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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 Accusation Against:

Case No. 1A-2015-25

13 **NING LI, L.Ac.**  
14 **4025 Mira Mesa Avenue**  
**Chino, CA 91710**

**ACCUSATION**

15 **Acupuncturist License No. AC 6715,**  
16 Respondent.

17  
18  
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 May 31, 1999, the Acupuncture Board issued Acupuncturist License  
23 Number AC 6715 to Ning Li, L.Ac. (Respondent). The Acupuncturist License was in full force  
24 and effect at all times relevant to the charges brought herein and will expire on May 31, 2022,  
25 unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Acupuncture Board (Board), Department of  
28 Consumer Affairs, under the authority of the following laws. All section references are to the

1 Business and Professions Code (Code) unless otherwise indicated.

2 **STATUTORY PROVISIONS**

3 4. Section 4928.1 of the Code states:

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

8 5. Section 4927, of the Code states:

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

10 ...

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

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

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

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

20 ...

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

24 ...

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

27 7. Section 4955.1 of the Code states:

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

...

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

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

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

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

4 8. Section 4955.2 of the Code states:

5 "The board may deny, suspend, revoke, or impose probationary conditions  
6 upon the license of any acupuncturist if he or she is guilty of committing any one of  
the following:

7 (a) Gross negligence.

8 (b) Repeated negligent acts.

9 (c) Incompetence.

10 9. Section 810 of the Code states:

11 (a) It shall constitute unprofessional conduct and grounds for disciplinary  
12 action, including suspension or revocation of a license or certificate, for a health care  
13 professional to do any of the following in connection with his or her professional  
activities:

14 (1) Knowingly present or cause to be presented any false or fraudulent claim for  
the payment of a loss under a contract of insurance.

15 (2) Knowingly prepare, make, or subscribe any writing, with intent to present or  
16 use the same, or to allow it to be presented or used in support of any false or  
fraudulent claim.

17 (b) It shall constitute cause for revocation or suspension of a license or  
18 certificate for a health care professional to engage in any conduct prohibited under  
Section 1871.4 of the Insurance Code or Section 549 or 550 of the Penal Code.

19 (c) (1) It shall constitute cause for automatic suspension of a license or  
20 certificate issued pursuant to Chapter 4 (commencing with Section 1600), Chapter 5  
21 (commencing with Section 2000), Chapter 6.6 (commencing with Section 2900),  
Chapter 7 (commencing with Section 3000), or Chapter 9 (commencing with Section  
22 4000), or pursuant to the Chiropractic Act or the Osteopathic Act, if a licensee or  
certificate holder has been convicted of any felony involving fraud committed by the  
23 licensee or certificate holder in conjunction with providing benefits covered by  
worker's compensation insurance, or has been convicted of any felony involving  
24 Medi-Cal fraud committed by the licensee or certificate holder in conjunction with  
the Medi-Cal program, including the Denti-Cal element of the Medi-Cal program,  
25 pursuant to Chapter 7 (commencing with Section 14000), or Chapter 8 (commencing  
with Section 14200), of Part 3 of Division 9 of the Welfare and Institutions Code. The  
26 board shall convene a disciplinary hearing to determine whether or not the license or  
certificate shall be suspended, revoked, or some other disposition shall be considered,  
27 including, but not limited to, revocation with the opportunity to petition for  
reinstatement, suspension, or other limitations on the license or certificate as the  
board deems appropriate.

28 (2) It shall constitute cause for automatic suspension and for revocation of a

1 license or certificate issued pursuant to Chapter 4 (commencing with Section 1600),  
2 Chapter 5 (commencing with Section 2000), Chapter 6.6 (commencing with Section  
3 2900), Chapter 7 (commencing with Section 3000), or Chapter 9 (commencing with  
4 Section 4000), or pursuant to the Chiropractic Act or the Osteopathic Act, if a  
5 licensee or certificate holder has more than one conviction of any felony arising out  
6 of separate prosecutions involving fraud committed by the licensee or certificate  
7 holder in conjunction with providing benefits covered by worker's compensation  
8 insurance, or in conjunction with the Medi-Cal program, including the Denti-Cal  
9 element of the Medi-Cal program pursuant to Chapter 7 (commencing with Section  
10 14000), or Chapter 8 (commencing with Section 14200), of Part 3 of Division 9 of the  
11 Welfare and Institutions Code. The board shall convene a disciplinary hearing to  
12 revoke the license or certificate and an order of revocation shall be issued unless the  
13 board finds mitigating circumstances to order some other disposition.

14 (3) It is the intent of the Legislature that paragraph (2) apply to a licensee or  
15 certificate holder who has one or more convictions prior to January 1, 2004, as  
16 provided in this subdivision.

17 (4) Nothing in this subdivision shall preclude a board from suspending or  
18 revoking a license or certificate pursuant to any other provision of law.

19 (5) "Board," as used in this subdivision, means the Dental Board of California,  
20 the Medical Board of California, the California Board of Podiatric Medicine, the  
21 Board of Psychology, the State Board of Optometry, the California State Board of  
22 Pharmacy, the Osteopathic Medical Board of California, and the State Board of  
23 Chiropractic Examiners.

24 (6) "More than one conviction," as used in this subdivision, means that the  
25 licensee or certificate holder has one or more convictions prior to January 1, 2004,  
26 and at least one conviction on or after that date, or the licensee or certificate holder  
27 has two or more convictions on or after January 1, 2004. However, a licensee or  
28 certificate holder who has one or more convictions prior to January 1, 2004, but who  
has no convictions and is currently licensed or holds a certificate after that date, does  
not have "more than one conviction" for the purposes of this subdivision.

(d) As used in this section, health care professional means any person licensed  
or certified pursuant to this division, or licensed pursuant to the Osteopathic Initiative  
Act, or the Chiropractic Initiative Act.

## REGULATORY PROVISIONS

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

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

## COST RECOVERY

11. Section 4959 of the Code states:

(a) The board may request the administrative law judge, under his or her  
proposed decision in resolution of a disciplinary proceeding before the board, to  
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.

1 (b) The costs to be assessed shall be fixed by the administrative law judge and  
2 shall not in any event be increased by the board. When the board does not adopt a  
3 proposed decision and remands the case to an administrative law judge, the  
4 administrative law judge shall not increase the amount of any costs assessed in the  
5 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  
9 enforcement shall be in addition to any other rights the board may have as to any  
10 licensee directed to pay costs.

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

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

## 16 GENERAL STATUTES OR REGULATIONS

17 12. The Current Procedural Terminology (CPT) code set is a medical code set maintained  
18 by the American Medical Association through the CPT Editorial Panel.

19 13. Section 99203 of the Current Procedural Terminology Code states:

20 Level 4 New Patient Office Visit: Office or other outpatient visit for the  
21 evaluation and management of a new patient, which requires these components:

22 Office or other outpatient visit for the evaluation and management of a new  
23 patient, which requires these three key components: a detailed history; a detailed  
24 examination; and medical decision making of low complexity. Counseling and/or  
25 coordination of care with other physicians, other qualified health care professionals,  
26 or agencies are provided consistent with the nature of the problem(s) and the patient's  
27 and/or family's needs. Usually, the presenting problem(s) are of moderate severity.  
28 Typically, 30 minutes are spent face-to-face with the patient and/or family. Billing  
Instructions: Bill 1 unit per visit.

14. Section 99213 of the Current Procedural Terminology Code states:

Established Patient: requires at least 2 of these 3 key components: An expanded  
problem focused history; An expanded problem focused examination; Medical  
decision making of low complexity. Counseling and coordination of care with other  
physicians, other qualified health care professionals, or agencies are provided  
consistent with the nature of the problem(s) and the patient's and/or family's needs.  
Usually, the presenting problem(s) are of low to moderate severity. Typically, 15  
minutes are spent face-to-face with the patient and/or family.

