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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-2019-169

13 **XUE HUA PENG, L.AC.**
14 **265 Lafayette Avenue**
Hayward CA 94544

FIRST AMENDED ACCUSATION

15 **Acupuncturist License No. AC 9392**

16 Respondent.

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18 **PARTIES**

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

22 2. On or about October 29, 2003, the Acupuncture Board issued Acupuncturist License
23 Number AC 9392 to Xue Hua Peng, L.Ac. (Respondent). The Acupuncturist License was in full
24 force and effect at all times relevant to the charges brought herein and will expire on September
25 30, 2021, unless renewed.

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JURISDICTION

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

4. Section 4955 of the Code states:

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

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

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

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

“...”

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

“...”

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

“In addition to the conduct described in Section 4955 of the Business and Professions Code, ‘unprofessional conduct’ also includes but is not limited to the following:

“...”

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

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

“(2) The arrest of the licensee.

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

“(4) Any disciplinary action taken by another licensing entity or authority of

1 this state or of another state or an agency of the federal government or the United
2 States military.”

3 “...”

4 **COST RECOVERY**

5 6. Section 4959 of the Code states:

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

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

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

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

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

22 **FACTUAL ALLEGATIONS**

23 7. On or about September 27, 2019, Respondent was arrested by agents of the Federal
24 Bureau of Investigation.

25 8. Respondent failed to inform the Board of this arrest.

26 9. On November 6, 2019, the United States Attorney’s Office, United States Department
27 of Justice, filed an information against Respondent, alleging that Respondent violated 18 U.S.C.
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1 section 951 – Acting as an Agent of a Foreign Government Without Notice to the Attorney
2 General.

3 10. Specifically, the information accused Respondent of providing, on at least four
4 occasions, classified information related to the security of the United States of America to agents
5 of the Ministry of State Security (MSS) of the People’s Republic of China, without authorization
6 from the government of the United States of America. These actions are alleged to have occurred
7 between June 13, 2015, and July 2, 2018.

8 11. Respondent failed to inform the Board that the information had been filed against
9 him.

10 12. On March 17, 2020, Respondent was convicted in the United States District Court,
11 Northern District of California, Case No. CR19-00589-001 HSG, of violating 18 U.S.C section
12 951, Acting as a Foreign Agent Without Notification, a felony.

13 **CAUSE FOR DISCIPLINE**

14 (Unprofessional Conduct)

15 13. Respondent’s license is subject to disciplinary action under Code sections 4955 (b),
16 (d) and (i), and California Code of Regulations, title 16, section 1399.469.2 (d) in that
17 Respondent was convicted of a felony; acted in a manner that would have warranted the denial of
18 his acupuncture license; was arrested by the Federal Bureau of Investigations and failed to inform
19 the Board of the arrest; and never informed the Board that the United States Attorney’s Office
20 filed an information alleging that Respondent committed a felony.

21 **PRAYER**

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

24 1. Revoking or suspending Acupuncturist License Number AC 9392, issued to Xue Hua
25 Peng, L.Ac.;

26 2. Ordering Xue Hua Peng, L.Ac. to pay the Acupuncture Board the reasonable costs of
27 the investigation and enforcement of this case, pursuant to Business and Professions Code section
28 4959; and,

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

DATED: March 20, 2020

Original Signature on File
BENJAMIN BODEA
Executive Officer
Acupuncture Board
Department of Consumer Affairs
State of California
Complainant