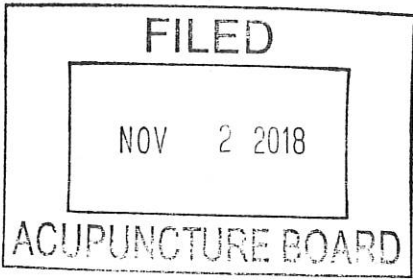


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10 **BEFORE THE**
11 **ACUPUNCTURE BOARD**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

14
15 In the Matter of the Accusation Against:
16 **CORREY PO-HONG LAI, AC**
2001 Oregon Drive
17 Sacramento, CA 95822
18 **Acupuncturist License No. AC 7632**
19 Respondent.

Case No. 1A-2017-194

A C C U S A T I O N

21 Complainant alleges:

22 **PARTIES**

- 23 1. Benjamin Bodea (Complainant) brings this Accusation solely in his official capacity
24 as the Executive Officer of the Acupuncture Board, Department of Consumer Affairs.
- 25 2. On or about February 13, 2001, the Acupuncture Board issued Acupuncturist License
26 No. AC 7632 to Correy Po-Hong Lai, AC (Respondent). The Acupuncturist License was in full
27 force and effect at all times relevant to the charges brought herein and will expire on May 31,
28 2020, unless renewed.

1 JURISDICTION

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

5 4. Section 4928.1 of the Code states:

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

10 5. Section 4955 of the Code states:

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

13 6. Section 4955.1 of the Code states, in pertinent part:

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

17 “... ”

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

20 7. Section 4955.2 of the Code states:

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

23 “(a) Gross negligence.

24 “(b) Repeated negligent acts.

25 “(c) Incompetence.”

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1 8. California Code of Regulations, title 16, section 1399.453, states:
2 "An acupuncturist shall keep complete and accurate records on each patient who is given
3 acupuncture treatment, including but not limited to, treatments given and progress made as a
4 result of the acupuncture treatments."

5
6 **COST RECOVERY**

7 9. Section 4959 of the Code states:

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

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

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

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

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

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1 FIRST CAUSE FOR DISCIPLINE

2 (Gross Negligence)

3 10. Respondent is subject to disciplinary action under section 4955.2, subdivision (a), of
4 the Code, in that she was grossly negligent in her care, treatment, and management of Patient A.¹

5 The circumstances are as follows:

6 11. On or about February 17, 2013, Patient A sustained jaw, neck and upper back
7 injuries, after being involved in an automobile accident. On or about July 1, 2013, Patient A,
8 enlisted Respondent for the purposes of receiving acupuncture treatment for his injuries.

9 12. Patient A had previously received acupuncture treatment from Respondent, on or
10 about February 10, 2005. During that visit and prior to receiving treatment, Patient A reviewed
11 and signed an Arbitration Agreement and Informed Consent form, which stated the following, in
12 pertinent part:

13 “I have been informed that acupuncture is a generally safe method of
14 treatment, but that it may have some side effects, including. . .Infection is another
15 possible risk, although the clinic uses sterile disposable needles and maintains a
16 clean and safe environment. . . .

17
18 “By voluntarily signing below, I show that I have read, or have had read to
19 me, the above consent to treatment, and have been told about the risks and benefits
20 of acupuncture and other procedures, and have the opportunity to ask questions. I
21 intend this consent form to cover the entire course of treatment for my present
22 condition and for any future condition(s) for which I seek treatment.”

23
24 13. On or about July 1, 2013, Respondent failed to explain the risks of acupuncture treatment to
25 Patient A.M., including, but not limited to, the risk of infection. Additionally,

26
27
28 ¹ To protect the privacy of all patients involved, patient names have not been included in
this pleading. Respondent is aware of the identity of the patients referred to herein.

1 Respondent failed to obtain written informed consent from Patient A, prior to treating him with
2 acupuncture.

3 14. Respondent administered additional acupuncture treatments to Patient A on or about
4 July 9, 2013, July 16, 2013, and August 6, 2013. During each of these visits, Respondent failed to
5 explain the risks of acupuncture treatment to Patient A, including, but not limited to, the risk of
6 infection. Additionally, Respondent failed to obtain written informed consent from Patient A,
7 prior to treating him with acupuncture.

8 15. Shortly after Patient A's acupuncture treatment on or about August 6, 2013, Patient A
9 developed a severe systemic infection and was admitted to the hospital. On or about August 16,
10 2013, Patient A died from MRSA, pneumonia, and septicemia, as a result of the infection.
11

12 16. Respondent committed gross negligence in her care and treatment of Patient A, which
13 included, but was not limited to, the following:

14 A. Failing to explain the risks of acupuncture treatment to Patient A, including, but
15 not limited to, the risk of infection;

16 B. Failing to obtain written consent from Patient A prior to treating him with
17 acupuncture; and

18 C. Failing to keep complete and adequate records during her care and treatment of
19 Patient A, as alleged in Paragraphs 17 through 22.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Repeated Negligent Acts)**

22 17. Respondent is subject to disciplinary action under section 4955.2, subdivision (b), of
23 the Code, in that she was repeatedly negligent in her care and treatment of Patient A, as alleged in
24 paragraphs 10 through 15 and paragraphs 18 through 23.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Failure to Keep Complete and Adequate Records)**

3 18. Respondent is subject to disciplinary action under section 4955.1, subdivision (e), of
4 the Code, and California Code of Regulations, title 16, section 1399.453, in that Respondent
5 failed to maintain adequate and accurate records during her care and treatment of Patient A. The
6 circumstances are as follows:

7 19. Paragraphs 10 through 15 are hereby incorporated by reference and realleged as if
8 fully set forth.