15. Section 97026 of the Current Procedural Terminology Code states:

This section discusses "Infrared Modality" and states: Application of infrared  
therapy is related to the use of an infrared light. Application of a modality to 1 or

more areas; infrared (limited coverage).

## FACTUAL SUMMARY

16. On February 10, 2015, the Continental Assurance Company (CNA) notified the Board it was investigating Respondent for fraudulent billing. The Board initiated an investigation of the events underlying this report through the Department of Consumer Affairs, Division of Investigation (DOI). The DOI investigator conducted an investigation regarding this complaint and prepared a report of the investigation for the Board.

17. Documents were obtained during the investigation which included Respondent's redacted billing records as well as her testimony which was taken during the course of three depositions.

18. The investigation revealed that Respondent allegedly treated 28 individuals out of 60 people for injuries sustained on December 21, 2012, which resulted from a crash between a bus and a car. The day after the accident six of the individuals allegedly injured in the accident sought care from the Respondent. Ultimately Respondent treated 28 patients from the tour bus accident. The 28 patients Respondent treated underwent the exact same procedures (acupuncture with electric stimulation, heat lamp and massage) from the initial treatment to the time they were discharged, notwithstanding their prior medical history, their medical condition at the time they were treated, or age. The Respondent billed a total of \$204,955.00 for the care she provided to these patients.

19. Patients treated by Respondent retained attorney 1<sup>1</sup> who referred them to Respondent for treatment. Attorney 1 is the same attorney who represented Respondent in a 2012 automobile accident, and Attorney 1 referred Respondent to Doctor 1 for Respondent's injuries in the 2012 accident.

20. Respondent was questioned by CNA attorneys during three depositions regarding her treatment of the people injured in the tour bus accident.

21. During the first deposition taken February 9, 2015, Respondent testified she received

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<sup>1</sup> The names of the patients and/or witnesses are anonymized to protect their privacy rights. The names will be provided to Respondent upon written request for discovery.

1 a Bachelor's Degree in Physical Education in 1988 and a Master's Degree in Oriental Medicine in  
2 either 1998 or 1999. Respondent testified she owned three acupuncture clinics and occasionally  
3 taught acupuncture classes two to three a week before she ceased teaching because she was too  
4 busy seeing patients in her practices to teach. Respondent stated she normally sees 20 to 30  
5 patients a day at her 3 practice locations.

6 22. Initially Respondent testified she did not think Attorney 1 referred any patients to her  
7 although she stated she had known him for several years. Respondent subsequently testified  
8 Attorney 1 had in fact referred patients to her and that she had referred patients to him.  
9 Respondent testified that Attorney 1 had accompanied patients to her practice when they received  
10 acupuncture treatment.

11 23. During her deposition Respondent disclosed Attorney 1 recommended Dr. 1 who  
12 treated her after her 2012 accident. During Respondent's treatment with Dr. 1 he examined her  
13 and recommended she submit to lower back surgery which she was too afraid to undergo.

14 24. When asked if she had talked to Dr. 1 concerning any of her patients Respondent said  
15 she did not quite recall but thought Dr. 1 might be an "orthopedic" [sic].

16 25. During the deposition Respondent subsequently testified that she had recommended  
17 at least one patient to Dr. 1. When Respondent was asked again if she had talked to Dr. 1  
18 Respondent said there were some patients who asked her about him and she told them Dr. 1 was a  
19 good doctor. Respondent was asked once more if she had spoken to Dr. 1 and she said she could  
20 not recall but then stated she had spoken to Dr. 1 once or twice about one or two patients with  
21 severe symptoms.

22 26. During the March 31, 2015, deposition when Respondent was asked if she suggested  
23 to any of her patients that they see Dr. 1 she contradicted her previous testimony and stated she  
24 had not suggested or recommended Dr. 1.

25 27. During Respondent's February 9, 2015, deposition Respondent revealed she failed to  
26 document in any patients' records that she had referred the patients to Dr. 1 for evaluation, nor did  
27 she document any of the patient records regarding her discussions with Dr. 1 regarding the  
28 patients' medical issues.

1           28. During Respondent's February 9, 2015, deposition Respondent testified that Person 1  
2 worked for her for approximately four years but she did not know if he was licensed in any  
3 medical field in California. Respondent testified she had instructed Person 1 to provide physical  
4 therapy and chiropractic services to these patients. Respondent denied that Person 1 provided  
5 acupuncture to any of the patients.

6           29. During Respondent's February 9, 2015, deposition Respondent testified that Person 2,  
7 a massage therapist, worked for her and provided massage to her patients although she did not  
8 know if Person 2 was licensed as a massage therapist in California.

9           30. During Respondent's February 9, 2015, deposition Respondent disclosed she did not  
10 know which patients had received treatment from either Person 1 or 2, because she did not  
11 document the patients' records with that information.

12           31. During Respondent's February 9, 2015, deposition Respondent was questioned about  
13 her failure to document a treatment plan for each of the patients. Respondent stated she did not  
14 document treatment plans because she believed that acupuncture is very complicated, as it is done  
15 on various body parts.

16           32. During Respondent's February 9, 2015, deposition Respondent testified her treatment  
17 plans for each patient was acupuncture and massage. Respondent testified she used acupuncture,  
18 electrical stimulation, and hot packs not cold packs to reduce swelling for each patient.  
19 Respondent stated there are all types of swelling and hot packs can help with some swelling.

20           33. During Respondent's February 9, 2015, deposition a number of the patient sign in  
21 sheets for the patients' dates of treatment were produced which appeared questionable as all of  
22 the signatures looked as though the patient had signed the sheets on the same date.

23           34. During Respondent's February 9, 2015, deposition Respondent disclosed that she did  
24 not document the patients' records with the appropriate acupuncture billing codes. Respondent  
25 stated she did not list codes for acupuncture treatment because she had so many patients she  
26 forgot to write in the codes. Respondent admitted that some of treatment codes in the patients'  
27 records were written in after the treatment dates.

28           35. During Respondent's February 9, 2015, deposition, when Respondent was questioned



1 about her billing practices, Respondent stated that it can take up to an hour to treat just one  
2 patient. However, Respondent was unable to explain how she was able to provide the exact same  
3 treatment to 23 patients on January 2, 2013, as reflected in the billing she submitted to CNA.

4 36. During Respondent's February 9, 2015, deposition Respondent testified she did not  
5 write progress notes for her patients because she believed regulations did not require written  
6 progress notes for each visit. Respondent stated that she did write notes occasionally but would  
7 not always document patients' progress at every visit.

8 37. Respondent billed for treatment of 20 identified patients but none of those patients'  
9 records revealed treatment by Respondent.

10 38. Many of the patients' records reflected treatment Respondent allegedly provided, but  
11 there were no patient signatures in those records. Other patient records did contain patients'  
12 signatures but the records contained no indication that any treatment had been provided.  
13 Respondent was unable to explain why there were numerous patient records wherein treatment  
14 was allegedly provided but there was no patient signature. Nor could Respondent explain why  
15 other patient records contained the patients' signatures but there was no treatment noted in the  
16 record.

17 39. Respondent denied any of her patients signed their treatment sheets in their records  
18 all on one day, and insisted that each treatment sheet in the patient's records was signed on the  
19 date the patients received treatment.

20 40. Respondent denied having the patients sign blank treatment sheets later filled in with  
21 alleged treatment dates.

22 41. Respondent was questioned about a number of patients to whom she had provided  
23 treatment. In one patient's records there was a sign-in sheet with his signature, dated May 22,  
24 2013, but Respondent failed to document any treatment for that date. Respondent stated that was  
25 a mistake. Respondent billed the patient for treatment on December 21, 2013, but failed to  
26 document any treatment for that date. Respondent testified she could not recall why there was no  
27 documented treatment. Respondent documented treatment on March 6, 2014, but the patient did  
28 not sign the sign-in sheet for that date. Respondent testified that the patient forgot to sign.

