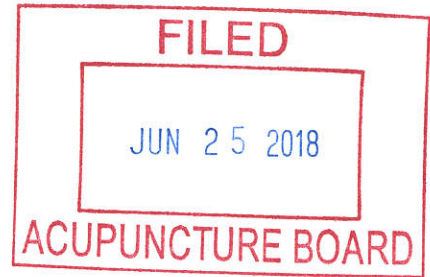


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8
9 **BEFORE THE**
ACUPUNCTURE BOARD
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 1A-2017-152

12 **MEI-CHEN DU, L.Ac.**
13 **18232 Gale Ave.**
14 **City of Industry, CA 91748**
Acupuncturist License No. AC 6510,

A C C U S A T I O N

15 Respondent.

16
17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about December 21, 1998, the Acupuncture Board issued Acupuncturist
23 License Number AC 6510 to Mei-Chen Du, L.Ac. (Respondent). The Acupuncturist License
24 expired on February 28, 2018, and has not been renewed.

25 **JURISDICTION**

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

1 4. Section 4928.1 of the Code states:

2 “Protection of the public shall be the highest priority for the Acupuncture Board in
3 exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the
4 public is inconsistent with other interests sought to be promoted, the protection of the public shall
5 be paramount.”

6 5. Section 4955 of the Code states:

7 “The board may deny, suspend, or revoke, or impose probationary conditions upon, the
8 license of any acupuncturist if he or she is guilty of unprofessional conduct.

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

10 “... ”

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

13 “... ”

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

16 “... ”

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

18 “... ”

19 6. Section 4955.1 of the Code states:

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

23 “... ”

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

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

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

1 “...”

2 7. Section 4956 of the Code states:

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

6 “The board may order a license suspended or revoked, or may deny a license, or may
7 impose probationary conditions upon a license, when the time for appeal has elapsed, or the
8 judgment of conviction has been affirmed on appeal, or when an order granting probation is made
9 suspending the imposition of sentence irrespective of a subsequent order under the provisions of
10 Section 1203.4 of the Penal Code allowing the person to withdraw his or her pleas of guilty and to
11 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation,
12 complaint, information, or indictment.”

13 8. Section 490 of the Code states:

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

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

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

28 “(d) The Legislature hereby finds and declares that the application of this section has been

1 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
2 554, and that the holding in that case has placed a significant number of statutes and regulations
3 in question, resulting in potential harm to the consumers of California from licensees who have
4 been convicted of crimes. Therefore, the Legislature finds and declares that this section
5 establishes an independent basis for a board to impose discipline upon a licensee, and that the
6 amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not
7 constitute a change to, but rather are declaratory of, existing law.”

8 9. Section 493 of the Code states:

9 “Notwithstanding any other provision of law, in a proceeding conducted by a board within
10 the department pursuant to law to deny an application for a license or to suspend or revoke a
11 license or otherwise take disciplinary action against a person who holds a license, upon the
12 ground that the applicant or the licensee has been convicted of a crime substantially related to the
13 qualifications, functions, and duties of the licensee in question, the record of conviction of the
14 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
15 and the board may inquire into the circumstances surrounding the commission of the crime in
16 order to fix the degree of discipline or to determine if the conviction is substantially related to the
17 qualifications, functions, and duties of the licensee in question.

18 “As used in this section, ‘license’ includes ‘certificate,’ ‘permit,’ ‘authority,’ and
19 ‘registration.’”

20 10. California Code of Regulations, title 16, section 1399.469.2 states:

21 “In addition to the conduct described in Section 4955 of the Business and Professions Code,
22 ‘unprofessional conduct’ also includes but is not limited to the following: (a) Including or
23 permitting to be included any of the following provisions in an agreement to settle a civil dispute
24 arising from the licensee’s practice to which the licensee is or expects to be named as a party,
25 whether the agreement is made before or after the filing of an action:

26 “(1) A provision that prohibits another party to the dispute from contacting, cooperating, or
27 filing a complaint with the board.

28 “(2) A provision that requires another party to the dispute to attempt to withdraw a

1 complaint the party has filed with the board.

2 “(b) Failure to provide to the board, as directed, lawfully requested copies of documents
3 within 15 days of receipt of the request or within the time specified in the request, whichever is
4 later, unless the licensee is unable to provide the documents within this time period for good
5 cause, including but not limited to, physical inability to access the records in the time allowed due
6 to illness or travel. This subsection shall not apply to a licensee who does not have access to, and
7 control over, medical records.

