BEFORE THE
CALIFORNIA ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	Case No. 1A-2011-103
	)	
Xiao Hong Qi	)	
913 E. Vista Way	)	
Vista, CA 92084	)	
	)	
Acupuncture License No. AC-11857	)	
	)	
Respondent.	)	
	)	

DECISION AND ORDER

The attached Default Decision and Order is hereby adopted by the California Acupuncture Board, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on APR 02 2014.

IT IS SO ORDERED MAR 03 2014.

Michael Shi, L.Ac., Chair
Acupuncture Board
Department of Consumer Affairs
State of California

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BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against, **XIAO HONG QI, A.C.** **913 E. Vista Way** **Vista, CA 92084** **Acupuncturist License No. AC 11857** Respondent.	Case No. 1A-2011-103 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about April 12, 2012, then- Complainant Janelle Wedge, in her official capacity as the then Executive Officer of the Acupuncture Board, Department of Consumer Affairs, filed Accusation No. 1A-2011-103 against Xiao Hong Qi, A.C. (Respondent) before the Acupuncture Board.

2. On or about October 16, 2007, the Acupuncture Board (Board) issued Acupuncturist License No. AC 11857 to Respondent. (**Exhibit A – Certification of Licensure**).[1]

[1] All exhibits are true and correct copies and are fully incorporated by reference, as if set forth in full herein. Exhibits are located in the attached in the Default Decision and Order Exhibit Package.

Acupuncturist License No. AC 11857 was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2015, unless renewed.

3. On or about April 12, 2012, the Board served by Certified and First Class Mail a true and correct copy of the Accusation No. 1A-2011-103, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7, to Respondent's address of record with the Board, which was and is 913 E. Vista Way, Vista, CA 92084. (**Exhibit B – Accusation No. 1A-2011-103, related documents and Declaration of Service**.) Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c).

4. On or about April 18, 2012, the aforementioned documents referenced in paragraph 3, above, which were mailed by certified mail, were received by Respondent. (**Exhibit C – return receipt**.)

5. Government Code section 11506 states, in pertinent part:

"(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

6. Respondent failed to file a Notice of Defense within 15 days after service upon her of the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 1A-2011-103. (**Exhibit D – Declaration of Lori Forcucci**.)

7. California Government Code section 11520 states, in pertinent part:

"(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent."

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8. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on Respondent's express admissions by way of default and the evidence before it, contained in Exhibits A, B, C, D, E, F, and G, hereto, and hereby finds that the charges and allegations in Accusation No. 1A-2011-103, and each of them, separately and severally, are true and correct.

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

10. Section 4955 of the Code states, in pertinent 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.

"..."

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.

"(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

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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."

12. Respondent has subjected her Acupuncture License No. AC 11857 to disciplinary action under section 4955, as defined by section 4955, subdivision (b), of the Code, in that she has been convicted of crimes substantially related to the qualifications, functions or duties of an acupuncturist, as more particularly alleged hereinafter:

13. On or about June 15, 2011, Respondent was cited for misdemeanor violations (**Exhibit E – Citation 6/15/11 and Conviction Documents**) of the following City of Vista Municipal Codes:

(a) Count 1: Section 5.56.190 of the Vista Municipal Code, unlawful advertising;

(b) Count 2: Section 5.56.070, subdivision (B), of the Vista Municipal Code, unlicensed massage;

(c) Count 3: Section 5.56.170, subdivision (P), of the Vista Municipal Code, unlawful massage, unlawful and intentional touching of the client's genitals;

(d) Count 4: Section 5.56.070, subdivision (D), of the Vista Municipal Code, no display of license information;

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(e) Count 5: Section 5.56.070, subdivision (X), of the Vista Municipal Code, no written customer record;

(f) Count 6: Section 5.56.070, subdivision (F), of the Vista Municipal Code, no list of services available; and

(g) Count 7: Section 5.56.070, subdivision (A), of the Vista Municipal Code, responsibility for massage therapists on premises.

14. On or about November 4, 2011, Respondent was additionally cited for a second misdemeanor violation of Section 5.56.190 of the Vista Municipal Code, unlawful advertisement of massage services without including a massage therapy permit number as Count 8. (**Exhibit E – Citation and Conviction documents**.)

15. On or about November 4, 2011, in the Superior Court of California, County of San Diego, in the case entitled, *The People vs. Xiao Hong Qi,* Case No. CN 296138, Respondent pled guilty to and was convicted of two misdemeanors (**Exhibit E – Citation and Conviction documents**):

(a) Count 3, violation of Section 5.56.190 subdivision (P), of the Vista Municipal Code, unlawful massage, unlawful and intentional touching of the client's genitals; and

(b) Count 8, violation of Section 5.56.190 of the Vista Municipal Code, unlawful advertisement of massage services without including a massage therapy permit number.

