

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of Amended Accusation
Against:

YILIN MA, L.Ac.

Acupuncture License No. AC-11076,

Respondent.

Case No. 1A-2007-79

OAH No. 2010080436

PROPOSED DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, on February 9, 2011, at Los Angeles. Complainant was represented by Margaret Phe, Deputy Attorney General. Respondent was present at the hearing and represented by Justin Strassburg, Attorney at Law.

During the hearing, complainant's counsel asked that the record be held open to allow her to file a certified copy of a certification of investigative costs. The Administrative Law Judge granted the request. On February 15, 2011, complainant filed a Declaration of Investigative Costs, which was marked as Exhibit 13, and sections of the Municipal Codes of the City of Vista and the City of Torrance, which were as marked as Exhibit 14. On February 23, 2011, respondent filed a Motion to Tax Costs, which was marked as Exhibit A. On February 28, 2011, complainant filed an Opposition to Motion to Tax Costs, which was marked as Exhibit 15. The Administrative Law Judge hereby admits Exhibit 13 and 14 into evidence. In addition, respondent's Motion to Tax Costs is hereby denied and treated as an objection to and a request to reduce complainant's costs.

Oral and documentary evidence having been received, the Administrative Law Judge submitted this matter for decision on February 28, 2011, and finds as follows:

FACTUAL FINDINGS

1. (A) On July 6, 2010, the Accusation, Case No. 1A-2007-79, was made and filed by complainant Janelle Wedge in her official capacity as Executive Officer, Acupuncture Board, Department of Consumer Affairs, State of California.

(B) On January 26, 2011, the Amended Accusation, Case No. 1A-2007-79, was made and filed by complainant Janelle Wedge in her official capacity as Executive Officer, Acupuncture Board, Department of Consumer Affairs, State of California (Acupuncture Board).

2. On or about April 21, 2006, the Acupuncture Board issued acupuncture license no. AC-11076 to Yilin Ma, also known as Yi Ling Ma (respondent). Said license expires on January 31, 2012, unless renewed, and currently is in full force and effect.

3. (A) On or about February 11, 2008, before the Superior Court of California, County of Orange, Central Center, in *People v. Yi Ling Ma*, Case No. 07CM03015, respondent was convicted on her plea of guilty of loitering in a public place for the purpose of allowing prostitution in violation of Penal Code section 653.22, a misdemeanor and crime not necessarily involving moral turpitude.

(B) As a result of her plea and conviction, imposition of sentence was suspended and respondent was placed on informal probation for three years on condition, in part, that she obey all laws and rules of the court and probation, submit to search and seizure without a warrant, use her true name and date of birth and carry a valid photographic identification at all times, complete an AIDS prevention education program and testing, pay fines and fees totaling \$720 plus penalty assessments, not apply for or hold a license to operate an escort, massage, acupuncture or outcall business in Orange County, not work for or receive compensation from any business that conceals or acts as a front for prostitution activities, and not work for or receive compensation from any escort, massage, acupuncture, or outcall business.

4. (A) The facts and circumstances of respondent's 2008 conviction in Orange County were that, from on or about August 14, 2006, until April 2007, respondent operated Serenity Health Center in the City of Orange. On August 14, 2006, she filed a business license tax application with the city on which she stated that Serenity Health Center was an acupuncture and acupressure business and provided a copy of her acupuncture license issued by the Acupuncture Board. In fact, respondent operated Serenity Health Center as a massage establishment and employed several massage technicians.

(B) From August 17, 2006, through February 15, 2007, the Orange Police Department conducted approximately 20 undercover operations at Serenity Health Center in order to investigate suspected prostitution activities. During a majority of these undercover operations, respondent's employees touched the buttocks and genitals of the undercover officers while purporting to massage them. In addition, respondent's employees allowed the undercover officers' buttocks and genitals to be exposed and attempted to masturbate them. A number of respondent's employees exposed their breasts to the undercover officers. Respondent was present on the business premises of Serenity Health Center during three of these undercover operations.