8 “(c) Failure to cooperate and participate in any board investigation pending against the
9 licensee. This subsection shall not be construed to deprive a licensee of any privilege guaranteed
10 by the Fifth Amendment to the Constitution of the United States, or any other constitutional or
11 statutory privileges. This subsection shall not be construed to require a licensee to cooperate with
12 a request that would require the licensee to waive any constitutional or statutory privilege or to
13 comply with a request for information or other matters within an unreasonable period of time in
14 light of the time constraints of the licensee’s practice. Any exercise by a licensee of any
15 constitutional or statutory privilege shall not be used against the licensee in a regulatory or
16 disciplinary proceeding against the licensee.

17 “(d) Failure to report to the board within 30 days any of the following:

18 “(1) The bringing of an indictment or information charging a felony against the licensee.

19 “(2) The arrest of the licensee.

20 “(3) The conviction of the licensee, including any verdict of guilty, or pleas of guilty or no
21 contest, of any felony or misdemeanor.

22 “(4) Any disciplinary action taken by another licensing entity or authority of this state or of
23 another state or an agency of the federal government or the United States military.

24 “(e) Failure or refusal to comply with a court order, issued in the enforcement of a
25 subpoena, mandating the release of records to the board.”

26 11. 18 United States Code section 1341 states:

27 “Whoever, having devised or intending to devise any scheme or artifice to defraud, or for
28 obtaining money or property by means of false or fraudulent pretenses, representations, or

1 promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or
2 procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or
3 anything represented to be or intimated or held out to be such counterfeit or spurious article, for
4 the purpose of executing such scheme or artifice or attempting so to do, places in any post office
5 or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by
6 the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or
7 delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such
8 matter or thing, or knowingly causes to be delivered by mail or such carrier according to the
9 direction thereon, or at the place at which it is directed to be delivered by the person to whom it is
10 addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20
11 years, or both. If the violation occurs in relation to, or involving any benefit authorized,
12 transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially
13 declared major disaster or emergency (as those terms are defined in section 102 of the Robert T.
14 Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)), or affects a financial
15 institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30
16 years, or both.”

17 COSTS

18 12. Section 4959 of the Code states:

19 “(a) The board may request the administrative law judge, under his or her proposed
20 decision in resolution of a disciplinary proceeding before the board, to direct any licensee found
21 guilty of unprofessional conduct to pay to the board a sum not to exceed actual and reasonable
22 costs of the investigation and prosecution of the case.

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

27 “(c) When the payment directed in the board's order for payment of costs is not made by
28 the licensee, the board may enforce the order for payment in the superior court in the county

1 where the administrative hearing was held. This right of enforcement shall be in addition to any
2 other rights the board may have as to any licensee directed to pay costs.

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

5 “(e) All costs recovered under this section shall be considered a reimbursement for costs
6 incurred and shall be deposited in the Acupuncture Fund.”

7 **FIRST CAUSE FOR DISCIPLINE**

8 (Conviction of a Crime In 2017)

9 13. Respondent is subject to disciplinary action for unprofessional conduct under section
10 4955, subdivision (b), section 4956, and section 490 of the Code, in that she was convicted in
11 United States District Court, Central District of California of violating 18 United States Code
12 section 1341 (Mail Fraud), a crime which is substantially related to the qualifications, functions,
13 and duties of an acupuncturist. The circumstances are as follows:

14 14. On or about May 18, 2017, in proceedings entitled *UNITED STATES OF AMERICA*
15 *vs. MEI CHEN DU*, case number *CR 17-0286- DOC*, then pending in the United States District
16 Court for the Central District of California (Central District of California), pursuant to a plea and
17 sentence agreement Respondent was convicted of Count 1, mail fraud, a violation of 18 United
18 States Code section 1341, by her plea of guilty.

19 15. On or about October 23, 2017, following Respondent's plea of guilty, the Court
20 placed Respondent on two (2) years probation, under terms and condition which included that she
21 be committed to the custody of the Bureau of Prisons for a term of 12 months and 1 day; that she
22 pay a total amount of \$535,143.08 in restitution with \$100,000.00 due immediately and the
23 remaining balance due within 6 months after sentencing; that upon her release from imprisonment
24 she shall not be employed by, affiliated with, own, control, volunteer for, or otherwise participate,
25 directly or indirectly, in any business involving health insurance or entitlement programs without
26 the express written approval of the Probation Officer prior to engaging in such employment.