1           42. Respondent admitted she did not write down a treatment plan for this patient who she  
2 described as being a “complicated” patient because of previous health issues (Respondent’s  
3 discharge report for this patient stated “the patient had no significant medical history before the  
4 accident”) but testified she had verbally discussed the treatment plan with the patient.

5           43. Respondent testified she treated this patient for a year and a half because he was not  
6 recovering. Respondent testified treating a patient that long would benefit the patient.  
7 Respondent could not remember if she spoke to Dr. 1 about the patient or considered sending the  
8 patient to Dr. 1 for treatment.

9           44. Respondent testified she saw this patient twice a week, providing free treatment for  
10 him from April 2014, up to the time of the deposition. Respondent testified she stopped keeping  
11 medical records for the patient after she stopped charging the patient for treatment. Respondent  
12 testified she was not aware that she had to document treatment she provided to a patient if she did  
13 not charge the patient.

14           45. During the February 9, 2015, deposition Respondent was shown a sign-in sheet for a  
15 different patient. The patient’s sign-in sheet had been obtained by the CNA attorney in  
16 November 2014. The records did not show a treatment date of April 25, 2014, for that patient.  
17 However, Respondent brought records to the February 9, 2015, deposition for that patient which  
18 documented that the patient was treated on April 25, 2014. Respondent could not remember how  
19 the April 24, 2014, treatment date was added to her copy of the medical records after the CNA  
20 attorney received his copy of the patient’s records in November 2014.

21           46. Respondent was questioned about another patient’s records. That patient’s records  
22 reflected on May 31, 2013, Respondent provided a half hour of acupuncture and a half hour  
23 massage on the patient’s neck after the patient underwent surgery on that same date by Dr. 1.  
24 Respondent stated she would perform acupuncture on a patient who underwent surgery the same  
25 day if the patient did not have an open surgical incision.

26           47. During the second deposition taken on March 31, 2015, Respondent stated she could  
27 not remember when any of her patients had undergone an MRI as Chinese medicine doctors  
28 normally do not believe in Western medicine. Respondent stated that Chinese and Western

1 medicine have totally different practices and theories which explains why Chinese medicine  
2 doctors don't recommend that their patients see Western medical doctors. Respondent testified  
3 that from a Chinese medicine doctor's perspective the Chinese medicine doctor can tell what is  
4 wrong with a patient since the way a Chinese medicine doctor diagnoses a patient is different than  
5 Western medical doctors. Respondent testified that the difference between Chinese and Western  
6 medicine however, did not mean she did not want her patients to see a Western medical doctor.

7 48. Respondent testified that five patients had gone to Dr. 1 who performed surgery on  
8 the patients to relieve their pain. Prior to undergoing surgery none of the patients told her they  
9 were considering having surgery. Respondent said those patients stated Dr. 1 performed surgery  
10 to relieve their pain yet the patients returned to her for additional treatment. When Respondent  
11 was asked why the patient would come to her after undergoing surgery to relieve pain which  
12 continued despite having undergone acupuncture treatment from her, Respondent stated that  
13 surgery was recommended based on Western medical practice and she is not familiar with that  
14 area. Respondent testified she had no idea why her patients did not tell her they were planning to  
15 have surgery.

16 49. Respondent testified that she had no idea how it happened that 28 people from the  
17 same bus accident came to her for treatment. Six of the patients came to see Respondent the day  
18 after the accident. Respondent said she could not remember at which of her three practices she  
19 saw them, could not remember if the six patients each called to make an appointment to be seen  
20 that day, and could not remember if they all came together to be seen on that day. Respondent  
21 was unable to remember how much time it took to evaluate and treat all six of the patients who  
22 came to her office on the same day.

23 50. Respondent testified that after she saw the six patients, all the patients came back two  
24 days later. Respondent did not remember why all six patients would come back on the same day  
25 but opined it could have been that she had them all come back on the same day because they all  
26 had the exact same complaint. The six patients returned to see Respondent four days after their  
27 second visit, but Respondent could not remember why they returned four days after their second  
28 visit.

1           51. On January 2, 2013, Respondent testified she treated 24 different patients from the  
2 accident, 18 of whom were new patients. Respondent testified that when a new patient comes to  
3 her practice to receive treatment it takes about an hour to evaluate them and treat them.

4 Respondent testified she couldn't remember how many hours it took to see the 18 patients.

5           52. Respondent testified she had hoped that all the patients would come to her for  
6 treatment but if she had known that it would have gotten herself in so much trouble, she would  
7 not have seen them. When questioned about what kind of trouble, Respondent testified because  
8 of the deposition she was not able to pick her son up from school and he had to walk home.

9           53. During both the second and third deposition which was taken on May 15, 2015,  
10 Attorney 2 was present. On May 15, 2015, the CNA attorney asked Attorney 2 if he was in fact  
11 representing Respondent and if so when Respondent had retained him.

12           54. Respondent said that Attorney 2 was not representing her. Respondent said that while  
13 she gave testimony if she thought she needed an attorney she would ask Attorney 2 to represent  
14 her. The CNA attorney told Respondent that Attorney 2 stated he was representing her, and if  
15 Attorney 2 was not representing her Respondent should so inform Attorney 2. Respondent stated  
16 she needed Attorney 2's services. Attorney 2 remained throughout the deposition.

17           55. The CNA attorney asked Respondent if she knew Attorney 2 was also representing all  
18 of the passengers injured in the accident. Respondent testified she was not aware that Attorney 2  
19 was representing her as well as all of the passengers who had been injured in the accident.

20           56. During the course of the depositions Respondent testified Person 1 and Person 2  
21 provided massage to the patients and explained the patients' exercise regimens to the patients and  
22 also helped the patients move around after massage.

23           57. Respondent testified that if one of the massage therapists, that is, Person 1 or Person  
24 2, gave a patient a massage the massage therapist did not document the massage in the patient's  
25 medical records.

26           58. Respondent was asked if she could look at the patient records and be able to tell at  
27 which of her three practices the patient was treated. Respondent testified she could not because it  
28 had been so long since she has treated those patients but that some patients would be treated at

1 one practice and later they would go to one of her other practices.

2 59. Respondent testified the 28 patients underwent routine treatments which did not  
3 require her to perform Chinese Medicine. Respondent subsequently changed her testimony and  
4 testified she had in fact performed Chinese Medicine during her treatment of the patients.  
5 Respondent stated that because she was not asked to do Chinese Medicine, she did not record  
6 performing Chinese Medicine treatment in the patients' medical records.

7 60. Respondent testified that Western medicine does not require her to look at the  
8 patient's energy or pulse. Respondent stated after she examined a patient, she did not document  
9 her findings because she was not paid to write down her findings. However, Respondent testified  
10 that although she did not write down her findings after examinations, she did record the billing  
11 codes for the examinations.

12 61. Respondent testified that when she had a patient with muscle spasms, sometimes she  
13 would document the muscle spasm, but most of the time she would document the muscle spasm  
14 as pain. Respondent testified record keeping was not good after which she stated she needed to  
15 go to her practice and ended the deposition.

16 62. On March 1, 2017, the DOI investigator interviewed Respondent for the first time.  
17 During that interview Respondent stated she had had an acupuncture practice since 1999 and  
18 provided the addresses for her current three acupuncture practices. Respondent stated she sees  
19 20-50 patients a day. Respondent stated she had a massage therapist that helped her in her  
20 practices. Respondent stated that she had hired various people to help her treat patients at the  
21 same time but those people no longer work for her and she does not know where they are.

