

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

In the Matter of the Accusation against:

LI LI LIN, L. Ac.,

Respondent.

Agency Case No. 1A-2019-102

OAH No. 2022040401

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Acupuncture Board Department of Consumer Affairs as its Decision in the above-entitled matter.

This Decision shall become effective on June 10, 2023.

IT IS SO ORDERED this 11th day of May 2023.

By: Original signature on file

FOR THE ACUPUNCTURE BOARD
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PROPOSED DECISION

Eileen Cohn, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter on October 31, 2022, November 1, 2, 3, and 4, 2022, and March 6, 7, 8, and 9, 2023, via videoconference.

Benjamin Bodea, Executive Officer (complainant), Acupuncture Board (Board), Department of Consumer Affairs, was represented by Wendy Widlus, Deputy Attorney General, California Department of Justice.

Li Li Lin, also spelled LiLi Lin (respondent) was self-represented. Certified Mandarin-language interpreters were duly sworn and provided interpretation services for respondent throughout the hearing with separate Mandarin-language interpreters

providing interpretation services for certain witnesses who benefitted from interpretation services.

Testimony and documentary evidence was received. The record was closed and the matter was submitted for decision on March 9, 2023.

SUMMARY

Complainant charges respondent with filing a fraudulent application for licensure by falsifying her credentials from Fujian College of Traditional Chinese Medicine (Fujian College), located in China, her employment history, and her required certification card for cardiopulmonary resuscitation (CPR). Complainant further charges respondent with failing to cooperate with the Board's investigation. (The term Chinese medicine is alternatively referred to as oriental medicine but this decision will use the term Chinese medicine except when referencing an official title of a credential.)

Respondent disputes her credentials were falsified and maintains she completed her studies at Fujian College and obtained her credentials. Respondent attacks the foundation of the Board's investigation and supporting documentation, particularly the information gathered from officials from what is referred to below as respondent's Alien File and ICE Beijing. Alternatively, respondent maintains any errors in her license application or inconsistencies between representations made on her license application and supporting documentation, and other government documentation, were not her fault, but the fault of others who drafted the documents on her behalf. Respondent maintains her demonstrated competence and dedication to the quality of care required of the profession supports the validity of her credentials, because without the completion of her studies she would not have been an accomplished

practitioner. Respondent also maintains she cooperated with the Board in its investigation but despite her inquiry about an interpreter, and the investigator's confirmation he would secure one, she never received a call to schedule an investigation.

Complainant met his burden of proof demonstrating by clear and convincing evidence respondent provided fraudulent school credentials and a fraudulent CPR certification to the Board. Complainant failed to meet his burden of proof to show respondent's employment history was falsified. Complainant failed to meet his burden of proof to establish respondent failed to cooperate with the Board's investigation.

The Board's Disciplinary Guidelines provide no alternative to revocation where licensees have been found to have qualified for the Board's license examination and subsequently obtained a license by falsifying their qualifying credentials. As such, respondent's Board-issued acupuncture license is revoked. Respondent shall be required to repay the Board's reasonable costs of prosecution at such time as she is reinstated as a Board licensee.

FACTUAL FINDINGS

Jurisdictional Matters and Background

1.aa Complainant served Respondent with the Accusation in his official capacity as Executive Officer of the Board, on March 8, 2022. The Accusation and all other statutorily required documents were properly served on respondent. Respondent timely served Complainant with a Notice of Defense contesting the Accusation on March 15, 2022. The Accusation was filed with the OAH on April 13,

2022. All jurisdictional requirements have been satisfied for this matter to proceed to hearing.

2.11 On April 17, 2015, the Board issued respondent license number AC16492,11 with an initial expiration date of November 30, 2022. (Ex. 2.) The license has been renewed, is current and active.

3.11 The Board issued respondent's license after respondent had achieved all passing score on the Board's examination for licensure. Respondent initially applied to take the Board's August 19, 2014 licensure examination. Respondent certified her application under penalty of perjury on April 11, 2014. (Ex. 3, pp. A52-A54.) The Board received her application on April 17, 2014. (Ex. 3, p. A32.) As part of the application for the examination, she was required to submit documentation including her credentials and transcript from a college or program accredited for acupuncture, and certification of CPR and Clean Needle Technique (CNT) training. Respondent prepared her application and the attached documentation of her purported credentials and CPR card with the assistance of Chien-Lang Lin (Cl Lin). Her application was earmarked by the Board as incomplete and she was directed to provide the official certificate of graduation or diploma and transcripts from the school she identified, Fujian College in order to qualify for the examination no later than May 27, 2014. (Ex. 3, p. A65.) A transcript purportedly from Fujian College was sent to the Board in a sealed envelope from China. (Ex. 3, pp A86-87.) After respondent provided the documentation to the Board, she was permitted to take the August 19, 2014 licensing examination but did not achieve a passing score. (Ex. 3, pp. A62-A63, A66.) She reapplied to take the March 3, 2015 licensing examination and obtained a passing score. (Ex. 3, pp. A57-A58.) Respondent qualified as a foreign-trained applicant.

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Complainant's Evidence

THE INVESTIGATION

4.ii This dispute arose from an investigation opened by the Division of Investigation (Division) in late May 2019 at the request of the Board. (Ex.3, p. A32.) The Division operates independent of the Board within the Department of Consumer Affairs. Sworn peace officers conduct investigations for licensing boards and bureaus upon request. Respondent's investigation was initiated after it was discovered respondent was a student of CL Lin, a former acupuncture instructor and Board licensee, who was subject to criminal charges for fraudulently submitting to the Board false documentation in support of his students' applications for admission to the Board licensing examination. CL Lin surrendered his license on August 14, 2019, effective September 28, 2019; he stipulated to a criminal conviction involving the submission of false CPR cards and/or CNT certificates. (Ex. 3.) There was no dispute that a CPR card and CNT certificate were required as part of the examination application. (The hearsay statements attributed to CL Lin's students by a separate investigation and incorporated into Exhibit 3 have not been credited unless they support and explain other admissible witness testimony. (*Lake v Reed* (1997) 16 Cal.4th 448.)

5.ii There is no evidence respondent was referenced in CL Lin's criminal charges or CL Lin admitted to providing false documentation to the Board on her behalf. Neither is there evidence, as respondent claims, she was specifically targeted by the Division investigators or the Board. Respondent was among 30 or more former students who were investigated and the investigators involved, including those who testified, had no personal interest in the outcome or evidenced any bias toward respondent. The investigators were clearly operating within the boundaries of their

positions and authority to gather documentation, including documentation from respondent's immigration file also known as an Alien File as more fully described below. The investigators provided credible testimony of the veracity of their investigation and the foundation of the documentation they obtained.

6.ee Based on its findings of CL Lin's practice of submitting falsified credentials, and CPR cards and CNT certificates, the Board requested the Division investigate respondent's application for fraud in all these areas. During its investigation the Division found the CNT certification was valid, but her credentials from Fujian College and her CPR certification card were fraudulent. As such, the Accusation charged respondent with submitting fraudulent credentials from Fujian College and a fraudulent CPR card, but did not charge her with wrongdoing related to her CNT certification.