27 16. The facts underlying Respondent's plea of guilty to Count 1 in the indictment are as
28 follows:

1 17. On or about April 12, 2017, United States Office of Personnel Management Office of
2 Inspector General Special Agent MN¹ served a search warrant at Acupuncture Alternative, Inc.
3 (“AAI”), an acupuncture practice owned by Respondent located at 18232 Gale Avenue, City of
4 Industry, California, 91748.

5 18. While MN was executing the search warrant, Respondent drove up to the business.
6 MN informed her he was executing a search warrant for AAI and Respondent agreed to speak
7 with MN.

8 19. Respondent stated AAI had been open since 2011. AAI’s employees included
9 Respondent, her husband (a licensed chiropractor), and other family members. Respondent stated
10 AAI provided a number of services including acupuncture, massages, and circulation treatments
11 to patients and billed the patients’ insurance for these services.

12 20. Respondent and another AAI employee did all of the billing. Respondent admitted
13 that since 2011, she had submitted fraudulent medical reimbursement claims to federally
14 sponsored health benefit plans and private insurers for services which were misrepresented and/or
15 not rendered. Respondent billed the insurance companies for services not rendered in order to
16 cover all of the additional services, including massages and facials, which AAI provided to
17 patients without charging them. Respondent admitted submitting falsified billings in excess of
18 \$1,000,000.

19 21. MN showed Respondent a patient file. After examining the file Respondent
20 explained under AAI’s billing system patient files have separate sheets inside the files indicating
21 real visits versus falsified visits. Respondent could therefore look at a patient file and ascertain if
22 the patient visits occurred or not. Respondent stated AAI maintained a thicker “real file” for the
23 primary patient and their family.

24 22. Respondent verified the patient file shown to her by MN contained Respondent’s
25 writing. Respondent stated that all of the visits documented in the patient file were false.
26 Respondent was thereafter arrested, indicted in proceedings entitled *UNITED STATES OF*

27 ¹ The names of any witnesses are abbreviated to protect privacy rights. The names will be provided to
28 Respondent upon written request for discovery.

1 *AMERICA vs. MEI CHEN DU, case number CR 17-0286- DOC*, and convicted by her plea of
2 guilty in those proceedings. Respondent failed to report her indictment, arrest and conviction to
3 the Board.

4 **SECOND CAUSE FOR DISCIPLINE**

5 (Unprofessional Conduct - Committing an Act of Dishonesty or Corruption)

6 23. Respondent is subject to disciplinary action under section 4955.1, subdivisions (b),
7 (c) and (d), of the Code, in that she has committed acts involving dishonesty or corruption with
8 respect to the duties of an acupuncturist.

9 24. Complainant refers to, and by reference incorporates herein, paragraphs 13 through
10 22, inclusive, above.

11 **THIRD CAUSE FOR DISCIPLINE**

12 (Failing to Report)

13 25. Respondent is subject to disciplinary action under California Code Regulations
14 section 1399.469.2, subsection (d), subdivisions (1), (2), and (3) in that she committed
15 unprofessional conduct by failing to report her indictment, arrest, and conviction.

16 26. Complainant refers to, and by reference incorporates herein paragraphs 13 through
17 22, inclusive, above.

18 **FOURTH CAUSE FOR DISCIPLINE**

19 (Unprofessional Conduct)

20 27. Respondent is subject to disciplinary action under section 4955, subdivisions (b) and
21 (d), of the Code in that she is guilty of unprofessional conduct.

22 28. Complainant refers to, and by reference incorporates herein paragraphs 13 through
23 22, inclusive, above.

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1 **PRAYER**

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


4 1. Revoking or suspending Acupuncturist License Number AC 6510, issued to Mei-
5 Chen Du, L.Ac.;

6 2. Ordering Mei-Chen Du, L.Ac. to pay the Acupuncture Board the reasonable costs of
7 the investigation and enforcement of this case, pursuant to Business and Professions Code section
8 4959;

9 3. If placed on probation, ordering her to pay to the Acupuncture Board the costs of
10 probation monitoring; and

11 3. Taking such other and further action as deemed necessary and proper.

12
13
14
15 DATED: JUN 25 2018


16 **BENJAMIN BODEA**
17 Executive Officer
18 Acupuncture Board
19 Department of Consumer Affairs
20 State of California
21 *Complainant*

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