22 63. Respondent said that she had given three depositions related to the billing and  
23 treatment she provided to 28 patients involved in injuries sustained in the December 21, 2012, bus  
24 and car accident. Respondent said she was not sure how the patients were referred to her but a lot  
25 of patients who were on the bus were old patients of hers.

26 64. Respondent said she had not been contacted by anyone other than the insurance  
27 company regarding her treatment of the 28 patients and did not have any idea why the  
28 investigator contacted her.

1           65. Respondent said that she had not been paid by the insurance company for any of the  
2 patients' treatment.

3           66. Respondent denied that she had committed fraud, or overcharged the insurance  
4 company for the patients' treatments. Respondent said she could not answer any of the  
5 investigator's questions regarding the case because she could not remember anything about it.

6           67. Respondent stated she needed to leave because she had patients that she needed to see  
7 in the afternoon. Respondent stated she would need to come back for another interview after she  
8 reviewed the patient records. Respondent subsequently hired an attorney who initially refused to  
9 allow Respondent to participate in a second interview with the DOI investigator.

10          68. On October 9, 2018, the DOI investigator interviewed Respondent for the second  
11 time. In response to the Board's subpoenas Respondent brought patient records for just nine  
12 patients with her. Respondent identified the nine patients' records as her medical records from  
13 her treatment of the bus/car accident patients.

14          69. During the October 9, 2018, interview Respondent stated that her husband, who  
15 worked full time at a toy factory, had done her billing for personal injury cases since 1999.

16          70. During the October 9, 2018, interview Respondent stated she hired other employees  
17 to assist her at her offices because she had so many patients she could not treat all of them.  
18 Respondent stated she hired four temporary massage therapists to treat patients from the bus  
19 accident. Respondent stated Respondent hired Person 1 as a full-time massage therapist who  
20 worked for her from 2012 until 2017.

21          71. Respondent stated she hired Person 2 as a massage therapist but could not remember  
22 his last name. She said that Person 2 started working for her in 2013, but once the patients from  
23 the bus accident completed their treatments she no longer needed his services. Respondent did not  
24 have contact information for any of her former employees.

25          72. Respondent stated she treated most of the patients at two of her three office locations.  
26 Respondent said that she could treat up to thirty patients in a day at one of the offices where she  
27 had four tables and one massage chair. The other office had five tables and one massage chair.  
28 Respondent stated a patient's treatment would last approximately an hour. Respondent stated she

1 treated five to six patients an hour.

2 73. Respondent confirmed all the treatment records for the nine patients provided to the  
3 Board were the same treatment records Respondent submitted to Attorney 1 who represented  
4 those patients in the December 21, 2012, bus and car accident lawsuit. The Respondent stated she  
5 neither provided the insurance company with the patients' treatment records nor submitted any  
6 billing to the insurance company.

7 74. At the October 9, 2018, interview Respondent reviewed treatment records for  
8 Patients' 1 through 9. Those records contained a summary report, "Statement of Professional  
9 Services Rendered," "Patient Information" sheet, and a treatment record form. The treatment  
10 record form contained a place for the patient to sign-in on the date of treatment.

11 75. Respondent stated during a patient's first visit the patient would fill out the "Patient  
12 Information" sheet on which Respondent documented the patient's initial complaint and medical  
13 history. At the end of each patient's visit, Respondent stated she would tell her husband what  
14 acupuncture billing codes to write on the patient's treatment record form.

15 76. Examination of each of the records for the nine patients revealed that none of the  
16 patient treatment records other than Patient 2's contained a treatment checklist. None of the  
17 treatment record forms contained any written documentation regarding the patient's treatment or  
18 progress.

19 77. Respondent stated her husband would enter billing code 99202 for a patient's first  
20 visit, billing code 99213 for a patient's second evaluation, billing code 97813 for acupuncture and  
21 electrical stimulation, billing code 97010 for heat lamp treatment, and billing code 97124 for  
22 massage therapy.

23 78. Respondent stated she does not write notes for any patient visits, does not normally  
24 keep notations of the patient's pain level nor what caused the patient's injury. Respondent stated  
25 she always remembered the last conversation with the patient and what their complaint was at that  
26 time. Respondent stated she reviewed what treatments she provided by reviewing the previous  
27 visit's acupuncture billing codes in the patient's treatment records. Respondent stated she would  
28 only write detailed notes when it was necessary to submit documentation for billing.

1           79. Respondent stated she wrote notes on scratch paper in Chinese which were not kept in  
2 the patient's file and then provided those notes to her husband so he could write a summary.  
3 Respondent stated she did not consider the notes to be part of the patients' treatment records but  
4 notes for her use which is why the notes were destroyed. Respondent stated she considers writing  
5 billing codes on the treatment records as the only necessary documentation for patient treatment  
6 records.

7           80. Respondent stated that Health Maintenance Organization insurance companies  
8 require her to fill out a checkoff list for every visit. Respondent said those checklists were  
9 prepared electronically, but Respondent did not include that information as part of the treatment  
10 records Respondent kept in her file cabinet.

11           81. The investigator asked Respondent in what way another acupuncturist would know  
12 how to treat her patients without any documentation in the patient's records. In response  
13 Respondent stated another acupuncturist would ask the patient what treatment the patient needed.  
14 Respondent told the investigator that other acupuncturists worked at her office when Respondent  
15 was not present and sometimes would call Respondent and ask her what treatment the patient  
16 needed.

17           82. Respondent stated she had problems with properly documenting the patients'  
18 treatment records but her main concern is the patient and not the documentation.

19           83. Respondent stated that while she was treating the patients from the December 21,  
20 2012, accident she learned some of the patients had gone to an orthopedic surgeon for surgery  
21 without telling her. Respondent stated some of the patients returned to her practice after  
22 undertaking surgery because they were still in pain and insisted that she treat them after surgery.  
23 Respondent stated she did not determine the kind of surgery the patients had undergone.  
24 Nonetheless Respondent continued to treat the patients for pain despite the fact that the surgery  
25 which had been performed was intended to eliminate the patient's pain.

26           84. When the investigator asked Respondent if she referred the patients to their primary  
27 care physician to be treated for chronic pain Respondent stated she had done so. However,  
28 Respondent also said the patients would return to her practice to be treated for pain.



1 85. The investigator asked if Respondent had documentation which reflected her  
2 recommendations to the patients to return to the primary care physician for a physical evaluation  
3 and/or additional tests. Respondent stated she did not document counseling these patients to  
4 return to the primary care physician for a physical evaluation and/or additional tests. Respondent  
5 stated she just remembered that she told the patients to return to their primary care physician.

6 86. Respondent stated she did not confirm in any way that patients went to their doctors  
7 for the evaluation and testing she allegedly recommended but just trusted that the patient  
8 consulted with their primary care physician

9 87. The investigator reviewed the summary reports for each of the nine patients  
10 Respondent provided to the Board and subsequently brought to the interview. Respondent  
11 admitted the reports in each patient's file were written from her recollection and the billing codes.  
12 The following patients were discussed:

13 88. The records for Patient 1, a 70-year-old male who Respondent treated January 2,  
14 2013, to February 8, 2013, contained a "Discharge Report," a sign in sheet, and billing records.

15 89. Patient 1's records disclosed that on January 2, 2013, Respondent performed an  
16 "Initial Exam" billed as CPT 99201, for which insurance was billed \$140.00. During the  
17 interview, Respondent said Patient 1 complained of neck, headache, knee, and lower back pain on  
18 the initial visit. The records contained a very small handwritten notation on "1/25/13" that stated  
19 "neck 15%, back 15-25%" [sic] and Respondent stated those notes meant the patient's neck had  
20 15% movement, and he had 15 to 25% movement in his back. On "2/8/13," she noted "pain is  
21 better neck and back" [sic].