7.ee Several witnesses who were involved with the investigation at various times and in various supervisory and line capacities testified on behalf of the Board. Helen Tennyson is currently a Special Agent for the Department of Justice. She was a Supervising Investigator with the Division when the investigation of CL Lin and respondent started. Ms. Tennyson worked for the Division from August 2010 to December 2019. Her responsibilities were not restricted to the Board or to the investigation of respondent. She estimated she conducted over 170 investigations during her tenure with the Division. As part of her responsibilities, Ms. Tennyson conducted civil and criminal investigations for a variety of boards governing a wide range of California licensees. Ms. Tennyson has been a sworn peace officer during her entire tenure with the Division and the Department of Justice. Ms. Tennyson is a well-qualified investigator. She obtained a Bachelor of Arts in Business Administration and

an Associate of Arts in Criminal Justice. As an investigator, she received 640 hours of specialized training.

8.aa During her tenure with the Division, Ms. Tennyson investigated fraudulent transcripts from foreign countries for the Board as well as the Board of Registered Nursing. In 2014, she started investigating CL Lin for his provision of fake diplomas, transcripts and certifications. Between February and August or September 2014, the Division obtained information about CL Lin's possible submission of fraudulent documents to the Board. By October 2014, the Division had obtained a very large batch of potentially fraudulent CPR cards, of those approximately 46 were verified as fraudulent. Once the CPR cards were confirmed fraudulent, other documents were investigated including the CNT certificates. Approximately 30 CNT certificates were determined fraudulent.

9.aa Ms. Tennyson suggested the Board was more lenient with applicants who failed to secure the CPR cards or CNT certificates, that the omissions could possibly be cured by updating the CPR cards and CNT certificates. Respondent completed CPR training provided by the American Heart Association on March 22, 2022, obtained a valid card and updated her CPR certification. (Ex. G.)

10.aa Respondent does not dispute CL Lin submitted a fraudulent CPR card on her behalf, but instead insisted she was an innocent victim, or alternatively, was nevertheless qualified due to her previous training at Fujian College and possession of an "emergency kit" and experience with CPR.

11.aa The fraudulent CPR certification referenced an issuance date of July 25, 2012 and an expiration date of July 2014. The CPR training also encompasses certification for the use of an automated electrical defibrillator (AED). The fraudulent

certificate included an identification number, a course location at Alhambra Medical University and represented Dr. Allan Chang was the instructor. (Ex. 3, pp. A76-A77.)

12.nn Dr. Allan Chang was subpoenaed to testify and presented clear andn exacting answers to questions. Dr. Chang presented unbiased and credible testimony. Dr. Chang has never had a personal or professional relationship with anyone at the Board or Division, is not contracted by the Board to provide any services as an instructor. Dr. Chang is a Board-licensed acupuncturist, Diplomat of Oriental Medicine, who holds a Bachelor of Arts degree and doctorate in acupuncture and oriental medicine (DAOM), and is certified as an advanced medical technician. In response to an inquiry by the Division, Dr. Chang researched his records and confirmed respondent had never attended his CPR class. (Ex. 4.) During his testimony, Dr. Chang emphasized the need for specialized training through formal CPR and AED instruction so acupuncturists, who provide a form of medical treatment, are prepared to provide all emergency treatments including resuscitation. Dr. Chang effectively disputed respondent's claim the possession of an emergency kit is an adequate substitute for CPR certification. Dr. Chang maintained that emergency kits available to acupuncturists are not restricted to basic first aid for home use, but generally include (unspecified) tools for higher levels of intervention. As such, emergency kits do not substitute for formal training and skill practice.

13.nn Dr. Chang confirmed the process he uses to provide the CPR certification.nn After the training is completed and students pass written and skill practice tests, he sends the documentation for approval to the American Heart Association. The American Heart Association informs him when the certifications are ready. Individual students pick up the certification from him in class. He is required to maintain a receipt for every individual who picks up a certification.

14.00 The importance of formal training was further supported byoo Complainant's testimony. Complainant stated acupuncturists are considered primary care providers. They provide treatment in health care facilities and as such, need to provide emergency services.

15.00 The Division's investigation of respondent was part of a second batch ofoo applicants or licensees who used the services of CL Lin. The Board had received complaints about educational documents from China. However, it was difficult to verify the authenticity of those documents. The Board generally relied upon evaluation companies to verify the authenticity of the certifications. Between 2014 and 2016, the Board, using the services of the Division, reviewed the applications processed between October and April 2014 and opened approximately 12 investigations.

16.00 The Division's investigation of respondent began after respondentoo obtained her license and a pattern of fraud related to CL Lin was discovered. During the Division and Ms. Tennyson's investigation of other clients of CL Lin, it was discovered that CL Lin had prepared phony evaluation reports purportedly from an evaluation company, Foundation for International Services, Inc. (FIS). FIS provides credential evaluations for licensing agencies and operates independently of the agencies. As part of its services, it certifies the authenticity of an applicant's education which is particularly important when the applicant is from another country. During the Division's investigation, it uncovered multiple instances where CL Lin prepared fake FIS evaluations for applicants. The Division issued subpoenas to FIS for certain evaluations and FIS reported they had no records of these evaluations. As a result, the Division started to look at every license application related to CL Lin from 2014.

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17.aa In May 2019, the Division sought confirmation of the validity of a respondent's FIS evaluation submitted by CL Lin on respondent's behalf. FIS informed the Division they had no records of respondent's evaluation.

18.aa The Board concentrated its efforts on confirming the validity of a respondent's credentials in June 2019 after it received confirmation respondent's evaluation was fraudulent. (Ex. 3, p. A98.)

19.aa Ms. Tennyson secured respondent's Alien File as part of her investigation. The Alien File was maintained by the Department of Homeland Security and included documents used by respondent to gain entry to the United States, a visa or "green card," and documents to become citizens. These documents are considered critical because they are created at the time individuals first enter the United States and before applicants such as respondent obtain assistance with their licensure. The Alien File requires disclosure of education, schools, family and work history and the applicant swears under oath the information is true.

20.aa Respondent's Alien File revealed a conflict between respondent's representation to the Board she attended Fujian College and her educational history. Respondent's application for examination received on April 17, 2014 stated she attended Fujian College from 1996-2001. The Certificate of Graduation respondent provided to the Board stated she graduated from Fujian College on July 1, 2001. (Ex. 3, p. A158.) In respondent's Application for Immigrant Visa and Alien Registration, she represented she was married on May 16, 2001, which would be within the time period of her attendance or graduation from Fujian College. (There is other documentation suggesting the year of marriage was 2002, (Exhibit 3 page A108, but that later date is still close to the time of her purported graduation from Fujian College.) Respondent did not tell the United States Department of State in her Application for Immigrant

Visa and Alien Registration of her attendance and graduation at Fujian College. (Ex. 13, p. Z43-Z48.) On April 8, 2002, in her Application for Immigrant Visa and Alien Registration, which respondent represented she signed, or her spouse signed on her behalf, she listed Lin Ye School, NanPing City, with her dates of attendance from September 1996 through July, 1999, with her degree or diploma in Accounting. (Ex. 13.)

21.hh Ms. Tennyson prepared the letter provided to the United Stateshh Department of Homeland Security, Immigration and Customs Enforcement (ICE) which was directed to its Beijing office (ICE Beijing). The letter requested staff to reach out to Fujian College to confirm respondent's attendance. Ms. Tennyson sent the certificate of respondent's graduation and transcripts to ICE Beijing staff by facsimile. It was not established whether the documentation sent was limited to the purported Fujian College documents in the Chinese-language or also included the English-language translation in the respondent's application file. (Exhibit 3, pp. 81-85.)