(C) On March 30, 2007, Orange police officers executed a search warrant at Serenity Health Center. Respondent closed or abandoned the business soon thereafter. On March 28, 2007, respondent was charged with keeping a house of ill fame in violation of Penal Code section 315, a misdemeanor. Three of her employees were charged with soliciting acts of prostitution in violation of Penal Code section 657b, misdemeanors. On February 28, 2008, respondent was convicted of loitering in a public place for the purpose of allowing prostitution pursuant to a plea agreement. It was not established whether any of respondent's employees were convicted of crimes.

5. Based on Findings 3 – 4 above, respondent's 2008 conviction in Orange County for loitering in a public place for the purpose of allowing prostitution was for a crime substantially related to the qualifications, functions, or duties of a licensed acupuncturist. Respondent held herself out to the public as a duly licensed acupuncturist.

6. It was not established that respondent failed to register her business at Serenity Health Center as her place of practice as required by Business and Professions Code section 4961, subdivision (a). No probative evidence was presented on this allegation. A senior investigator from the Division of Investigation, Department of Consumer Affairs, State of California, prepared an investigative report in which he noted this charge or violation. However, the investigative report, which was admitted into evidence, did not contain any report certified by the Acupuncture Board that respondent failed to register her place of practice or business in violation of Business and Professions Code section 4961, subdivision (a).

7. (A) On or about December 21, 2009, before the Superior Court of California, County of San Diego, North County Division, in *People v. Yi Ling Ma*, Case No. CN268136, respondent was convicted on her plea of guilty of violating four sections of the Municipal Code of the City of Vista as follows: operating a massage establishment without first obtaining a certificate of massage establishment compliance from the City of Vista, employing a massage therapist who did not have a valid massage therapist permit from the city, performing or allowing the performance of, massage services upon a patron whose genitals were not fully covered, and advertising a massage establishment or for massage services without stating the permit or license number of the massage therapist. As such, respondent violated the City of Vista Municipal Code, sections 5.56.040, subdivision (a), 5.56.90, subdivision (a), 5.56.090, subdivision (o), and 5.56.240, respectively, of the Municipal Code of the City of Vista, which violations constituted misdemeanors and crimes not necessarily involving moral turpitude.

(B) As a result of her plea, imposition of sentence was suspended, and respondent was placed on summary probation for three years on condition that she violate no laws, pay a fine of \$750 for each violation for a total fine of \$3,000, pay a probation revocation or restitution fine of \$100 and an accounts receivable fine of \$35, and not operate a massage or acupuncture establishment in the City of Vista. In the event that respondent were to successfully complete 24 months of probation, the court indicated there would be no objection to her obtaining relief or expungement of her conviction under Penal Code section

1203.4. It was not established whether respondent successfully completed 24 months of probation or filed a petition to expunge this conviction.

8. (A) The facts and circumstances of respondent's 2009 conviction in San Diego County were that, from May 1, 2009, through August 19, 2009, respondent owned and operated Seren Acu-Care in the City of Vista. She obtained a license or permit from the city to operate Seren Acu-Care an acupuncture business but, in fact, performed and employed others to perform massage services. As such, respondent operated an unpermitted and illegal massage establishment at the location. Respondent advertised the availability of massage services at Seren Acu-Care on the internet on Craigslist website and in a local newspaper without stating or providing the permit numbers of the massage therapists working there.

(B) On June 3, 2009, and August 19, 2009, the San Diego Sheriff's Department conducted undercover operations at Seren Acu-Care to investigate complaints of prostitution activities. On June 3, 2009, sheriff's deputies found that, except for one treatment room, all of the treatment rooms at Seren Acu-Care had massage tables and there were only a limited number of acupuncture tools on-site at the establishment. Respondent also employed one or two massage technicians who did not hold massage therapist permits issued by the city. On August 19, 2009, respondent performed a massage upon an undercover sheriff's deputy and allowed the deputy's genitals to be exposed and not covered by a towel or clothing. Respondent touched the deputy's groin area to purportedly massage his lymph nodes and told the deputy that, if he wanted, he could masturbate himself while she waited outside the treatment room.

