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ACUPUNCTURE BOARD

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: YILIN MA, L.Ac. 1952 Paso Real Avenue Rowland Heights, California 91748 Licensed Acupuncturist No. AC 11076, Respondent.	Case No. 1A-2007-79 **ACCUSATION**

Complainant alleges:

PARTIES

1. Janelle Wedge (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Acupuncture Board of California (Board).

2. On or about April 21, 2006, the Board issued Acupuncture License number AC 11076 to Yilin Ma (Respondent). That license was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2012, unless renewed.

JURISDICTION

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

4. Section 498 of the Code states: "A board may revoke, suspend, or otherwise restrict a license on the ground that the licensee secured the license by fraud, deceit, or knowing misrepresentation of a material fact or by knowingly omitting to state a material fact."

5. Section 731, subdivision (a), of the Code states:

> "Any person licensed, certified, registered, or otherwise subject to regulation pursuant to this division [Division 2, Healing Arts, commencing with section 500 of the Business and Professions Code] who engages in, or who aids or abets in, a violation of Section 266h, 266i, 315, 316, or 318 of, or subdivision (a) or (b) of Section 647 of, the Penal Code occurring in the work premises of, or work area under the direct professional supervision or control of, that person, shall be guilty of unprofessional conduct. The license, certification, or registration of that person shall be subject to denial, suspension, or revocation by the appropriate regulatory entity under this division."

6. Section 4955 of the Code states in part:

> "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.
> >
> > ". . .
> >
> > "(h) Disciplinary action taken by any public agency for any act substantially related to the qualifications, functions, or duties of an acupuncturist or any professional health care licensee.
> >
> > "(i) Any action or conduct that would have warranted the denial of the acupuncture license.
> >
> > "(j) The violation of any law or local ordinance on an acupuncturist's business premises by an acupuncturist's employee or a person who is

working under the acupuncturist's professional license or business permit, that is substantially related to the qualifications, functions, or duties of an acupuncturist. These violations shall subject the acupuncturist who employed the individuals, or under whose acupuncturist license the employee is working, to disciplinary action.

"..."

7. Section 4955.1 of the Code states:

"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.

"..."

8. Section 4961, subdivision (a), of the Code states:

"Every person who is now or hereafter licensed to practice acupuncture in this state shall register, on forms prescribed by the Acupuncture Board, his or her place of practice, or, if he or she has more than one place of practice, all of the places of practice. If the licensee has no place of practice, he or she shall notify the board of that fact. A person licensed by the board shall register within 30 days after the date of his or her licensure."

9. California Penal Code section 653.22, subdivision (a), states: "It is unlawful for any person to loiter in any public place with the intent to commit prostitution. This intent is evidenced by acting in a manner and under circumstances which openly demonstrate the purpose of inducing, enticing, or soliciting prostitution, or procuring another to commit prostitution."

COST RECOVERY

10. 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.

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

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

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

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

FIRST CAUSE FOR DISCIPLINE

(Conviction of Crimes: Unpermitted massage establishment, allowing unpermitted massage services, massage on patron with exposed genitalia, and prohibited advertisement in 2009)

11. Respondent is subject to disciplinary action under sections 731, subdivision (a), 4955, subdivisions (b), (d), and (j), and 4955.1, subdivision (c), of the Code in that she was convicted of crimes substantially related to the qualifications, functions or duties of an acupuncturist. In particular, Respondent was convicted of operating an unpermitted massage establishment, allowing unpermitted massage services, massaging a patron with exposed genitalia, and engaging in prohibited advertisement in violation of the City of Vista municipal code sections. The facts and circumstances are as follows:

12. On or about December 21, 2009, in the North County Division Superior Court of San Diego County, in proceedings entitled *The People of the State of California v. Yi Ling Ma,* case number CN268136, Respondent was convicted following a plea of guilty for violating Vista Municipal Code sections 5.56.040 (A), 5.56.090 (A), 5.56.090 (O), and 5.56.240, all misdemeanors.

13. At all times relevant, Respondent held herself out to the public as a duly licensed acupuncturist, legally conducting the business of acupuncture at Seren Acu Care located at 995

Postal Way #102, Vista, California. A business license posted on the wall inside the front office listed Respondent as the business owner.

14. On or about June 3, 2009, during an undercover prostitution operation, Respondent was arrested at Seren Acu Care during business hours for a violation of Penal Code 647, subdivision (b), after soliciting and/or agreeing to perform an act of prostitution upon a San Diego Police Department undercover officer.