22.hh After Ms. Tennyson obtained the information from FIS and prepared thehh groundwork for obtaining confirmation from Fujian College through ICE Beijing, she left the Division for the Department of Justice. Ms. Tennyson's role in respondent's investigation was limited to contacting FIS, the United States Department of Homeland Security, ordering and photocopying documents from the Alien File and reviewing the documents with Johnny Tsang, Supervising Investigator, Lakewood Office, now retired, and the preparation of letters to ICE Beijing to confirm respondent's attendance at Fujian College.

23.hh The Division's investigation continued in part by Stephanie Whitley, nowhh Commander Whitley, but principally with Johnny Tsang. Commander Whitley and Mr. Tsang, sworn peace officers, are trained and experienced investigators with a long

history of investigations for the Division and licensing boards. Commander Whitley and Mr. Tsang clearly established in response to respondent's extensive questioning they conducted the investigation of her application documents without any personal agenda or bias. Ms. Whitley was clear the Division is not directed to find untoward conduct and often reaches a conclusion after investigation that allegations are unfounded. Mr. Tsang established he was responsible for building upon Ms. Tennyson's initial outreach and preparing the report of investigation. (Ex. 3.) Both witnesses established respondent's investigation was part of a larger investigation of individuals who had relied upon CL Lin for their applications and respondent was not selectively prosecuted. (Certified records of respondent's licensing and Alien File are also contained in Exhibits 5 and 13.)

24.ii An evaluation report ostensibly from FIS, dated December 6, 2013, was submitted on behalf of respondent with her application for examination. The evaluation listed Fujian College, set forth the program and represented copies of English translations of the graduation certificate and student grade record listing the coursework completed with the hours and grades received for each subject were submitted as part of the evaluation. The student grade record was included in the evaluation. The evaluation was purportedly signed by an FIS evaluator, Sharalynn D. Cromer. (Ex. 3, pp. A90- A92.)

25.ii On June 11, 2019 Severine Kassimou, Director of Evaluations for FIS since 2015, and prior to that, the Assistant Director, Senior Analyst and Junior Analyst, informed Ms. Tennyson FIS had no record of an evaluation of respondent. Ms. Kassimou testified at hearing and a subsequent investigation report (Exhibit 7) supported and explained her testimony of the process FIS uses to verify its evaluations. An evaluation report may be a basic (document-by-document) or comprehensive

report of each course taken with a translation of each course when the transcript is not in English. Those individuals requesting a report pay an up-front fee. Records are kept for at least five years. Records from schools must be originals provided in sealed envelopes.

26.tt Ms. Kassimou clearly and unambiguously established the timeline and validity of FIS's investigation. After receiving the Division's request, Ms. Kassimou searched FIS's archives based on the service number contained in the proffered FIS evaluation of respondent and found a report with the service number, but for a different individual. Ms. Kassimou was able to retrieve the service number from FIS's server archive. The report was a basic document-by-document evaluation (not a comprehensive course-by-course evaluation) issued in 2010 in connection with an immigration application from an individual in Canada and not respondent. The credentials were from a school in Ontario, Canada, and were equivalent to a bachelor's degree in mathematics and accounting, and a master's degree in accounting. A master's degree in mathematics with a specialization in statistics was verified from a regionally accredited institution in the United States. (Ex. 7, p. A205.) There was no evidence any fee was paid by respondent or CL Lin on her behalf for the FIS report as would be required. (Ex. 7.)

27.tt Ms. Kassimou convincingly established FIS did not err in its conclusion that the FIS evaluation related to the proffered number was for a different individual, it never conducted an evaluation of respondent, and did not have any documentation about respondent in its files. The FIS evaluation provided by CL Lin in support of respondent's evaluation and submitted to the Board with the purported original transcripts was clearly a forgery.

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28.aa The FIS report was ostensibly signed by an official of FIS, Sharylynn D.aa Cromer. Ms. Kassimou had worked with the purported signatory of the evaluation, Ms. Cromer and was familiar with her handwriting. At one time during Ms. Kassimou's tenure with FIS, Ms. Cromer was her supervisor. Ms. Kassimou maintained it was not Ms. Cromer's signature. Specifically, Ms. Cromer's title was wrong. Ms. Cromer's title was not Evaluator; she was Vice President of Operations. Her signature penmanship was also unusual. Ms. Kassimou supplied the Division with a sample of a valid FIS evaluation from 2013 with Mr. Cromer's signature. The letterhead and signature was different. (Ex. 7. pp. A216-A219.)

29.aa Respondent contested the authenticity of FIS's search for its evaluationaa and the foundation for the evaluation, particularly whether it was manipulated, and further denied it was filed with the Board with her knowledge or consent. Overall, respondent maintained FIS's findings did not establish her credentials and transcripts were not genuine. Respondent consistently maintained she provided a valid original certificate and transcript from Fujian College to CL Lin for him to file on her behalf. As more fully discussed below, Respondent's testimony and Alien File undermined the veracity of her representation and damaged her credibility.

30.aa Commander Whitley was Ms. Tennyson's supervisor before she left theaa Division for the Department of Justice. She had worked with the United States Embassy before on other cases, and based on her experience, the documents provided by the United States Embassy were accurate. Commander Whitley was assured by the review from FIS that the respondent's evaluation was fraudulent.

31.aa Commander Whitley was familiar with the Division's authority to gatheraa information from other government agencies. She established the Division's efforts to

gather information from the United States Department of Homeland Security and Beijing ICE was within the Division's authority.

32. Mr. Tsang was assigned the day-to-day investigation of respondent and others who had been students of CL Lin. He did not report directly to Commander Whitley but to another supervisor who approved and co-signed his report of investigation report (Ex. 3.) Mr. Tsang contacted the Department of Homeland Security by email on October 11, 2019 requesting the Alien File for respondent as well as another individual. (Ex. 3, p. 103.) The Alien File was provided. (Ex. 3, pp. A105-A122; see also Ex. 13 (certified records)).

33. On July 15, 2019, Mr. Tsang contacted the Council of Colleges of Acupuncture and Oriental Medicine (CCAOM), responsible for administering the coursework and certification for respondent's CNT. (Ex. 3, p. A101.) They confirmed the CNT certificate was legitimate.

34. In response to the Division's request, Beijing ICE sent a request to Fujian College to confirm respondent was one of its graduates who obtained a certificate of graduation with the appropriate course of study qualifying her for the Board examination and licensure. Beijing ICE forwarded respondent's certificate of graduation to Fujian College. (Ex. 3, p. A131). Respondent was not the only individual included in the request.

35. On August 30, 2020, in a letter directed to Commander Whitley as a Supervising Investigator, Austin Moore, the attaché for Beijing ICE confirmed the results of its inquiries made on January 6, 2020 and again on March 3, 2020 to Fujian College for three individuals including respondent. The inquiry was made by ICE Foreign Service National Investigator Han Yan who contacted Mr. Xinxing Zheng from

Fujian College's Registrar's Office. On March 3, 2020, Beijing ICE contacted Fujian College again and provided respondent's purported serial number on her graduation certificate number, name and date of birth. (Ex. 3, pp. A128-129, 131.) As to respondent, Mr. Zheng confirmed "[w]e did not find the certificate information regarding the three students who you requested us to verify." Respondent questioned the foundation of the documentation. An original was never provided to the Board. However, the authenticity of the documentation was clearly established by the letterhead from Beijing ICE and the responsive letter from Mr. Zheng written on Fujian College letterhead which included a seal from the Integrated Archives Office of Fujian College. There was no motive or incentive for Beijing ICE to target respondent.