22 90. Patient 1's records revealed January 25, 2013, and February 8, 2013, "Examinations"  
23 billed as CPT 99213 for which insurance was billed \$100. Patient 1's records reflected  
24 Respondent billed for 11 treatments of acupuncture with electric-stimulation billed as CPT 97813,  
25 hot pack billed as CPT 97010 and massage billed as CPT 97124. Patient 1 was discharged on  
26 February 8, 2013, but Respondent's discharge report was dated March 25, 2013.

27 91. There was no documentation to support any of Respondent's billing for Patient 1.  
28 The total amount billed for these treatments was \$2,035.00.

1           92. A review of Patient 2's records reflected the 74-year-old female patient was treated  
2 January 2, 2013, to June 28, 2013. Patient 2's records disclosed that on January 2, 2013,  
3 Respondent performed an "Initial Exam" billed for this patient as CPT 99203, for which  
4 insurance was billed \$140.00. Respondent's "Acupuncture Treatment Record" recorded Patient 2  
5 had "20% neck movement and 25% back movement" [sic] The appointment summary for a  
6 number of Patient 2's appointments had different dates than Patient 2's "Acupuncture Treatment  
7 Record." The records show Patient 2 signed the record, but the date had been crossed out.  
8 Respondent said it was an error and was not sure why Patient 2 signed there. Patient 2's records  
9 reflected 53 treatments of acupuncture with electric-stimulation billed as CPT 97813, hot pack  
10 billed as CPT 97010, and massage billed as CPT 97124. Patient 2 was discharged on June 28,  
11 2013, but Respondent's discharge report was dated July 10, 2013.

12           93. There was no documentation to support any of Respondent's billing for Patient 2.  
13 The total amount billed for these treatments was \$8,370.00.

14           94. A review of Patient 3's records reflected the 59-year-old female patient was treated  
15 December 22, 2012, to December 13, 2013. Patient 3's records disclosed that on December 22,  
16 2012, Respondent performed an "Initial Exam" billed as CPT 99203, for which insurance was  
17 billed \$140.00. Patient 3's records show that on February 29, 2013, April 23, 2013, and June 6,  
18 201, Respondent performed "Examinations" billed for \$100.00.

19           95. Patient 3's "Statement of Professional Service" show that on March 6, 2013,  
20 Respondent billed for a medical report, acupuncture, hot packs, and massage. However, the  
21 "Acupuncture Treatment Record" does not show that Patient 3 received any treatment on that  
22 date. Respondent stated the discrepancies in Patient 3's medical records were documentation  
23 errors.

24           96. Patient 3's records disclosed that between December 22, 2012, and June 28, 2013, the  
25 patient was allegedly treated 80 times with acupuncture with electric-stimulation billed as CPT  
26 97813, with hot packs billed as CPT 97010, and massage billed as CPT 97124. Patient 3 was  
27 discharged on June 28, 2013, but Respondent's discharge report for Patient 3 was dated  
28 September 6, 2013. There was no supporting documentation for the 80 treatments. The total

1 amount billed for the 80 treatments was \$12,140.00.

2 97. Respondent stated Patient 3 complained of pain and wanted to be treated daily.  
3 Respondent stated that she continued to treat Patient 3 because the treatment provided Patient 3  
4 with pain relief. Respondent stated she thought she referred Patient 3 to the patient's primary  
5 care physician but couldn't remember the details of the conversation because of the lapse of time.  
6 Respondent then stated from her experience she would refer a patient to a Western medicine  
7 doctor or physical therapist if the patient continued to complain of pain.

8 98. Respondent stated Patient 3 had surgery but she still came to Respondent for  
9 treatment. Patient 3's records disclosed Respondent treated her 22 more times after surgery with  
10 electric-stimulation billed as CPT 97813, with hot packs billed as CPT 97010, and massage billed  
11 as CPT 97124. The total amount billed for the additional 22 treatments was \$3,190.00.  
12 Respondent said she would tell patients to get an x-ray or go to another doctor for an examination  
13 but Patient 3 never gave Respondent any documentation stating that she was evaluated by other  
14 doctors. Respondent stated patients just "like her treatment" which is why patients continue to  
15 treat with her for pain relief even after surgery to relieve the patient's pain.

16 99. On May 31, 2013, Respondent performed acupuncture treatment on Patient 3, the  
17 same day Patient 3 underwent surgery.

18 100. A review of Patient 4's records reflected the 48-year-old female patient was treated  
19 from January 2, 2013, to November 15, 2013. Patient 4's records reflected on January 2, 2013,  
20 Respondent performed an "Initial Exam" billed as CPT 99203, for which insurance was billed  
21 \$140.00. Patient 4's records reflected on February 19, 2013, April 11 and 23, 2013, Respondent  
22 performed "Examinations" billed as CPT 99213 for \$100 each which were included in the bill  
23 without supporting documentation.

24 101. In addition, Patient 4's records reflect that Patient 4 received treatments two or three  
25 days in a row on multiple occasions. Respondent provided 65 treatments of acupuncture with  
26 electric-stimulation billed as CPT 97813, with hot packs billed as CPT 97010, and massage billed  
27 as CPT 97124 which were billed for a total of \$9,965.00, without any supporting documentation.  
28 During her interview with the investigator Respondent stated Patient 4 had pain issues and needed

1 acupuncture often.

2 102. Respondent stated she told Patient 4 to go to her primary care physician to see if she  
3 needed physical therapy. However, Respondent stated that she does not follow-up with patients  
4 to make sure they see their doctor nor does she contact the patients' doctors to ensure the patients  
5 went to them for evaluation. Respondent stated Patient 4 informed Respondent that her doctor  
6 recommended she continue acupuncture. Respondent did not have any documentation from the  
7 Patient 4's doctors which recommended acupuncture treatment.

8 103. Respondent's "Discharge Report" for Patient 4" stated Patient 4 was discharged May  
9 31, 2013, although the only "Discharge Report" prepared by Respondent was dated August 25,  
10 2013. After Respondent initially discharged Patient 4 on May 31, 2013, Respondent allegedly  
11 performed 19 additional acupuncture treatments with electric-stimulation billed as CPT 97813,  
12 hot packs billed as CPT 97010, and massage billed as CPT 97124 between June 14, 2013, and  
13 November 15, 2013, for an additional \$2,755.00.

14 104. A review of Patient 5's records reflected the 72-year-old male patient was treated  
15 December 22, 2012, to July 29, 2013. Patient 5's records reflected on December 22, 2012,  
16 Respondent performed an "Initial Exam" billed as CPT 99203, for which insurance was billed  
17 \$140.00. Patient 5's records reflected on February 28, 2013, May 1, 2013, and July 29, 2013,  
18 Respondent performed "Examinations" billed as CPT 99213 for \$100 each which were included  
19 in the bill without supporting documentation.

20 105. Patient 5's records reflected Respondent provided 80 treatments of acupuncture with  
21 electric-stimulation billed as CPT 97813, hot packs billed as CPT 97010, and massage billed as  
22 CPT 97124 billed for a total of \$12,140.00, without supporting documentation. Patient 5 was  
23 discharged on July 29, 2013, but the patient's discharge report was dated August 20, 2013. After  
24 Respondent discharged Patient 5 Respondent allegedly performed 17 additional treatments of  
25 acupuncture with electric-stimulation billed as CPT 97813, hot packs billed as CPT 97010, and  
26 massage billed as CPT 97124 between August 1, 2013, and December 15, 2013, for an additional  
27 \$2,465.00.