15. Approximately two months later on or about August 19, 2009, Respondent was arrested a second time at Seren Acu Care during business hours for the following violations:

(1.) Unlawfully touching the genital area and removing the towel exposing the genital area during the massage of a San Diego County Sheriff's Department undercover deputy in violation of Vista Municipal Code sections 5.56.230(A) and 5.56.090(O);

(2.) Exposing part of her mid section while massaging a San Diego County Sheriff's Department undercover deputy in violation of Vista Municipal Code section 5.56.090(J);

(3.) Using her acupuncture license and the business to illegally operate a massage establishment in violation of Vista Municipal Code section 5.56.040(A);

(4.) Having alcohol on the premises in violation of Vista Municipal Code section 5.56.090(K);

(5.) Having locked doors on the premises in violation of Vista Municipal Code section 5.56.090(N);

(6.) Failing to maintain massage therapy records for two years in violation of Vista Municipal Code section 5.56.090(P);

(7.) Sleeping/residing or preparing food inside a massage establishment in violation of Vista Municipal Code section 5.56.090(R); and

(8.) Failing to display the permit license number on the advertisement in violation of Vista Municipal Code section 5.56.240.

16. On or about September 15, 2009, a misdemeanor complaint was filed in *The People of the State of California v. Yi Ling Ma*, charging Respondent with the following:

Count 1: Unpermitted Massage Establishment in violation of Vista Municipal Code section 5.56.040(A), a misdemeanor;

Count 2: Allowing unpermitted massage services in violation of Vista Municipal Code section 5.56.090(A), a misdemeanor;

Count 3: Failure to maintain written records of treatments in violation of Vista Municipal Code section 5.56.090(P), a misdemeanor;

Count 4: Failure to maintain proof of liability insurance in violation of Vista Municipal Code section 5.56.090(Q), a misdemeanor;

Count 5: Unlawful use of massage establishment for residential purpose in violation of Vista Municipal Code section 5.56.090(R), a misdemeanor;

Count 6: Unpermitted massage establishment in violation of Vista Municipal Code section 5.56.040(A), a misdemeanor;

Count 7: Lack of required clothing in violation of Vista Municipal Code section 5.56.090(J), a misdemeanor;

Count 8: Massage services behind locked door in violation of Vista Municipal Code section 5.56.090(N), a misdemeanor;

Count 9: Massage on patron with exposed genitalia in violation of Vista Municipal Code section 5.56.090(O), a misdemeanor;

Count 10: Failure to maintain written records of treatment in violation of Vista Municipal Code section 5.56.090(P), a misdemeanor;

Count 11: Unlawful use of massage establishment for residential purpose in violation of Vista Municipal Code section 5.56.090(R), a misdemeanor;

Count 12: Unlawful massage of genital area of patron in violation of Vista Municipal Code section 5.56.230(A), a misdemeanor; and

Count 13: Prohibited Advertisement in violation of Vista Municipal Code section 5.56.240, a misdemeanor;

17. On or about December 21, 2009, the case was called for a jury trial. Respondent was convicted of Counts 1 (unpermitted massage establishment), 2 (allowing unpermitted massage services), 9 (massage on patron with exposed genitalia), and 13 (prohibited advertisement) following a guilty plea. Counts 3 - 8 and 10 - 12 were dismissed in the interests of justice. As to Counts 1, 2, 9, and 13, the court suspended the imposition of sentence, placed Respondent on summary probation for 36 months, and ordered her to: (1) pay fines and assessment fees totaling $3,000; (2) not operate massage or acupuncture services in the City of Vista; and (3) obey all laws and further orders of the court.

SECOND CAUSE FOR DISCIPLINE

(Conviction of a Crime: Loitering in a public place with intent to commit prostitution in 2008)

18. Respondent is subject to further disciplinary action under sections 4955, subdivisions (b), (d), and (j), 4955.1, subdivision (c), and 4961, subdivision (a), of the Code, and Penal Code section 653.22, subdivision (a), in that she was convicted of a crime substantially related to the qualifications, functions or duties of an acupuncturist. In particular, Respondent was convicted of loitering to commit prostitution in violation of the Penal Code. The facts and circumstances are as follows:

19. On August 14, 2006, Respondent obtained a new business license for King Health Center located in the City of Orange, which was renamed Serenity Health Center. At all times relevant, Respondent held herself out to the public as a duly licensed acupuncturist, legally conducting the business of acupuncture at Serenity Health Center, 1196 North Tustin, Orange, California. Respondent failed to register this place of practice with the Board.

20. On or about March 28, 2007, a misdemeanor complaint was filed in *The People of the State of California vs. Yi Ling Ma* case number 07CM03015, charging Respondent with one count of keeping a house of ill-fame resorted to for the purpose of prostitution and lewdness in violation of Penal Code section 315, a misdemeanor. On February 11, 2008, the original Complaint was amended by interlineation to add a second criminal count for unlawful loitering in a public place for the purpose of allowing prostitution in violation of Penal Code section 653.22, subdivision (a), a misdemeanor.

21. The facts and circumstances surrounding the conviction referred to above were that an eight-month undercover investigation of Serenity Health Center gave cause to the issuance and service of a warrant on or about March 30, 2007, which confirmed that Respondent's business was an illegal massage parlor operating as a house of prostitution. Specifically, during the eight-month investigation that began on August 17, 2006, 22 undercover vice operations were performed at the premises. In all but 2 of the 22 undercover operations, some form of sexual conduct was performed or conveyed to the undercover officers confirming that the premises was an illegal massage parlor operating as a house of prostitution. Furthermore, during one of the

undercover operations on or about December 27, 2006, Respondent exposed the officer's genitals, touched his penis and scrotum several times, and exposed her breasts to him. On March 28, 2007, a search warrant was issued for the premises and a warrant of arrest was issued for Respondent. It was served on March 30, 2007. On that date, two previously identified suspects were detained, and one was arrested for an outstanding warrant. Respondent, who was not present at the premises when the warrant was served, failed to respond to the business after officers contacted her. Approximately two weeks later, a notice of abandonment was posted at the business.

22. On or about February 11, 2008, the case was called for a jury trial. Respondent was convicted of Count 2 (unlawfully loitering in a public place for the purpose of allowing prostitution) following a guilty plea. Count 1 was dismissed on motion of the People. As to Count 2, the court suspended the imposition of sentence, placed Respondent on informal probation for three years, and ordered Respondent to do the following, among other things: (1) violate no law; (2) obey all laws, orders, rules, and regulations of the Court, Jail, and Probation; (3) submit her person and property to search and seizure at any time of the day or night by any law enforcement or probation officer with or without a warrant, and with or without reasonable cause or reasonable suspicion; (4) use her true name and date of birth only at all times: (5) complete an Acquired Immune Deficiency Syndrome Prevention Education Program and testing; (6) pay fines and assessment fees totaling $720; (7) comply with street terms; (8) not be an employee of, nor participant in or at, nor derive any money or other form of consideration from any operation, establishment, business or residence used to conceal or act as a front for prostitution activities; and (9) not be an employee or, nor participate, nor reside in or at, nor derive any money or other form of consideration from any modeling escort, massage or sauna operation or business or any outcall operation or business or any acupressure or acupuncture operation or business.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Fraud in Renewing License in 2010)

23. Respondent is subject to disciplinary action under sections 498 and 4955.1, subdivisions (b) and (c), of the Code. On or about February 11, 2008, in a prior criminal

proceeding entitled *The People of the State of California v. Yi Ling Ma*, in Orange County Superior Court, case no. 07CM03015, Respondent was convicted of violating Penal Code 653.22, a misdemeanor. Additionally, on or about December 21, 2009, in a prior criminal proceeding entitled *The People of the State of California v. Yi Ling Ma*, in San Diego Superior Court, case no. CN268136, Respondent was convicted of violating Vista Municipal Code sections 5.56.040(A), 5.56.090(A), 5.56.090(O), and 5.56.240, all misdemeanors.

24. On or about December 31, 2009, the Board received Respondent's license renewal application. In said written renewal application, Respondent was asked the following:

> "Since you last renewed your license, have you had any license disciplined by a government agency or other disciplinary body; or have you been convicted of any crime in any state, the USA and its territories, military court or a foreign country?"

25. On or about January 10, 2010, knowing her answer to be false, Respondent declared under penalty of perjury under the laws of California that her response, "No" to the foregoing question was true and correct.

26. Respondent's false statements of fact were grounds for revocation of her license, pursuant to sections 498 and 4955.1, subdivisions (b) and (c) of the Code. Pursuant to section 4955, subdivisions (h) and (i), Respondent is guilty of unprofessional conduct, warranting the discipline prayed for herein.

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PRAYER

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

1. Revoking or suspending Acupuncture License No. AC 11076, issued to Yilin Ma;

2. Ordering Yilin Ma to pay the Board the reasonable costs of the investigation and enforcement of this case pursuant to Business and Professions Code section 4959;

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

DATED: JUL 06 2010

JANELLE WEDGE
Executive Officer
Acupuncture Board
State of California
Complainant

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