36.ii Respondent disputed Mr. Moore's characterization of Mr. Zheng's response as a statement confirming her certificate was fraudulent. Mr. Zheng did not expressly state respondent's certificate was fraudulent. However, respondent did not dispute the serial number associated with her purported certificate. Respondent claimed the records office could have made a mistake and mishandled files from the time it was a college. The institution became a university in or around 2010. In view of the entirety of the evidence, Respondent's assertion was baseless.

37.ii Mr. Tsang's final report of investigation was dated September 1, 2020.ii During the hearing, Mr. Tsang was able to substantiate the accuracy of his investigation memorialized in his report of investigation and establish the foundation and chain of custody for the documentation obtained by the Division in most material areas.

38.ii Mr. Tsang's report and conclusions were not without flaws. He expressed suspicion of respondent's claim she began Fujian College in 1996 when she was 16. However, Ms. Kassimou confirmed educational levels are different in China. Mr.

Tsang's misguided assumption however did not affect the Division's findings respondent's credentials from Fujian College were fraudulent.

39.mmComplainant did not provide sufficient evidence respondent failed to cooperate with the Board's investigation. Mr. Tsang initially attempted to contact respondent in 2019 to arrange for an interview, correspondence respondent said she did not receive. By his own admission, Mr. Tsang did not contact her again until 2020 because of his workload. In his report of investigation, he confirmed there was seven companion cases in his office and three other related cases in the Division. (Ex. 3, p. A31.) When he did communicate with respondent in 2020, the evidence established there was communication between him and respondent but there was no evidence of a resolution to respondent's request for an interpreter. Mr. Tsang candidly conceded he did not remember with certainty the calls from respondent. There was also some confusion in his written communication to respondent. Mr. Tsang admitted the date in one letter should have said the year 2020, not 2019. Respondent's testimony and supporting documentation are more fully discussed below.

40.mmComplainant did not provide sufficient evidence respondent misrepresented her employment to the Board. Complainant's charges are not clear and the basis for the charge is not supported by Mr. Tsang's investigation. At the time of respondent's application, she represented she was not working. Mr. Tsang contacted the State of California Employment Development Department for employment records for six quarters, covering 2018 to 2019 on November 12, 2019, well after respondent's application was processed by the Board and respondent had received her license. The next day, the Employment Development Department confirmed it did not have any documentation for respondent. (Ex. 3.) As set forth below, at a time not established by the record with certainty, prior to respondent's

licensure, she worked for her mother-in-law in her mother-in-law's acupuncture practice; however, her employment may have been unpaid or unreported. As such, complainant's charge of misrepresentation is ambiguous and is not adequately supported by the evidence presented. It was also established at some time that after respondent obtained her acupuncture license she worked as an acupuncturist, at an address provided to the Board. It was discovered that sometime after licensure, respondent changed her address of record, did not notify the Board and the Board cited her on July 28, 2020 for a violation of the Board's laws and regulations. (Ex. 12.) Based upon the Accusation, and Mr. Tsang's report and testimony complainant's charge of misrepresentation is ambiguous and is not adequately supported by the evidence.

THE BOARD'S LICENSING REQUIREMENTS

41.tt Complainant Benjamin Bodea, the Board's Executive Officer testified. Mr.tt Bodea was not directly involved in the investigation. He established respondent was not a specific target of the investigation but was investigated along with many others as a result of an initial review of CL Lin's students. Mr. Bodea authorized the investigation of upward of 40 cases of suspected fraud after problems with the documentation related to CL Lin's students were discovered. Many of these investigations are ongoing. Mr. Bodea directed the investigators to obtain official records from the applicants' schools and evaluation agencies. Generally, where the CPR or CNT certificates were found to be fraudulent, he directed the investigators to take a "deeper dive" into the records of the applicants/licensees.

42.tt Mr. Bodea provided crucial information about the general function of thett Board and the specific licensing requirements. Mr. Bodea demonstrated a deep understanding of the Board's mandate and processes. He testified clearly and without

hesitation and provided straightforward answers in a respectful manner under both direct and a cross-examination. Bodea is knowledgeable about the Board's mandate and the pathways to licensure. He had been the Executive Officer of the Board since 2016. From 2008 to 2016, Mr. Bodea worked within the administrative and licensing unit of the Board and provided oversight of the educational requirements for licensure.

43.hh Mr. Bodea emphasized the Board's overriding mandate is to protect the public. To do so, the seven-member Board, after consultation with consumers and members, developed entry-level standards for applicants, including the curriculum requirements, and developed and administered licensing examinations. Mr. Bodea emphasized the Board's mandate for public protection required it to ensure potential licensees have the appropriate credentials before taking the Board examination. The Board obtains input from practitioners, experts and the public before finalizing the curriculum and examination. For applicants who attended a domestic school, a final transcript is provided to the Board from an approved program in a sealed envelope. During the time respondent filed her application, the Board also accepted original transcripts in sealed envelopes from foreign institutions. Now, as the result of the submission of fraudulent transcripts and certifications, the Board requires foreign applicants to submit the sealed original transcripts to an evaluation company. The Board reviews the transcripts from foreign institutions to check if the coursework is comparable to the coursework required for acupuncturists in domestic institutions.

44.hh Respondent did not have to support her application for examination with documentation from a foreign institution. Mr. Bodea noted academic credentials are not the only pathway to licensure. An applicant who has not obtained a formal degree from an accredited institution could earn the right to take the examination through an

apprenticeship with a Board-licensed acupuncturist approved by the Board as a supervisor.

45. Mr. Bodea provided clear and responses to respondent's cross-examination questions. Mr. Bodea agreed the Board initially considered respondent's credentials legitimate and allowed her to take the examination. However, after it was notified of problems, it developed new protocols to ensure the validity of the transcripts. Respondent questioned Mr. Bodea about her rights as a member of the public. Mr. Bodea disagreed a licensee has a right to public protection equivalent to the right of consumers of acupuncture services. Respondent has maintained throughout that the Board exceeded its authority and specially targeted her as an immigrant when it obtained her Alien File. Mr. Bodea confirmed the Board's right to conduct due diligence by accessing respondent's Alien File.

Respondent's Evidence

RESPONDENT'S WITNESSES

46. There is no dispute that this case is not about respondent's ability to practice as an acupuncturist. She was the subject of an investigation of her practice and no deviations from the standard of care were identified. On July 28, 2020, the Board issued respondent a Citation and Order of Abatement for violation of the statutes and regulations of the Board (Business and Professions Code sections 4955, subdivision (d)) because she failed to register with the Board the address of her practice and to post her acupuncture license in a conspicuous location, in violation of Business and Professions Code sections 4961, subdivisions (a) and (b). (Ex. 12.) Respondent denied any previous discipline and her denial was correct in so far as a Citation is not technically a disciplinary action, but can give rise to a disciplinary action.

(See Code of Regulations, tit 16, section 1399.464.) Respondent resolved the Citation by paying the fine and complying with the Order of Abatement.

47.tt Respondent's patients were not in a position to know whether she provided false credentials to the Board, but their testimony does put in issue whether someone as respected as respondent would lie to the Board and as such, needs to be addressed. It is clear respondent is loved and respected by her patients who wrote statements under penalty of perjury and testified on her behalf consistent with their statements, about respondent's exemplary care. (Ex. 3.) These witnesses understood they were being called as character witnesses, but also were in a position to observe Respondent as a practitioner. Respondent did not fully disclose the substance of the Accusation to her witnesses and omitted telling them she was accused of fraudulently representing her credentials from Fujian College.