28 106. The records for Patient 6 examined by the investigator during Respondent's interview

1 included a detailed checklist with the exact treatments provided to Patient 6. A review of Patient  
2 6's "Statement of Professional Service" rendered showed that Respondent billed for March 7,  
3 2013. Although there was no detailed checklist for March 7, 2013, on the "Acupuncture  
4 Treatment Record" March 7, 2013, is listed along with the patient's signature. Similarly, the  
5 March 11, 2013, "Statement of Professional Service" rendered shows Respondent billed for  
6 treatment and the detailed checklist for March 11, 2013, indicates treatment was provided.  
7 However, Patient 6's signature was not on the "Acupuncture Treatment Records" for March 11,  
8 2013.

9 107. A review of Patient 6's records reflected the 64 year-old female patient was treated  
10 from December 22, 2012, to May 23, 2013. Patient 6's records reflected that on December 22,  
11 2012, Respondent performed an "Initial Exam" billed as CPT 99203, for which insurance was  
12 billed \$140.00. Patient 6's records reflected on February 13, 2013, April 4, 2013, and May 23,  
13 2013, Respondent performed "Examinations" billed as CPT 99213 for \$100 each which were  
14 included in the bill without supporting documentation.

15 108. Patient 6's records reflected Respondent provided 61 treatments of acupuncture with  
16 electric-stimulation billed as CPT 97813, hot packs billed as CPT 97010, and massage billed as  
17 CPT 97124 billed for a total of \$9,385.00, without supporting documentation. Patient 6 was  
18 discharged on May 23, 2013, but the patient's discharge report was dated August 20, 2013.

19 109. After Respondent discharged Patient 6, Respondent allegedly performed 12 additional  
20 treatments of acupuncture with electric-stimulation billed as CPT 97813, hot packs billed as CPT  
21 97010, and massage billed as CPT 97124 between June 6, 2013, and December 11, 2013, for an  
22 additional \$1,740.00.

23 110. Patient 6's records reflected the patient was last seen by Respondent on February 19,  
24 2014, for a total of 81 visits. Patient 6's records revealed Respondent provided 65 identical  
25 treatments utilizing the exact same acupuncture points, as well as a second set of 16 identical  
26 treatments to the first set, which differed due to the inclusion of one additional point.

27 111. A review of Patient 7's records reflected the 56 year-old male patient was treated  
28 from December 22, 2012, to May 23, 2013. On December 22, 2012, Respondent performed an

1 “Initial Exam” billed as CPT 99203, for which insurance was billed \$140.00. Patient 7’s records  
2 reflected on February 13, 2013, April 4, 2013, and May 23, 2013, Respondent performed  
3 “Examinations” billed as CPT 99213 for \$100 each which were included in the bill without  
4 supporting documentation.

5 112. Patient 7’s records reflected Respondent provided 61 treatments of acupuncture with  
6 electric-stimulation billed as CPT 97813, hot packs billed as CPT 97010, and massage billed as  
7 CPT 97124 billed for a total of \$9,385.00, without supporting documentation. Patient 7 was  
8 discharged on May 23, 2013, but Respondent’s “Discharge Report” for Patient 7 was dated  
9 August 26, 2013.

10 113. After Respondent discharged Patient 7 Respondent allegedly performed 11 additional  
11 treatments of acupuncture with electric-stimulation billed as CPT 97813, hot packs billed as CPT  
12 97010, and massage billed as CPT 97124 between June 6, 2013, and October 24, 2013, for an  
13 additional \$1,595.00.

14 114. A review of Patient 8’s records reflected the 74 year-old, female patient was treated  
15 from December 22, 2012, to May 23, 2013. On December 22, 2012, Respondent performed an  
16 “Initial Exam” billed as CPT 99203, for which insurance was billed \$140.00. Patient 8’s records  
17 reflected on February 13, 2013, April 4, 2013, and May 23, 2013, Respondent performed  
18 “Examinations” billed as CPT 99213 for \$100 each which were included in the bill without  
19 supporting documentation.

20 115. Patient 8’s records reflected Respondent provided 58 treatments of acupuncture with  
21 electric-stimulation billed as CPT 97813, hot packs billed as CPT 97010, and massage billed as  
22 CPT 97124 which were billed for a total of \$8,950.00, without supporting documentation. Patient  
23 8 was discharged on May 23, 2013, and the patient’s discharge report was dated May 30, 2013.

24 116. After Respondent discharged Patient 8 Respondent allegedly performed 10 additional  
25 treatments of acupuncture with electric-stimulation billed as CPT 97813, hot packs billed as CPT  
26 97010, and massage billed as CPT 97124 between June 6, 2013, and December 7, 2013, for an  
27 additional \$1,450.00.

28 117. The records for Patient 9 examined by the investigator during Respondent’s interview

1 revealed signatures signed on lines that had no corresponding date. Also, the records included  
2 dates that Patient 9 was ostensibly treated which did not have a signature associated with the  
3 treatment date. Respondent stated the discrepancies in Patient 9's medical records were  
4 documentation errors.

5 118. A review of Patient 9's records reflected the 59 year-old, female patient was treated  
6 from January 2, 2013, to January 31, 2013. On January 2, 2013, Respondent performed an  
7 "Initial Exam" billed as CPT 99203, for which insurance was billed \$140.00. Patient 9's records  
8 reflected on January 22, 2013, and January 31, 2013, Respondent performed "Examinations"  
9 billed as CPT 99213 for \$100 each which were included in the bill without supporting  
10 documentation.

11 119. Patient 9's records reflected Respondent provided 9 treatments of acupuncture with  
12 electric-stimulation billed as CPT 97813, hot packs billed as CPT 97010, and massage billed as  
13 CPT 97124 which were billed for a total of \$1,745.00, without supporting documentation. Patient  
14 9 was discharged on January 31, 2013, but the patient's discharge report was dated February 24,  
15 2013.

16 120. After Respondent discharged Patient 9, Respondent allegedly performed 4 additional  
17 treatments of acupuncture with electric-stimulation billed as CPT 97813, with hot packs billed as  
18 CPT 97010, and massage billed as CPT 97124 between March 15, 2013, and April 19, 2013, for  
19 an additional \$580.00.

20 121. Each set of records contained a patient signed form titled "Patient Info Sheet" which  
21 stated: "Note: insurance forms will be completed by this office, however, the patient is personally  
22 responsible for payment of all the services rendered. Assignment. . . I understand that I am  
23 responsible for any amount not covered by insurance."

24 122. During Respondent's interview with the investigator, Respondent provided a number  
25 of explanations of the discrepancies in the patients' treatments dates, such as the patient requested  
26 to be seen the next day or the patient had complained that they did not want to wait until the next  
27 week for their next treatment or some patients did not want to travel to her other office to receive  
28 treatment so she would allow them to come back the next day for the same treatment.

1 123. Respondent explained she had completed most of the patients' treatments when  
2 Attorney 1 requested the patients' treatment records. Based on her conversation with Attorney 1  
3 Respondent stated she believed Attorney 1 would submit the billing for the patients' treatments  
4 and pay her at the conclusion of the lawsuits. Respondent stated she subsequently learned the  
5 patients did not win the lawsuit and she was not paid for the patients' treatment. Respondent  
6 stated she did not bill the patients because the payment was supposed to come from Attorney 1.

7 124. Respondent stated Attorney 1 informed her she had to appear for a deposition.  
8 Respondent stated she was not given information regarding the subject of the deposition and did  
9 not have legal representation. Attorney 1 told Respondent that she needed to get her own attorney  
10 because he was only representing the patients.

11 125. Respondent stated that she had no contact with Attorney 1 after the depositions.

12 126. The investigator obtained various records and billing statements from Dr. 1 for  
13 several patients involved in the December 21, 2012, accident. The records included a statement  
14 for Patient 3. The investigator also obtained three depositions from Dr. 1 taken September 24,  
15 2014, January 28, 2015, and April 16, 2015, regarding his care and treatment of various patients  
16 injured in the December 21, 2012, accident.