9. Based on Findings 7 – 8 above, respondent's 2009 conviction in San Diego County for violating municipal code sections regulating massage services was for crimes substantially related to the qualifications, functions, or duties of a licensed acupuncturist. Respondent held herself out to the public as a duly licensed acupuncturist.

10. (A) On or about January 10, 2010, respondent filed an application with the Acupuncture Board to renew her acupuncture license. Her license was expiring at the end of January 2010. After submitting her renewal application to the Board, respondent secured the current renewal of her acupuncture license.

(B) On the renewal application, Part B asked, "Since you last renewed your license, have you had any license disciplined by a government agency or other disciplinary body; or have you been convicted of any crime in any state, the U.S.A. and its territories, military court or a foreign country?" In response to this question, respondent marked and answered, "No." Respondent certified under penalty of perjury that all of her statements or information in the renewal application were true and correct. However, respondent's answer to the Part B question that she had no convictions was, in fact, false and incorrect. She had been convicted of the crimes outlined in Findings 3 – 5 and 7 – 9 above.

(C) Respondent contends that her answer to the Part B question on her renewal application was not knowingly false or incorrect because she did not understand the question.

Her first and primary language is Mandarin and respondent testified that, while she can speak English, she cannot read the English language. Respondent's claim was not credible. The renewal application asked not only about criminal convictions but also for a record of her continuing education courses or hours. Respondent was able to list the courses and hours that she had completed in the prior two years on her renewal application. Four years earlier, on August 14, 2006, respondent completed and submitted the business license tax application in order to conduct business in the City of Orange. The business license tax application was in English. The preponderance of the evidence thus has a strong tendency in reason to demonstrate that respondent is able to read English and understood the question on the renewal application. Moreover, the court dockets in her two prior criminal proceedings showed that she was provided with the services of Mandarin interpreters when she entered her pleas and was convicted. Respondent knew that she had been convicted of crimes when she completed and submitted her renewal application.

11. (A) Based on Findings 3 – 4, 7 – 8, and 10 above, respondent secured the renewal of her acupuncture license by making a knowing misrepresentation of a material fact or by knowingly omitting to state a material fact. That she had been convicted of crimes was a material fact that respondent was required to disclose on her renewal application.

(B) Based on Findings 3 – 4, 7 – 8, and 10 above, respondent committed an act involving dishonesty with respect to the qualifications of an acupuncturist when she made her false and incorrect statement on her license renewal application. Whether she had any criminal convictions to disclose was a material and relevant fact that affected her qualifications to continue to be licensed as an acupuncturist.

12. Based on Findings 3 – 10 above, it was not established that respondent committed a fraudulent or dishonest act "as an acupuncturist." Respondent was not performing any professional act of a licensed acupuncturist or any duty requiring an acupuncture license when she made her false statement on her renewal application.

13. (A) On or September 10, 2010, before the Superior Court of California, County of Los Angeles, Southwest Judicial District, in *People v. Yi Ling Ma*, Case No. 0SY01426, respondent was convicted on her pleas of nolo contendere of failing to wear garments appropriate for or restricted to a massage or acupressure establishment in violation of the City of Torrance Municipal Code section 35.12.7, subdivision (a), a misdemeanor and crime not necessarily involving moral turpitude.

(B) As a result of her plea and conviction, imposition of sentence was suspended and respondent was placed on summary probation for two years on condition, in part, that she pay a fine of \$300 plus penalty assessment of \$702 or serve 10 days in the Los Angeles County Jail with credit for one day served, pay additional fees or fines totaling \$244, obey all laws and orders of the court, submit to testing for AIDS, and not conduct business or work as a massage technician in the City of Torrance.