48.tt Kristin A. Field, an attorney who no longer practices, who also possesses a Master of Business Administration, provided the most extensive testimony. She has been respondent's patient for approximately five years. Ms. Field suffers from chronic illnesses, including fibromyalgia, Hashimoto's thyroid disease, osteoarthritis, heart arrhythmias, brain swelling and other physical problems. Ms. Field has known respondent as an honest, and empathetic practitioner, "sensitive" to both the physical and emotional trauma associated with alleviating the pain of chronic illnesses. She described respondent's administration of the tools of acupuncture as a "sanctuary of healing," and her application of a holistic approach to her chronic illnesses as more successful than traditional western medication. She applauded respondent's capable and gentle use of needles, her masterful explanation of her treatment. Under respondent's care, Ms. Klein has been able to stop all pain medication. She considers respondent her friend as well as her doctor.

49.rr Ms. Klein did not know before the hearing respondent was accused of falsifying her credentials from Fujian College. She only knew respondent failed to file a CPR certificate. Respondent told her she was not aware of the CPR requirement. In response to cross-examination, Ms. Klein reminded counsel she was called as a character witness and could not address the substance of the Board's charges. Nevertheless, Ms. Klein was incredulous the Board would question respondent's credentials because she found it impossible a practitioner of respondent's skill who, in her view, demonstrated an unimpeachable fidelity to the truth, did not obtain the required education. Ms. Klein was unaware of the Board's licensing requirements or even whether it was necessary to be licensed to practice acupuncture. She had lived in other states where acupuncturists are not required to be licensed like western medical practitioners. Nevertheless, as a character witness, Ms. Klein maintained she could not imagine respondent to be intentionally untruthful based upon her observation of her strong moral character.

50.rr Robert Pierson, a retired Sergeant with the Riverside County Sheriff's Department was also highly complimentary of respondent's skills in his written declaration (Exhibit 3) and testimony. Respondent treated Sergeant Pierson as part of his workers' compensation-related injury for pre and post-surgery issues with his back, neck and left shoulder, approximately 30 times, using "lots of needles." He declared respondent was the best of the many acupuncturists he had tried, was impressed by her knowledge, her clear and concise English-language communication and her "caring heart." He was "impressed" by her treatment plan where she considered a "holistic approach to alleviate pain and inflammation," and her insightful questions which focused on ascertaining the underlying basis of his condition. He considered himself "better off" as a result of her care. During the hearing, Sergeant Pierson

admitted he did not know respondent was accused of falsifying her credentials, and based on his experience in criminal cases, would not think of asking.

51.ii Krystal Estrella Martinez prepared a written declaration (Exhibit 3) and testified consistent with that declaration. Her opinion of respondent was consistent with the other character witnesses. Ms. Martinez confirmed during the hearing she knew nothing about the Board's action against respondent. Ms. Martinez started seeing respondent in her twenties after two major near-fatal car accidents which left her physically and emotionally "broken." As a result of weekly sessions with respondent, her physical and mental health have been restored. Ms. Martinez described respondent's care including "anointed hands and true passion for helping people feel their best." (*Ibid.*) Ms. Martinez is now in her early thirties and maintains respondent's "knowledge and experience in Chinese medicine, acupuncture, and tai chi, [] has instilled in my hope for a better tomorrow, and quality of life, by feeling more healed and whole." (*Id.*) Ms. Martinez's impassioned testimony was heartfelt and sincere.

52.ii Wenjie Chen testified on behalf of respondent. He attended elementary and junior high school with respondent's spouse in China. He has known respondent since approximately January 2007 when she came to China with her spouse and they spent time together. At some point "many years ago" respondent examined his tongue and took his pulse after he complained of an upset stomach and successfully treated him with a prescription for Chinese medicine. At that time, Mr. Chen asked respondent how she knew so much and she told him she graduated Fujian College. After three months his stomach problems, which included bloating and pain, ceased. He respected and admired respondent "from the bottom of [his] heart" for curing his stomach issues.

53.nn Three of respondent's family members testified on her behalf. Their testimony from these witnesses was not compelling because not one of the witnesses personally attended Fujian College with respondent or was personally involved in obtaining or verifying her credentials. In their experience respondent was a truthful, caring and capable person, personally and professionally. Their testimony was honest and sincere and based entirely on their personal observations of respondent as a mother, family member, and in the case of her mother-in-law, practitioner. As with her clients, with the possible exception of her spouse, respondent did not inform them fully of the charges against her.

54.nn Respondent's spouse, Mei Yang, has known respondent for over 20 years;nn they have lived together for ten years. They are currently married with two children. Mr. Yang provided a written statement which was consistent with his testimony. (Ex. I.) Their relationship began in China through correspondence between Mr. Yang and respondent between January and May 2000. Mr. Yang lived and attended university in another province, two hours distance by airline from respondent's home province, where Fujian College was also located. Mr. Yang became aware of respondent through a neighbor who represented he knew respondent because they both attended Fujian College. The neighbor knew Mr. Yang and respondent both intended to immigrate to the United States and thought it would be good for them to have a friend once they arrived in the United States.

55.nn Mr. Yang was convinced the Board had targeted respondent and his family and his belief in his spouse's veracity was sincere and heartfelt. He has never observed her to lie to her family or break any promises to them. He considers his family law-abiding, hard-working people, who are responsible with money, and are not a burden to society. Respondent in particular contributes to the community through

her work. Mr. Yang represented respondent is the sole support of the family and shoulders the economic burden for their entire household. (Ex. I.) In December 2019, Mr. Yang also observed respondent ably perform CPR on his father when he suddenly collapsed in their kitchen while respondent was practicing piano with their children. Respondent quickly restored his pulse to stabilize him when the ambulance arrived.

56.nn Mr. Yang was "puzzled" by the Accusation. He relied on the neighbor's representation respondent was his classmate at Fujian College. Mr. Yang and respondent exchanged written correspondence beginning in January 2000 through May 2000. Mr. Yang addressed the written correspondence to respondent at the address of Fujian College and respondent sent him correspondence with Fujian College as the return address. Mr. Yang testified much of the day about the letters exchanged. They shared their areas of study; his was accounting, she represented hers to be traditional medicine. They communicated about vacations and computers, her visit to the United States when she was eight years old, her closeness to her grandmother, and their interest in immigrating to the United States.

57.nn Mr. Yang was candid in response to questioning. Mr. Yang could identify respondent in pictures she submitted, one under an entrance to Fujian College, one by the water with a group of friends, and another that appeared to be in front of an entrance to a living area such as a dorm room. (Ex. J, B56-59.) However, he never attended classes with respondent, studied with her, or met with her at Fujian College. He completely relied on the representations made by his friend and respondent. Mr. Yang was not involved in submitting the documentation to the Board; however, he insisted his spouse would not submit false information.

58.nn Respondent's mother-in-law, Fang Lai, testified. Ms. Lai, an immigrant from China, has been in the United States for 30 years. Prior to moving to California,

she lived in New York for six years. Ms. Lai obtained a college degree in traditional Chinese medicine in China and has been a licensee of the Board with her own practice for many years until her retirement. Ms. Lai is currently disabled and during her testimony admitted to memory problems which impaired her ability to recall dates and the chronology of events with precision. Otherwise, like her son, Mr. Yang, Ms. Lai was firm in her observations of respondent as a caring, trustworthy and honest individual. She was happy her son had a partner who was also in the same profession as Ms. Lai.

