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FILED
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ACUPUNCTURE BOARD

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **STEVEN CHEN JING XIA** 14505 E. 14th Street San Leandro, CA, 94578 Acupuncture License No. 8907 Respondent.	Case No. 1A-2013-92 **ACCUSATION**

Complainant alleges:

PARTIES

1. Terri Thorfinnson (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Acupuncture Board, Department of Consumer Affairs.

2. On March 6, 2003, the Acupuncture Board issued Acupuncture License Number 8907 to Steven Chen Jing Xia (Respondent). The license was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2014, unless renewed.

JURISDICTION

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

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4. Section 4955 of the Code states:

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

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

. . . .

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

. . . .

5. Section 4956 of the Code states:

"A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge which is substantially related to the qualifications, functions, or duties of an acupuncturist is deemed to be a conviction within the meaning of this chapter.

"The board may order a license suspended or revoked, or may deny a license, or may impose probationary conditions upon a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing the person to withdraw his or her pleas of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment."

6. 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.

COST RECOVERY

7. 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

(Substantially-Related Conviction)

8. Respondent is subject to discipline under Code sections 4955(b) and 4956 in that he was convicted of violating Penal Code section 550(b)(1), a felony, for submitting a false statement regarding insurance claims.

9. Between March 1, 2011 and August 30, 2012, Respondent submitted false statements in support of insurance claims for acupuncture treatment that he never provided, including false claims that were confirmed through an undercover investigation by the Fraud Division of the California Department of Insurance.

10. On September 12, 2011, a seven-felony-count criminal complaint titled *People of the State of California v. Steven Chen Jing Xia et al,* Case No.444636-A was filed in Alameda County Superior Court, Hayward Hall of Justice. The Complaint alleges that Respondent submitted false insurance claims for the following individuals, in violation of Penal Code section 550(a)(1):

- A person known to Respondent as Nancy Loy (in fact a Department of Insurance detective working undercover), between March 8, 2012 and August 30, 2012;
- A person known to Respondent as Jason Chan (in fact a Department of Insurance detective working undercover), between February 1, 2012 and August 30, 2012;
- A person named B. H.[1], between March 1, 2011 and May 5, 2011; and
- A person named J. L., between March 16, 2011 and May 5, 2011.

11. The Complaint further alleges that Respondent submitted false statements in support of insurance claims for at least the following individuals, in violation of Penal Code section 550(b)(1):

- A person named B. H., on or about May 5, 2011; and
- A person named J. L., on or about May 5, 2011.

12. According to the Declaration in Support of Probable Cause accompanying the Complaint, Respondent never provided acupuncture treatment to any of these individuals. Nonetheless, Respondent submitted insurance claims for providing acupuncture treatment to Nancy Loy and Jason Chan on each and every of their respective 11 and 17 visits to him.

13. On May 2, 2013, Respondent was convicted of violating Penal Code section 550(b)(1), a felony, when he pleaded no contest to Count 4 of the Complaint. Respondent was

[1] Patient initials are used to protect patient privacy. The patient name will be provided upon a request for discovery.

subsequently sentenced to serve 30 days in jail, ordered to pay $7,005.25 in restitution to the insurance company, and placed on probation for five years, with, *inter alia*, the following conditions: (1) "Do not practice acupuncture unless properly licensed."; and (2) "Do not submit claims nor collect money from any insurance company for services rendered during the first year of probation."

14. Respondent's felony conviction is substantially related to the qualifications, functions, or duties of an acupuncturist and constitutes unprofessional conduct subject to discipline under Code sections 4955(b) and 4956.

SECOND CAUSE FOR DISCIPLINE

(Substantially-Related Fraudulent or Dishonest Act)

15. Respondent is subject to discipline under Code sections 4955.1(b) and 4955.1(c) in that he engaged in the acts set forth in Paragraphs 8-13, above.

16. Respondent's acts are substantially related to the qualifications, functions, or duties of an acupuncturist and constitute fraud subject to discipline under Code sections 4955.1(b) and 4955.1(c).

PRAYER

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

1. Revoking or suspending Acupuncture License Number 8907, issued to Steven Chen Jing Xia (Respondent);

2. Ordering Respondent to pay the Acupuncture Board the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 4959 and California Code of Regulations, title 16, section 1399.469; and

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

DATED: MAR 03 2014

TERRI THORFINNSON
Executive Officer
Acupuncture Board
Department of Consumer Affairs
State of California
Complainant

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