14. The facts and circumstances of respondent's 2010 conviction in Los Angeles County were that, on February 24, 2010, respondent was operating Elite Acupuncture Massage in the City of Torrance when vice detectives from the Torrance Police Department conducted an undercover investigation of respondent's establishment. An undercover officer entered Elite Acupuncture Massage. Respondent greeted the officer and escorted him to a treatment room. Respondent asked the officer if he wanted a half-hour or one-hour massage. The undercover officer replied that he wanted a one-hour massage with two women. Respondent stated it would cost \$100. The officer paid respondent, removed his clothing, and lay down naked on a massage table. Another woman entered the treatment room, told the officer to lie on his stomach, and started giving him a massage but she did not cover him with a towel. The woman scratched him on the back, legs, and buttocks. Shortly, respondent re-entered the room and began scratching the officer's back and shoulders, too. The officer rolled over on his back and respondent squeezed his nipples while the other woman massaged his inner thighs. The officer offered to pay the woman \$50 each to play with his penis and to show him their breasts. The other woman poured massage oil on the officer's genitals and then rubbed his scrotum while respondent massaged his penis. The officer reminded them that he was also paying them to show him their breasts. Both women then exposed their breasts to him. After the massage ended, respondent cleaned the officer's groin with a warm towel and he paid her another \$100 and left respondent's establishment. Within a few minutes, the undercover officer returned to the premises with other officers. Both respondent and the other woman or employee were arrested. It was not established whether respondent's employee was convicted of any crime.

15. Based on Findings 13 – 14 above, respondent's 2010 conviction in Los Angeles County for not wearing appropriate massage or acupressure apparel was for a crime substantially related to the qualifications, functions, or duties of a licensed acupuncturist. Respondent held herself out to the public as a duly licensed acupuncturist.

16. Respondent has been a licensed acupuncturist since 2006 and wishes to retain her license. She enjoys the practice of acupuncture and studied for four additional years in this country to obtain her doctorate in acupuncture. She likes to treat and help patients, including those who cannot afford to pay for her acupuncture services. Respondent is currently working as an acupuncturist in a Van Nuys establishment owned by a friend. Respondent's work as a licensed acupuncturist is her only source of income with which she supports a college-age daughter and three-year-old son as a single mother.

17. Respondent did not establish whether she has completed probation for any of her three convictions.

18. The Acupuncture Board's costs of investigation in this matter total \$6,616.00, as set forth in Exhibit 13. The Acupuncture Board also incurred enforcement or prosecution in this matter are \$17,000.00, as set forth in the Certification of Prosecution Costs, as set forth in Exhibit 12.

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Grounds exist to revoke or suspend respondent's acupuncture license for unprofessional conduct pursuant to Business and Professions section 4955, subdivision (b), in that, on three occasions, respondent was convicted of crimes substantially related to the qualifications, functions, or duties of a licensed acupuncturist, as set forth in Findings 5, 9 and 15 above, separately.

2. Grounds exist to revoke or suspend respondent's acupuncture license for unprofessional conduct pursuant to Business and Professions section 4955.1, subdivision (c), in that respondent committed acts involving dishonesty or corruption with respect to the functions or duties of a licensed acupuncturist, as set forth in Findings 5, 9, and 15 above, separately. Respondent held herself out as a licensed acupuncturist and was thrice convicted in three different counties for committing unlawful acts and allowing lewd activities while operating massage establishments.

3. Grounds exist to revoke or suspend respondent's acupuncture license for unprofessional conduct pursuant to Business and Professions Code section 498, in that respondent secured the renewal of her acupuncture license by knowingly misrepresenting or omitting to state the material fact that she had been convicted of crimes, as set forth in Finding 11(A) above.

4. Grounds exist to revoke or suspend respondent's acupuncture license for unprofessional conduct pursuant to Business and Professions Code section 4955.1, subdivision (b), in that, by making false statements in her application to renew her acupuncture license, respondent committed an act involving dishonesty with respect to her qualifications as a licensed acupuncturist, based on Finding 11(B) above.

5. Grounds do not exist to revoke or suspend respondent's acupuncture license for unprofessional conduct pursuant to Business and Professions Code section 4995, subdivisions (b), in that it was not established that respondent aided or abetted in, or violated or conspired, directly or indirectly, the violation of any law or regulation governing the practice of acupuncture, based on Findings 3 – 17 above. No evidence or argument was presented to show that or explain how respondent violated this particular subdivision of Business and Professions Code section 4995.