59.aa Ms. Lai lives with respondent, her son, and her grandchildren. Sheaa disputed her son's representation of their dire financial condition. Perhaps Ms. Lai conceded there were more financial challenges when her grandchildren were younger. Ms. Lai is disabled, but insisted she was financially stable; e.g, she receives income from other sources, including the government, and her own investments. She did not consider her son to be without financial resources. On the contrary, she considered him resourceful as a successful investor.

60.aa As a licensee, Ms. Lai had only positive observations of respondent. Thereaa is no evidence Ms. Lai has any history of discipline with the Board. She developed and operated her own practice. At some point, respondent began working with Ms. Lai to assist her as a receptionist and with client scheduling. After Ms. Lai's spouse died and after she became disabled and respondent obtained her Board license, at a date she could not remember with assurance, respondent "took over" her business.

61.aa Before leaving the practice, respondent worked under Ms. Lai'saa supervision. Respondent ably treated Ms. Lai during upwards of a dozen sessions of acupuncture which included using needles. She observed respondent to be knowledgeable about the medical compendium of Chinese medicine.

62.ii Ms. Lai did not allow respondent to work as an acupuncturist until after respondent provided her credentials. Based upon her recollection, she was certain she was shown the Board license, and the Chinese-language certificate of graduation from Fujian College (Exhibit 5, p. A160). Ms. Lai would not have allowed respondent to practice acupuncture in her practice unless she was assured of her credentials and Board license. Ms. Lai represented during the hearing she maintained respondent's credentials in a file, but since she has moved, it would be difficult to locate.

63.ii Ms. Lai admitted she was not fully aware of the substance of the Accusation. She had never seen the Accusation and did not understand respondent was charged with fraud. Respondent never spoke to her about the allegation she submitted fraudulent credentials. She did not understand the process the Board used to verify transcripts to assure they meet Board requirements and admittedly could not answer any questions about Board credential requirements. Respondent never showed her the application and she never saw the supporting documentations respondent submitted to the Board. Nevertheless, from Ms. Lai's understanding of respondent, she did not believe the charges. She maintained mistakes can occur even at the highest levels of the Board.

64.ii Respondent presented the testimony of Simin Lai, another witness she identified as percipient to her qualifications. Simin Lai is Ms. Lai's brother and Mr. Yang's uncle. Mr. Lai spoke admiringly of respondent's deep knowledge of Chinese holistic medicine, and the intersection between Taoist philosophy and Chinese medical practice, and her deep understanding of the noted compendium of Chinese medicine. Respondent had successfully treated Mr. Lai for his lower back and arthritis in his feet. He was impressed with her use of herbs to treat his diabetes. Mr. Lai has known respondent for 10 years and had also met her father twice when he visited the United

States. Her father was proud of her accomplishments in acupuncture; however, it was unclear from Mr. Lai's testimony whether they were referring to the school respondent attended after she obtained her license, Five Branches University Graduate School of Traditional Chinese Medicine (Five Branches), located in San Jose, California, from which she completed and passed the examination for Doctor of Acupuncture and Oriental Medicine (Ex. C.) Regardless, Mr. Lai's recollection of his discussions with respondent's father were hearsay and not credited.

RESPONDENT'S TESTIMONY

65.ii Respondent presented as a sympathetic individual, an immigrant to this country, who has established herself as a responsible and compassionate spouse, mother of two children, and daughter-in-law. Respondent presented as a capable, detail-oriented, intelligent and diligent individual. Nevertheless, her testimony taken together with her representations in her Alien File, clearly and unequivocally undermined her position she obtained a legitimate credential from Fujian College.

66.ii Respondent supplied a detailed and heartfelt written position statement which was consistent with her testimony. (Ex. A.) Nevertheless, the evidence presented during the hearing, not only from the documentation obtained by the Board, but also, in particular, documentation generated by respondent as part of her Alien File establishes with certainty respondent did not obtain the required credential from Fujian College.

67.ii Respondent maintained she had been studying Chinese medicine and acupuncture from a young age. Respondent had a traumatic childhood with the death of her mother at a young age, the remarriage of her father and her sense of rejection by her father's new family. Respondent steadfastly maintained it was impossible to

perform with her demonstrated competence without having completed the appropriate coursework and degree from Fujian College. That might make sense, but not under the circumstances of respondent's life. By her own testimony, respondent grew up and observed her mother and after her mother's death, her grandmother, with whom she lived, administer Chinese medicine techniques. At a young age, she observed her mother using needle techniques. She was also well read in the compendium of Chinese medicine and read "all the books on the bookshelf at home at a young age which included books on Chinese medicine." After her mother died from cancer, her grandmother "helped her recover through Chinese medicine." According to respondent, her grandmother worked in a "traditional Chinese medicine clinic in the alleyway where my grandmother's house was. Every time after school, I would follow my grandmother at the clinic and help her with filling the prescriptions. Under the influence of my grandmother, I was determined to become a traditional Chinese medical doctor at that time in order to help sick patients or anyone that needs my help." (Ex. A.)

68. Respondent also had other opportunities to learn about acupuncture. Prior to her licensure, she worked in her mother-in-law's practice as a clerk and had an opportunity to observe her techniques as well. In her Department of Homeland Security, U.S. Citizenship and Immigration Services, N-400 Application for Naturalization, which she signed under penalty of perjury on January 22, 2008, she represented she had lived in Maryland (with her former spouse) until November 1, 2006. She obtained a divorce on October 30, 2007. Afterward she moved to California and reported she worked first for two years as a buffet attendant at the Morongoe Casino in Cabazon, California and from September 2008 as a receptionist at Chinae Acupuncture. Her mother-in-law could not recall the exact date respondent began working with her but this timeline is consistent with her testimony. (Ex. 13, pp. Z3-Z42.)

After respondent's licensure, from fall 2015 through summer 2018, respondent attended Five Branches. On August 18, 2018, she was awarded a Doctor of Acupuncture and Oriental Medicine. At Five Branches, respondent attended a full range of classes covering different areas of the body and disease processes, psychiatry, needle techniques, herbal medicine and research methodology. (Ex. C.) To gain entry, respondent supplied Five Branches with the purported transcript and certificate from Fujian College. Her application to Five Branches and supporting documentation were not submitted as evidence.

69.11 Respondent did not provide any reliable evidence she in fact completed all the requirements of Fujian College and obtained a certificate. It is quite possible, respondent did, as she represented, pass the examination for entry in 1996 to Fujian College and "was qualified for admission." (Ex. A.) However, despite the letters between respondent and Mr. Yang which she offered as proof she attended Fujian College, as set forth above, she did not tell the United States Department of State in her Application for Immigrant Visa and Alien Registration of her attendance and graduation at Fujian College. (Ex. 13, p. Z43-Z48.) In her application, respondent represented she was married on May 16, 2001, which would be close in time to her graduation from Fujian College. (There is other documentation suggesting the year of marriage was 2002, Ex. 3, p. A108, but that later date is still close to the time of her purported graduation from Fujian College.) According to her testimony and her purported Certificate of Graduation, she graduated from Fujian College on July 1, 2001. (Ex. 3, p. A158.) Instead, on April 8, 2002, in a document she represented she signed, or which was signed on her behalf, she listed Lin Ye School, NanPing City, with her dates of attendance from September 1996 through July, 1999, with her degree or diploma in Accounting. (Ex. 13.) Notably, respondent had an opportunity to correct the information at her visa interview scheduled by the American Consulate General for

October 11, 2002. (Ex. 13, p. Z43.) There is no evidence of any correction being made. At that time, respondent also reported her occupation as "secretary" beginning in 2001. (Ex. 3, pp. A108, A110.)