9 20. On or about July 1, 2013, Respondent conducted a new patient evaluation on Patient
10 A, for which Patient A was billed. A new patient evaluation requires a detailed history, a detailed
11 examination, and a low complexity medical decision. However, Respondent failed to make a
12 recording of her respective examination findings in Patient A's records. Respondent additionally
13 provided acupuncture and massage treatment for Patient A. Although a massage was billed to
14 Patient A, Respondent failed to document the massage, as rendered, in her progress notes. Finally,
15 Respondent failed to sign the July 1, 2013, treatment notes pertaining to Patient A.

16 21. On or about July 9, 2013, Respondent administered acupuncture on Patient A,
17 followed by a massage. Although Respondent billed Patient A for the massage, she failed to
18 document the massage, as rendered, in her progress notes. Additionally, Respondent failed to
19 document whether an examination of Patient A took place, as well as sign Patient A's July 9,
20 2013, treatment notes.

21 22. On or about July 16, 2013, Respondent administered acupuncture on Patient A,
22 followed by a massage. Although Respondent billed Patient A for the massage, she failed to
23 document the massage, as rendered, in her progress notes. Additionally, Respondent failed to
24 document whether an examination of Patient A took place, as well as sign Patient A's July 16,
25 2013, treatment notes.

26 23. On or about August 6, 2013, Respondent administered acupuncture on Patient A,
27 followed by a massage. Although Respondent billed Patient A for the massage, she failed to
28 document the massage, as rendered, in her progress notes. Additionally, Respondent failed to

1 document whether an examination of Patient A took place, as well as sign Patient A's August 6,
2 2013, treatment notes.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Incompetence)**

5 24. Respondent is subject to disciplinary action under section 4955.2, subdivision (c), of
6 the Code, in that she demonstrated a lack of knowledge, experience, skill, or education in her care
7 and treatment of Patient A. The circumstances are as follows:

8 25. Paragraphs 10 through 23 are hereby incorporated by reference and realleged as if
9 fully set forth.

10 26. On or about May 4, 2017, Respondent's deposition was taken as part of a civil suit
11 filed against Respondent by the estate of Patient A. During Respondent's deposition, Respondent
12 made the following statements while under oath:

13 A. When asked if different types of infections are a risk of acupuncture treatment,
14 Respondent replied, "No."

15 B. When asked if she had read anything in acupuncture journals pertaining to
16 patients being infected with MRSA bacteria related to acupuncture treatment, Respondent replied,
17 "No."

18 C. When asked if she was aware of a single case report in all of the acupuncture
19 literature regarding MRSA infections, Respondent replied, "No."

20 D. When asked if she was aware of other types of bacterial infections that had been
21 related to acupuncture treatment before July and August of 2013, Respondent replied, "No."

22 E. Respondent was asked the following, "Have you ever heard in your entire
23 career, including all of your education, training, background and experience, all the work that
24 you've done—have you ever heard of a single instance of an infection being related to
25 acupuncture treatment?" Respondent replied, "No."

26 F. Respondent stated that she has a continuing education requirement of fifty-two
27 (52) hours per every two (2) years. She was then asked if any of the ongoing courses, that she
28

1 participated in or attended covered the risks of infections related to acupuncture treatments?

2 Respondent replied, "No."

3 G. Respondent was asked if she was aware of nerve injuries or nerve puncture
4 injuries associated with acupuncture? Respondent replied, "No."

5 H. Respondent was asked if she was aware of spinal cord or peripheral nerve
6 injuries associated with acupuncture. Respondent replied, "No."

7 I. Respondent was asked if she ever advised any patients of the risk of infectious
8 process or infectious disease. Respondent replied, "Acupuncture won't cause infections." She then
9 repeated this phrase in response to two (2) follow-up questions.

10 J. Respondent was asked the following, "It's your belief and conviction...based
11 on the totality of your education and experience that acupuncture treatment will not cause
12 infections in patients; correct?" Respondent replied, "Yes."

13 K. Respondent was asked the following, "You don't believe that infection is a risk
14 of acupuncture treatment, because you've never heard of a single case report your entire
15 professional career, and you've never received any instruction in any classes or courses that
16 infection is a risk; is that correct?" Respondent replied, "Yes."

17 27. Respondent demonstrated incompetence in her care and treatment of Patient A, which
18 included, but was not limited to, the following:

19 A. Failing to consider any potential risk of infection that acupuncture might
20 present; and

21 B. Stating that she had never received training, and furthermore, never heard that
22 infection is a potential risk of acupuncture treatment. This is inconsistent with the myriad of
23 information, training, and literature on the topic, as well as Respondent's own Arbitration
24 Agreement and Informed Consent form from 2005.

25 **FIFTH CAUSE FOR DISCIPLINE**

26 **(Violation of the Acupuncture License Act)**

27 28. Respondent is subject to disciplinary action under section 4955, subdivision (d), of
28 the Code, in that she violated the terms of the Acupuncture Licensure Act, as set forth in

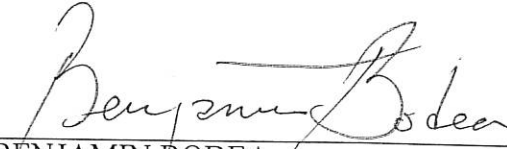
1 paragraphs 10 through 26, above, which are incorporated herein by reference as if fully set forth
2 herein.

3 **PRAYER**

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

- 6 1. Revoking or suspending Acupuncturist License Number AC 7632, issued to Correy
7 Po-Hong Lai, AC;
- 8 2. Ordering Correy Po-Hong Lai, AC to pay the Acupuncture Board the reasonable
9 costs of the investigation and enforcement of this case, pursuant to Business and Professions
10 Code section 4959; and,
- 11 3. Taking such other and further action as deemed necessary and proper.

12
13
14 DATED: NOV 02 2018


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

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