17 127. During his first two depositions Dr. 1 testified he performed surgery on six of the  
18 patients injured in the December 21, 2012, accident. Dr. 1 testified he would not recommend  
19 acupuncture after having surgery and did not believe in acupuncture treatments.

20 128. With regards to the Patient 7, Dr. 1 stated there was an error in his report of  
21 September 16, 2013, and made a handwritten change to the report.

#### 22 **STANDARD OF CARE**

23 129. The standard of care for recordkeeping requires the acupuncturist to keep complete,  
24 detailed and accurate records for each patient to whom the acupuncturist provides treatment.  
25 Those records must include, but are not limited to, the following information: the date of  
26 treatment (s), the type of treatments given and the patient's progression or regression as a result of  
27 the acupuncturist's treatments.

28 130. Respondent's medical records did not provide proper documentation for her patients'



1 treatments and constitute an extreme departure from the standard of care.

2 131. Respondent's medical records contained acupuncture reports written by Respondent's  
3 husband based on Respondent's memory of patient treatment which reports were often prepared  
4 months after the patient was discharged and these records constitute an extreme departure from  
5 the standard of care.

6 132. Respondent's medical records did not provide documentation of any referrals to other  
7 medical providers and that failure constitutes an extreme departure from the standard of care.

8 133. The standard of care for recordkeeping with regard to billing requires the  
9 acupuncturist to keep complete, detailed, and accurate records on each patient who is given  
10 treatment for which the patient is billed.

11 134. Respondent's medical records displayed numerous examples of billing errors where  
12 patients' charts were signed by the patient for treatment on a particular date for which no billing  
13 was submitted or where the patient did not sign the record to acknowledge receipt of treatment for  
14 a particular date but was billed for treatment allegedly provided on that date and this  
15 inappropriate recordkeeping constitutes an extreme departure from the standard of care.

16 135. Respondent's medical records depicted over 540 treatments she allegedly performed  
17 and for which she billed, which records utilized the exact same codes, regardless of each separate  
18 patients' prior medical history, age, injuries, or complaints. This inappropriate recordkeeping  
19 constitutes an extreme departure from the standard of care.

20 136. Respondent's medical records repeatedly demonstrated inaccurate billing codes for  
21 Respondent's patients' treatments which Respondent admitted were incorrect based on the  
22 treatment she allegedly provided to the patient and this inappropriate recordkeeping constitutes an  
23 extreme departure from the standard of care.

24 137. Public safety necessitates any provider performing a medical procedure be properly  
25 trained in the performance of such procedure. Therefore, the standard of care requires the  
26 acupuncturist to utilize only licensed providers to provide patient care such as massage and  
27 manipulation.

28 138. Based on the patients' records Respondent in fact employed unlicensed providers to

1 perform massage and manipulation treatments for the patients in contrast to Respondent's sworn  
2 deposition testimony as well as the statements she made to the investigator during her interviews.  
3 Respondent's employment of unlicensed providers to perform massage and manipulation  
4 treatments for her patients constitutes an extreme departure from the standard of care.

5 139. The standard of care for an acupuncturist who provides continuing care to patients  
6 requires the acupuncturist to document specific, measurable, progressive, significant, or objective  
7 functional improvements regarding the acupuncture provided to the patient in previous sessions to  
8 support the reasonableness and necessity of any additional acupuncture beyond an initial trial of  
9 six to eight sessions.

10 140. The standard of care for the acupuncturist who provides continuing care to patients  
11 requires the acupuncturist to provide additional treatments only if the patient demonstrated  
12 progressively greater, incremental, objective gains.

13 141. The standard of care for the acupuncturist who provides continuing care to patients  
14 requires the acupuncturist to discontinue patient care if the patient's condition resolves, the  
15 patient can no longer tolerate treatment, the patient exhibits a lack of measurable improvement, or  
16 the patient is non-compliant with the acupuncturist's direction regarding exercises or other  
17 suggested measures.

18 142. Respondent's patients' medical records did not illustrate specific, measurable,  
19 progressive, significant, or objective functional improvements as a result of the acupuncture  
20 treatments Respondent provided which supported the reasonableness and necessity of any  
21 additional acupuncture beyond an initial trial of six to eight sessions; the continued therapy for  
22 the patient therefore constitutes an extreme departure from the standard of care.

23 143. The standard of care for the acupuncturist regarding referrals from medical and legal  
24 providers requires referrals to the acupuncturist from medical and legal providers be based on  
25 medical necessity.

26 144. The standard of care for the acupuncturist regarding a referral from one medical  
27 provider to another mandates that the referral be done based on the need to properly diagnose  
28 and/or treat a patient due to severity of the symptoms, the need for specific set of skills required

1 (consultation with a specialist) and/or due to the lack of progression in their condition with the  
2 treatment rendered thus far, among other reasons.

3 145. The standard of care for the acupuncturist regarding a referral to the acupuncturist  
4 from medical and legal providers shall be based only on medical necessity not financial interest.

5 146. Respondent's patients' medical records exposed a pattern whereby the nine patients  
6 referred to her from the December 21, 2012, accident went directly to Respondent without a  
7 consultation with their own primary care physicians and/or a referral from same. Those patients  
8 were instead referred to Respondent by one of the same providers (e.g., the MRI facility, the  
9 patients' attorney, and/or physician) from at least one previous case where the Respondent was a  
10 party in a motor vehicle accident. The pattern of patient referral described above constitutes an  
11 extreme departure from the standard of care.

12 147. Respondent's patients' records demonstrate the patients' failure to consult with their  
13 primary care physician prior to receiving care from Respondent, Respondent's failure to properly  
14 diagnose and/or treat the patients, Respondent's failure to refer the patients for consultation with a  
15 specialist after their failure to progress after her numerous treatments, and Respondent's extensive  
16 billing for services allegedly rendered. Thus, those referrals between these professionals  
17 appeared to have been made with the intent of defrauding the insurance company. The pattern of  
18 patient referral behavior shown by Respondent and the other professionals referred to above  
19 constitutes an extreme departure from the standard of care.

20 148. The standard of care for the acupuncturist regarding the acupuncturist's policy on  
21 patient payment versus payment forgiveness for acupuncture services not reimbursed by  
22 insurance requires the acupuncturist to attempt reimbursement from the patient for those portions  
23 of the bill left unpaid by insurance.

24 149. Respondent patients' records fail to document any attempt to collect the portion of  
25 patients' bills unpaid by insurance. Under these circumstances Respondent's routine forgiveness  
26 of the portion unpaid by insurance appears to constitute fraud and constitute an extreme departure  
27 from the standard of care.

28 //

1 **CAUSE FOR DISCIPLINE**

2 (Gross Negligence)

3 150. Respondent is subject to disciplinary action under 4955.2, subsection (a), in that she  
4 was grossly negligent in her care and treatment of nine patients for injuries which resulted from a  
5 crash between a bus and a car. The circumstances are as follows:

6 151. Complainant refers to, and by reference incorporates herein paragraphs 16 through  
7 149, inclusive, above.

8 152. Respondent's care and treatment of patient's one through nine as set forth above  
9 includes the following acts and/or omissions which constitute extreme departures from the  
10 standard of care:

11 A. Respondent's medical records did not provide proper documentation for her patients'  
12 treatments.

13 B. Respondent's medical records contained acupuncture reports written by Respondent's  
14 husband based on Respondent's memory of patient treatment which reports were often prepared  
15 months after the patient was discharged.

16 C. Respondent's medical records did not provide documentation of any referrals to other  
17 medical providers.

18 D. Respondent's medical records displayed numerous examples of billing errors where  
19 patients' charts were signed by the patient for treatment on a particular date for which no billing  
20 was submitted or where the patient did not sign the record to acknowledge receipt of treatment for  
21 a particular date but were billed for treatment allegedly provided on that date.