70.ee Respondent's answers to cross-examination questions about this entry were not credible especially given the pride she expressed about her love for Chinese medicine and acupuncture and her purported attendance at Fujian College. She attributed this entry to her former husband and/or the person who assisted them with the paperwork, and her youth. It is unimaginable her then husband would not know about her attendance and make such a dramatic error on her behalf. Equally incredulous, given respondent's acknowledged attention to detail and intelligence, was respondent's insistence she signed important government paperwork, or others signed on her behalf, without reading the details. She compared her lack of diligence in reading her immigration documentation, with the lack of attention paid to a commercial contract or warranty for purchasing an appliance or a car. Unlike commercial contracts, some misrepresentations, referred to as material misrepresentations in the visa application can result in the rejection of an applicant's visa. It is not feasible respondent would take such a risk by making any misrepresentation, whether or not the misrepresentation or omission meets the legal definition of "material."

71.ee Respondent also attributed any misrepresentations in her Board application to her test preparation teacher, CL Lin. CL Lin provided test preparation courses for those seeking a Board license. There is no evidence his test preparation course included additional services for assisting respondent with her application. No evidence was submitted regarding the fees paid by respondent to take CL Lin's course. Respondent insisted CL Lin offered, at no additional charge, to submit the necessary

documents to the Board for her to qualify for the Board examination and licensure. She claimed she did not know he filed a false evaluation report purportedly from FIS with her application materials. Respondent insisted she provided CL Lin with original transcripts and diplomas from Fujian College for him to file on her behalf. However, when questioned why she did not retain a copy or obtain an extra original of the documents, she responded she had contacted CL Lin to obtain the original transcripts, but he did not respond. Her response was not credible. Respondent did not provide any evidence she retained the original or any copies of the documents she purportedly provided to CL Lin.

72. Respondent insisted she provided original documentation requested by the Board directly from Fujian College and pointed to the copy of the sealed envelope within a postal envelope with the return address from China. She stated her father personally went to Fujian College to obtain the records and mailed them. When asked why she did not attempt to obtain another original from Fujian College, she testified she tried to contact them but they did not respond or answer the phone. She testified she sent her father to obtain the records but Fujian College would not provide the records to him. Respondent maintained Fujian College informed her father respondent would have to personally come to the university to obtain the records. Respondent's testimony was not credible given her diligence in maintaining other documentation, including letters between her and her current spouse and her communication with Mr. Tsang. It is not credible given respondent's stated pride in her education at Fujian College, she would not obtain an original certification and transcript at the time of her graduation or obtain and retain an original or a copy for her own records at any time after she came to the United States. Ultimately and most critically, respondent's assurance she sought documentation from Fujian College conflicted with her Alien File.

73.ii She also insisted she was not aware CL Lin provided a false evaluation report from FIS on her behalf and had never seen it or known of its existence. (Ex. A, p.B4.) Respondent's purported failure to review the FIS evaluation does not exonerate her from fraud. Respondent attempt to hide behind the actions of other people conflicts with her reputation as an exacting and diligent individual and the clear and unambiguous absence of proof from Fujian College that she obtained certification.

74.ii Respondent also claimed she was unaware CL Lin provided a forged CPR card to the Board, which she claims she never saw. She insisted she was an innocent victim of CL Lin and if she had known would not have taken his course. She had no incentive to forge a CPR card she had learned CPR at Fujian College it was not difficult to learn and she knew it could be obtained in the United States after one day of class. (Ex. A.) Respondent's testimony is supported and explained by Mr. Tsang's investigation report describing the experience of other students who stated they did not have the opportunity to review the CPR card and CNT certification prior to submission to the Board. (Ex. 3, pp. 6-7.) Respondent may not have had an incentive to provide a false CPR card, but it does not mean that respondent was an innocent victim of CL Lin. Respondent stated she submitted original documentation to CL Lin for him to file, yet it appears CL Lin, at a minimum, filled in the gaps when such documentation was not provided. The CPR requirement was not expressly set forth in the application respondent signed under penalty of perjury but neither was the CNT requirement which respondent knew to secure. (Ex. A pp. 49-A56.) Respondent did secure a valid CNT certification on her own, on August 25, 2013, a requirement which also was not expressly set forth in the application. (Ex. M.) It was undisputed the CPR card and CNT certification were required as a condition of licensure. Respondent made no attempt to secure a valid CPR card until March 22, 2022 until after she was served with the Accusation. (Exs. 1 & G.)

75.nn Respondent insisted she did not pay CL Lin any money for packaging her application materials and submitting them to the Board. She merely paid a fee for his course. There is no evidence CL Lin did not provide legitimate test preparation materials to prepare his students for the license examination and respondent did pass the examination on her second try. Respondent was never identified by CL Lin as an individual for whom he falsified records. However, it is undisputed CL Lin did falsify records, at a minimum, CNT and CPR records, for his students. As such, respondent's statement she relied on the good will and veracity of CL Lin to submit documentation in support of her application for licensure was not credible.

76.nn There was insufficient information about respondent's employment status as of the time of her application in 2014 and reapplication in 2015 for complainant to sustain his burden of proof Respondent falsified her employment history. Respondent's employment history was established by her mother-in-law, Ms. Lei, but given her memory problems, was inconclusive. Respondent had worked for Ms. Lei as a receptionist and scheduling clerk at some unknown time period before her licensure. However, Mr. Tsang's request for confirmation of respondent's employment with the California Employment Development Department was limited to six quarters between 2018 and 2019, the time the Board was aware of respondent's license and address. Respondent's employment was not reported to the California Employment Development Department during that time. (Ex. 3, p. 36.)

77.nn There was insufficient evidence respondent failed to cooperate with the Board. Mr. Tsang's observations and his letters were inconclusive. Respondent claimed she did not receive the first letter. After respondent received the second letter on March 9, 2020, she spoke with Mr. Tsang to schedule an interview for March 19, 2020. Respondent spoke with Mr. Tsang in the English language. She initially told him she

did not need an interpreter but changed her mind and requested Mr. Tsang supply an interpreter the next day. Respondent called Mr. Tsang again on March 16, 2020 (Exhibit H) and spoke to Mr. Tsang who told her he would contact her after he found an interpreter. Mr. Tsang admitted there was a delay between his first communication in 2019 and second communication in 2020 due to his workload. Mr. Tsang's testimony was inconclusive.

Costs

78.hh Complainant provided a declaration of Deputy Attorney General Wendyhh Widlus with attached billing documentation from the accounting department at the Department of Justice in support of the prosecution costs charged to the Board. The billing documentation includes the costs of prosecution: fiscal year 2020, 1.5 hours of paralegal time; fiscal year 2021, one hour of attorney supervisory review and analysis (at \$220 per hour), paralegal time in the amount of five hours (at \$205 per hour) and 31 hours of work by the Deputy Attorney General Widlus, lead counsel (at \$220 per hour); and fiscal year in 2022 through October 21, 2022, at the same hourly rates, .25 hours of supervisory time, 58.75 hours of work by the Deputy Attorney General Widlus, and .25 hours for cost recovery (at \$195 per hour). The total cost of prosecution charged, which excludes all costs incurred after October 21, 2022, is \$21,503.75. The costs are not entirely reasonable given the nature of the allegations, the number of witnesses, and the reliance upon the underlying investigation. For these reasons, the total costs are reduced by 30 percent or by \$6,451. The total reasonable costs of prosecution are \$15,053. Complainant did not submit any costs of investigation.

