discussed and documented the possible secondary effects of herbal prescriptions with the
25 patient anticipating negative reactions and instructing him to immediately notify them of any

26 _____
27 ¹³ Cirrhosis is scarring (fibrosis) of the liver caused by long-term liver damage.

28 ¹⁴ Hepatotoxicity is damage to the liver caused by a medicine, chemical, or herbal or dietary supplement.

1 unanticipated or unpleasant effects associated with the herbs; however, she failed to document
2 this in the patient's chart.

3 88. After the patient stopped taking the herbal pills and formula from Respondent, his
4 condition improved, his diarrhea subsequently stopped, and he continued to gain his weight back.
5 Unfortunately, the cirrhotic changes to his liver are not reversible.

6 89. On or about June 7, 2020, the Kaiser physician, a gastroenterologist who treated the
7 patient, was interviewed and stated he believed the herbs the patient had been taking played a
8 "critical role" in contributing to the cirrhotic changes to his liver.

9 90. On or about June 25, 2020, Respondent and her husband declined to be phone-
10 interviewed.

11 91. Respondent's acts and omissions, singularly and collectively, constitute gross
12 negligence in her care and treatment of Patient A, when she:

13 A. Failed to obtain informed consent from the patient concerning the risks, benefits and
14 possible complications of the treatments and herbal prescriptions, formulas and pills;

15 B. Billed for services not substantiated by the progress notes;

16 C. Continued to provide treatments and herbal prescriptions, formulas and pills with no
17 objective measurable improvement(s) to justify the continuation of treatments;

18 D. Continued to prescribe and provide herbal prescriptions, pills, and formula that
19 played a critical role in contributing to the patient hepatotoxicity;

20 E. Failed to periodically take and document the patient's vital signs, including his
21 weight, pulse, blood pressure and temperature among other things in the progress notes; and

22 F. Failed to maintain adequate and accurate records.

23 **SECOND CAUSE FOR DISCIPLINE**

24 (Repeated Negligent Acts)

25 92. Respondent is subject to disciplinary action under Code section 4955.2, subdivision
26 (b), in that she committed repeated negligent acts in her care and treatment of Patient A. The
27 circumstances are as follows:

28 93. Paragraphs 15 through 90, inclusive, above, are incorporated herein as if fully set

1 forth.

2 **THIRD CAUSE FOR DISCIPLINE**

3 (Billing for Services Not Supported)

4 94. Respondent is subject to disciplinary action under Code section 810, subdivision
5 (a)(2), in that she billed the patient for treatments and services not supported by the patient
6 progress notes. The circumstances are as follows:

7 95. Paragraphs 15 through 90, inclusive, above, are incorporated herein as if fully set
8 forth.

9 **FOURTH CAUSE FOR DISCIPLINE**

10 (Failure to Maintain Adequate and Accurate Records)

11 96. Respondent is subject to disciplinary action under Code section 4955.1, subdivision
12 (e), and California Code of Regulations, title 16, section 1399.453, in that she failed to maintain
13 adequate and accurate records in her care and treatment of Patient A. The circumstances are as
14 follows:

15 97. Paragraphs 15 through 90, inclusive, above, are incorporated herein as if fully set
16 forth.

17 **FIFTH CAUSE FOR DISCIPLINE**

18 (Unprofessional Conduct)

19 98. Respondent is subject to disciplinary action under Code section 4955, subdivisions
20 (d) and (i), in that she aided and abetted in violating directly or indirectly the terms of the
21 Acupuncture Practice Act or any regulation adopted by the Board. The circumstances are as
22 follows:

23 99. Paragraphs 15 through 92, 94, and 96 inclusive, above, are incorporated herein as if
24 fully set forth.

25 **PRAYER**

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

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1. Revoking or suspending Acupuncturist License Number AC 4440, issued to Respondent, Lu Zhan, L.Ac.;
2. Ordering Respondent Lu Khan, L.Ac. to pay the Acupuncture Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 4959, and probation monitoring costs, if placed on probation; and
3. Taking such other and further action as deemed necessary and proper.

DATED: September 25, 2023

Original Signature on File

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

Complainant

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