22 E. Respondent's medical records depicted over 540 treatments for which she allegedly  
23 performed and billed which utilized the exact same codes, regardless of each separate patient's  
24 prior medical history, age, injuries, or complaints.

25 F. Respondent's medical records repeatedly demonstrated inaccurate billing codes for  
26 Respondent's patient treatments which Respondent admitted were incorrect based on the  
27 treatment she allegedly provided to the patient.

28 G. Respondent's employed unlicensed providers to perform massage and manipulation

1 treatments for her patients.

2 H. Respondent's patients' medical records did not illustrate specific, measurable,  
3 progressive, significant, or objective functional improvements as a result of the acupuncture  
4 treatments Respondent provided which supported the reasonableness and necessity of any  
5 additional acupuncture beyond an initial trial of six to eight sessions.

6 I. Respondent's patients' medical records exposed a pattern whereby the nine patients  
7 referred to her from the December 21, 2012, accident went directly to Respondent without a  
8 consultation with their own primary care physicians and/or a referral from same but were instead  
9 referred to Respondent by one of the same providers (e.g., the MRI facility, the patients' attorney,  
10 and physician) from at least one previous case there the Respondent was a party in a motor  
11 vehicle accident.

12 J. Respondent's patients' records show the patients' failure to consult with their primary  
13 care physician prior to receiving care from Respondent, Respondent's failure to properly diagnose  
14 and/or treat patients, Respondent's failure to refer patients for consultation with a specialist after  
15 their failure to progress after her numerous treatments, and the extensive billing for services  
16 allegedly rendered demonstrate that the patient referrals between these professionals appeared to  
17 have been made with the intent of defrauding the insurance company.

18 K. Respondent patients' records fail to document any attempt to collect the portion of  
19 patients' bills which were unpaid by insurance. Under these circumstances Respondent's routine  
20 forgiveness of the portion unpaid by insurance appears to constitute fraud.

21 **SECOND CAUSE FOR DISCIPLINE**

22 (Repeated Negligent Acts)

23 153. Respondent is subject to disciplinary action under section 4955.2, subdivision (b), of  
24 the Code, in that she has committed repeated acts of negligence in the practice of acupuncture.  
25 The circumstances are as follows:

26 154. Complainant refers to, and by reference incorporates herein paragraphs 16 through  
27 149, inclusive, above.

28 155. Respondent's care and treatment of patient's one through nine as set forth above

1 includes the following acts and/or omissions which constitute departures from the standard of  
2 care:

3       A.   Respondent's medical records did not provide proper documentation for her patients'  
4 treatments.

5       B.   Respondent's medical records contained acupuncture reports written by Respondent's  
6 husband based on Respondent's memory of patient treatment which reports were often prepared  
7 months after the patient was discharged.

8       C.   Respondent's medical records did not provide documentation of any referrals to other  
9 medical providers.

10       D.   Respondent's medical records displayed numerous examples of billing errors where  
11 patients' charts were signed by the patient for treatment on a particular date for which no billing  
12 was submitted or where the patient did not sign the record to acknowledge receipt of treatment for  
13 a particular date but were billed for treatment allegedly provided on that date.

14       E.   Respondent's medical records depicted over 540 treatments for which she allegedly  
15 performed and billed which utilized the exact same codes, regardless of each separate patient's  
16 prior medical history, age, injuries, or complaints.

17       F.   Respondent's medical records repeatedly demonstrated inaccurate billing codes for  
18 Respondent's patient treatments which Respondent admitted were incorrect based on the  
19 treatment she allegedly provided to the patient.

20       G.   Respondent's employed unlicensed providers to perform massage and manipulation  
21 treatments for her patients.

22       H.   Respondent's patients' medical records did not illustrate specific, measurable,  
23 progressive, significant, or objective functional improvements as a result of the acupuncture  
24 treatments Respondent provided which supported the reasonableness and necessity of any  
25 additional acupuncture beyond an initial trial of six to eight sessions.

26       I.   Respondent's patients' medical records exposed a pattern whereby the 28 patients  
27 referred to her from the bus and car crash went directly to Respondent without a consultation with  
28 their own primary care physicians and/or a referral from same but were instead referred to

1 Respondent by one of the same providers (e.g., the MRI facility, the patients' attorney, and  
2 physician) from at least one previous case there the Respondent was a party in a motor vehicle  
3 accident.

4 J. Respondent's patients' records show the patients' failure to consult with their primary  
5 care physician prior to receiving care from Respondent, Respondent's failure to properly diagnose  
6 and/or treat patients, Respondent's failure to refer patients for consultation with a specialist after  
7 their failure to progress after her numerous treatments, and the extensive billing for services  
8 allegedly rendered demonstrate that the patient referrals between these professionals appeared to  
9 have been made with the intent of defrauding the insurance company.

10 K. Respondent patients' records fail to document any attempt to collect the portion of  
11 patients' bills which were unpaid by insurance. Under these circumstances Respondent's routine  
12 forgiveness of the portion unpaid by insurance appears to constitute fraud.

### 13 **THIRD CAUSE FOR DISCIPLINE**

14 (Failure to Maintain Adequate and Accurate Records)

15 156. Respondent is subject to disciplinary action under section 4955, as defined by section  
16 4955.1, subdivision (e), in that she failed to maintain adequate and accurate records relating to the  
17 services she provided to patients one through nine. The circumstances are as follows:

18 157. Complainant refers to, and by reference incorporates herein paragraphs 16 through  
19 149, inclusive, above.

### 20 **FOURTH CAUSE FOR DISCIPLINE**

21 (Fraud)

22 158. Respondent is subject to disciplinary action under section 810, subdivision (a), as  
23 defined by section 810, subdivision (a)(1)(2)(b), in that she knowingly presented or caused to be  
24 presented false or fraudulent claims for the payment of a loss under a contract of insurance and/or  
25 knowingly prepared, made, or subscribed any writing, with intent to present or use the same, or to  
26 allow it to be presented or used in support of any false or fraudulent claim. The circumstances are  
27 as follows:

28 159. Complainant refers to, and by reference incorporates herein paragraphs 16 through

1 149, inclusive, above.

2 **FIFTH CAUSE FOR DISCIPLINE**

3 (Committing A Fraudulent Act)

4 160. Respondent is subject to disciplinary action under sections 4955.2, subdivisions (b),  
5 (c), (d), and (e), and California Code of Regulations, title 16, section 1399.453 for creating false  
6 medical records of her care and treatment of patients one through nine. The circumstances are as  
7 follows:

8 161. Complainant refers to, and by reference incorporates herein paragraphs 16 through  
9 149, inclusive, above.

10 **SIXTH CAUSE FOR DISCIPLINE**

11 (Unprofessional Conduct)

12 162. Respondent is subject to disciplinary action under section 4955.1, subdivision (e), of  
13 the Code, and California Code of Regulations, title 16, section 1399.453, in that She committed  
14 unprofessional conduct in her care and treatment of patients one through nine. The circumstances  
15 are as follows:

16 163. Complainant refers to, and by reference incorporates herein paragraphs 16 through  
17 160, 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 Respondent License Number AC 6715, issued  
5 to Ning Li, L.Ac.,

6 2. Ordering Ning Li, L.Ac. to pay the Acupuncture Board the reasonable costs of the  
7 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 4 Taking such other and further action as deemed necessary and proper.

12  
13  
14 DATED: May 28, 2020

Original Signature on File  
15 BENJAMIN BODEA  
16 Executive Officer  
17 Acupuncture Board  
18 Department of Consumer Affairs  
19 State of California  
20 *Complainant*

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