79.hh Respondent provided a vigorous defense and participated in good faithhh in the hearing. She is raising two children and is the only one currently employed in her household. Although based upon the testimony of her mother-in-law there may

be other sources of income, her future is uncertain and charging her for costs of prosecution may be unduly burdensome. For this reason and based upon the severity of the discipline imposed, respondent shall not be required to pay the reasonable costs of prosecution until such time as she is reinstated.

LEGAL CONCLUSIONS

General Legal Principles

1.hh The burden is on complainant to prove cause for discipline by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-856.) Complainant met his burden of proof to establish respondent submitted fraudulent credentials and transcripts from Fujian College, but did not meet his burden of proof to establish respondent lied about her employment history or failed to cooperate with the Board.

2.hh The Board is charged with protection of the public. Business and Professions Code section 4928.1 provides: Protection of the public shall be the highest priority for the Acupuncture Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. Complainant demonstrated ensuring acupuncturists have valid educational credentials and CPR card, furthers the Board's mandate of public protection, regardless of whether the licensee has the technical ability to practice acupuncture.

3.hh The factual findings and legal conclusions are the result of an extensive review of the entire record including the testimony and exhibits. The legal conclusions

below are based upon the factual findings whether or not the factual findings are specifically referenced.

4.aa Witness testimony was carefully weighed against the documentation provided and measured by the consistency of the testimony provided with written documentation. The trier of fact may "accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted." (*Stevens v. Parke Davis & Co.* (1973) 9 Cal.3d 51, 67.) The trier of fact may also "reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material." (*Id.*, at 67-68, quoting from *Neverov v. Caldwell* (1958) 161 Cal.App.2d 762, 767.) Further, the fact finder may reject the testimony of a witness, even an expert, although not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890.) And the testimony of "one credible witness may constitute substantial evidence," including a single expert witness. (*Kearl v. Board of Medical Quality Assurance* (1986) 189 Cal.App.3d 1040, 1052.) A fact finder may disbelieve any or all testimony of an impeached witness. (*Wallace v. Pacific Electric Ry. Co.* (1930) 105 Cal.App. 664, 671.)

5.aa Complainant's witnesses were found to be more credible than respondent with regard to the respondent's credential from Fujian College. Respondent's witnesses provided credible testimony respondent was a talented acupuncturist, but the standard of care was not an issue raised by the Accusation. Respondent provided credible testimony she cooperated with the Board. Complainant failed to provide clear support for his claim respondent misrepresented her employment history and as such it was unnecessary to weigh credibility on this charge.

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Causes for Discipline

6.dd The Accusation includes two causes for discipline: the First Cause for Discipline (Obtaining License by Fraud); and the Second Cause of Discipline (Dishonest and Corrupt Acts). Cause for discipline was established on both causes. Complainant met his burden of proof with regard to the filing of the fraudulent certification from Fujian College and the fraudulent CPR card by reason of the factual findings. Cause for discipline was not established based upon respondent's employment history (allegation 20) or failure to cooperate with the Board (allegation 21).

7.dd Complainant's Causes for Discipline are supported by statute. The First Cause of Discipline charges respondent with procuring her acupuncture license by means of knowingly submitting false and fraudulent documents. (Business and Professions Code sections 498 and 4955.1, subdivision (a)). Business and Professions Code section 498 provides:

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 knowingly omitting to state a material fact.

Business and Professions Code section 4959, subdivision (a) authorizes the board to discipline a license if she is found guilty of committing a fraudulent act including "securing a license by fraud of deceit. "

8.dd The Second Cause for Discipline charges respondent with unprofessional conduct in her knowing presentation of fraudulent documents to obtain her acupuncture license in violation of Business and Professions Code section 4955, subdivisions (d) and (i) which provides:

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

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

¶ . . . ¶

(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 an acupuncture license.

9.11 Respondent claims she provided original documents to the Board with the assistance of CL Lin but did not know he provided a fraudulent FIS report or CPR card. As such, respondent claims the Accusation does not meet the threshold requirement of "knowingly" submitting false and fraudulent documentation. However, it was conclusively established by respondent's Alien File she never attended Fujian College and Fujian College had no record of her certification. Respondent's representation she obtained the original records with the assistance of her father was not supported by her earlier representation in her Alien File. It was also further undermined by her additional testimony, which contradicted her description as a diligent and goal-oriented person as well as her pride in graduating from Fujian

College, she did not retain an additional original for her own records or obtain an additional one after she was notified of the Accusation. Respondent claimed CL Lin possessed the original and he would not respond to her communication, she could not reach Fujian College, and her father could not obtain another original on her behalf.

10.ii Respondent's ignorance of the CPR card requirement and reliance on CLii Lin for her CPR card was disingenuous. Respondent was aware of the CNT requirement so it is unreasonable, despite the purported ease with which she could obtain the CPR card, she was unaware of the CPR card requirement or CL Lin's actions. Respondent did not attempt to obtain a valid CPR card until after the Accusation was served. Respondent's attempt to rely on whether she "knowingly" submitted false and fraudulent document does not withstand scrutiny. The term "knowingly" does not require a specific intent to deceive, but only knowledge of the falsity of facts certified. (*Brown v. State Department of Health*, (1978) 86 Cal.App.3d 548, 555, referring to a statute concerning medical practitioners.) The record established with certainty respondent's knowledge of the falsity of her credentials from Fujian College and her CPR card. Respondent obtained her license by fraud and engaged in unprofessional conduct by knowingly presenting fraudulent documents to the board and engaging with CL Lin to do so on her behalf. Respondent's actions would have warranted the denial of her license.

11.ii The Board is a consumer protection agency with the primary mission ofii protecting consumers of acupuncture services from potentially harmful licensees. In keeping with its obligation to protect consumers, the Board has adopted guidelines for disciplinary orders for violations of the Acupuncture Licensure Act. In determining the appropriate level of discipline, the Board's "Disciplinary Guidelines" (Guidelines) have been considered. For securing a certificate by fraud or deceit, the Guidelines provide

for revocation as the only "suitable penalty inasmuch as the license would not have been issued but for the fraud or deception." Ms. Tennyson suggested a lesser penalty might be available for those applicants who only submitted invalid CPR cards. However, respondent also submitted fraudulent records from Fujian College. As such, revocation of respondent's license is the only available discipline.

Costs

12.00 Business and Professions Code sections 125.3 and 4959 authorize the Board to request the administrative law judge direct a licensee found to have committed violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court considered whether a similar cost recovery provision impermissibly discouraged licensees from exercising their due process rights to a hearing before their licenses could be revoked or suspended. The Court determined that cost recovery for investigation and prosecution is permissible as long as certain conditions are met: assessment of the costs will not unfairly penalize licensees who are found to have committed some wrongdoing but have used the hearing process to reduce the charges or the severity of the discipline; licensees have a subjective belief in the merits of their position; licensees have the means to pay the costs; and the costs are not disproportionately large when considered in the context of the innocuousness of the charge at issue. (*Zuckerman*, 29 Cal.4th at p. 45.) The *Zuckerman* factors have been considered. (Factual Findings 78-79.) At such time as respondent is readmitted as a Board licensee, respondent shall be required to pay the Board the reasonable costs of prosecution in the amount of \$15,053.

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ORDER

1. License number AC16492 issued to Li Li Lin, also referred to as LiLi Lin, is
revoked.

2. At such time as respondent is reinstated as a Board licensee, respondent shall
pay the Board the reasonable costs of prosecution in the amount of \$15,053.

DATE: 04/10/2023

Eileen Cohn

EILEEN COHN

Administrative Law Judge

Office of Administrative Hearings