(c) Counts 1, 2, 4, 5, 6 and 7 were dismissed.

16. On or about November 4, 2011, Respondent was placed on probation for three years, and ordered to pay fines of $500 each for counts 3 and 8. In addition, Respondent was ordered not to operate any type of massage business in the City of Vista, among other probationary terms (**Exhibit E – Conviction documents**).

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FACTORS IN AGGRAVATION

17. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on April 26, 2011, Respondent was issued a Citation by the Board, under Code Section 4955, and she has committed acts of unprofessional conduct that arose under the following facts and circumstances (**Exhibit F – Citation - 4/26/11**):

18. On or about October 26, 2007, in response to an investigation by an Anaheim Enforcement Officer, Respondent agreed to perform a 30 minute massage in consideration of payment of $40, in a facility holding a business license as an acupuncture clinic, but which was without acupuncture supplies and was functioning as an unlicensed massage parlor.

19. On or about October 26, 2007, Respondent was charged with:

(a) One violation of Anaheim Municipal Code Section 4.29.030, the operator's license requirement;

(b) One violation of Anaheim Municipal Code Section 4.29.060, the massage technician permit requirement; and

(c) One infraction of Anaheim Municipal Code section 3.04.050, the business license requirement.

20. On October 16, 2008, Respondent pled guilty to and was convicted of one infraction of Anaheim Municipal Code Section 3.04.050, a violation of the business license requirement.

21. On or about January 16, 2009, a follow up investigation was performed after an Anaheim Enforcement officer found an inappropriate advertisement for massage at the location at which Respondent was cited on October 26, 2007. Respondent again agreed to perform a 30 minute massage for the Enforcement Officer in consideration of payment of $40. Upon investigation, the Enforcement Officer found that the same municipal code violations cited on October 26, 2007, still existed on January 16, 2009.

22. On or about January 16, 2009, Respondent was charged with:

(a) One violation of Anaheim Municipal Code Section 4.29.030, the operator's license requirement;

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(b) One violation of Anaheim Municipal Code Section 4.29.060, the massage technician permit requirement; and

(c) One infraction of Anaheim Municipal Code Section 3.04.050, the business license requirement.

23. On or about July 9, 2009, Respondent pled guilty to and was convicted of a misdemeanor violation of Anaheim Municipal Code Section 4.29.060, the massage technician permit requirement.

Employment as an acupuncturist for unlicensed person

24. On or about January 16, 2009, Respondent committed an act of unprofessional conduct by being engaged as an independent contractor acupuncturist for the business of an unlicensed person.

Failure to register address of employment with Board

25. On or about January 16, 2009, Respondent committed an act of unprofessional conduct in that she failed to register her business address for her employment as an acupuncturist as independent contractor with the Board.

26. The Board further finds that pursuant to Business and Professions Code section 4959, the costs of investigation and enforcement of the case prayed for in the Accusation total $2665.00, based on the Declaration of Costs contained in **Exhibit G – Declaration of Costs of Deputy Attorney General Lori Forcucci**.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Xiao Hong Qi, A.C. has subjected her Acupuncturist License No. AC 11857 to discipline.

2. Pursuant to its authority under California Government Code section 11520, and based on the evidence before it, the Board hereby finds that the charges and allegations contained in Accusation No. 1A-2011-103, and the Findings of Fact contained in paragraphs 1 through 26, above, and each of them, separately and severally, are true and correct.

3. Pursuant to its authority under California Government Code section 11520, and by reason of the Findings of Fact contained in paragraphs 1 through 26, above, and Determination of

Issues 1 and 2, above, the Board hereby finds that respondent Xiao Hong Qi, has subjected her Acupuncturist License No. AC 11857 to disciplinary action under California Business and Professions Code section 4955 in that:

(a) Respondent was convicted of a crime substantially related to the qualifications, functions or duties of an acupuncturist; and

(b) Respondent, in violation of Codes section 4955, engaged in conduct which is unbecoming to a member in good standing of a person in the practice of acupuncture and which demonstrates an unfitness to practice acupuncture.

4. Respondent is liable for and hereby ordered to pay the above costs of investigation and enforcement of this action, in the amount of $2,665.00.

ORDER

IT IS SO ORDERED that Acupuncturist License No. AC 11857, heretofore issued to Respondent Xiao Hong Qi, A.C., is revoked. Respondent is hereby ordered to pay the above costs of investigation and enforcement of this action, in the amount of $2,665.00.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on _____.

It is so ORDERED _____

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FOR THE ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS

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