6. Grounds do not exist to revoke or suspend respondent's acupuncture license for unprofessional conduct pursuant to Business and Professions Code section 4955, subdivision (j), in that it was not established that any employee of respondent, or a person working under her acupuncturist's professional license or business, violated any law or local ordinance on respondent's business premises, based on Findings 3 - 4, 7 - 8, and 13 - 14 above. Persons working for respondent and at her business establishments were arrested and charged with violations of law following police undercover investigations, but it was not established that any of these persons were convicted or found to have violated any law or local ordinance.

7. Grounds do not exist to revoke or suspend respondent's acupuncture license for unprofessional conduct pursuant to Business and Professions Code section 4961, subdivision (a), in that it was not established that respondent failed to register, on forms prescribed by the Acupuncture Board, her place of practice, or that Business and Professions Code section 4961, subdivision (a), provides separate statutory authority or grounds to discipline a licensee of the Acupuncture Board, based on Finding 6 above.

8. Grounds do not exist to revoke or suspend respondent's acupuncture license for unprofessional conduct pursuant to Business and Professions Code section 731, subdivision (a), in that it was not established that respondent engaged in, or aided or abetted, in a violation of Penal Code sections 266h, 266i, 315, 316, 318, or 647, subdivision (a) or (b), at the work premises or work area under her direct professional supervision or control, based on Findings 3 - 17 above. Neither respondent nor any person or employee under her supervision or control was convicted of a violation of any of these sections of the Penal Code.

9. Grounds do not exist to revoke or suspend respondent's acupuncture license for unprofessional conduct under Penal Code section 653.22 or Torrance Municipal Code section 35.12.7, in that neither Penal Code section 653.22 nor the Torrance Municipal Code provide authority or statutory grounds to discipline a license issued by the Acupuncture Board, based on Findings 13 - 14 above.

10. Grounds exist under Business and Professions Code section 4959, subdivision (a), to direct respondent to pay the Acupuncture Board for the reasonable costs of investigation and enforcement in this matter inasmuch as respondent engaged in unprofessional conduct, based on Conclusions of Law 1, 2, 3, and 4 and Finding 18 above. The reasonable costs of investigation and enforcement are deemed to be \$12,000.00. The prosecution costs in this matter were high based on the nature of this matter. Discipline was sought on the grounds of three convictions and the undercover investigations of the underlying crimes were performed by local police agencies. Moreover, based on the discipline imposed by this Decision and the loss of income attendant to such discipline, respondent will not be ordered to pay the Acupuncture Board for these costs at this time. The Acupuncture Board may require, however, the payment of the reasonable costs of investigation and enforcement as a condition for reinstatement of the license.

11. Discussion—Public health, safety, and welfare require the revocation of respondent's acupuncture license. First, respondent was convicted on three separate occasions in the past three years of violating laws and city ordinances arising from her operation of unpermitted massage establishments where she allowed employees or massage technicians to perform improper massages and sexually illicit acts. Respondent used her acupuncture license to obtain city permits to open and operate her businesses and committed her offenses while holding herself out as a licensed acupuncturist.

Second, respondent knowingly failed to disclose two of her convictions on her January 2010 application for renewal of her acupuncture license. As such, she made a false statement on her renewal application and committed an act involving dishonesty. Respondent did not present any evidence of rehabilitation from her convictions or from her false and dishonest statement on her renewal application. No evidence was presented whether respondent has complied with terms of her probation or completed probation for any of her convictions.

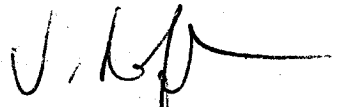
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WHEREFORE, the Administrative Law Judge makes the following Order:

ORDER

Acupuncture license no. AC-11076 and licensing rights previously issued by the Acupuncture Board, Department of Consumer Affairs, to respondent Yilin Ma, L.Ac., are revoked, based on Conclusions of Laws 1, 2, 3, and 4, jointly and for all.

Dated: March 29, 2011



Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings