



1 KAMALA D. HARRIS  
Attorney General of California  
2 THOMAS S. LAZAR  
Supervising Deputy Attorney General  
3 LORI JEAN FORCUCCI  
Deputy Attorney General  
4 State Bar No. 125345  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2080  
7 Facsimile: (619) 645-2061

8 *Attorneys for Complainant*

9 **BEFORE THE**  
10 **ACUPUNCTURE BOARD**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against,

Case No. 1A-2011-103

13 **XIAO HONG QI, A.C.**  
14 **913 E. Vista Way**  
**Vista, CA 92084**

**DEFAULT DECISION**  
**AND ORDER**

15 **Acupuncturist License No. AC 11857**

[Gov. Code, §11520]

16 Respondent.

17  
18 **FINDINGS OF FACT**

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

23 2. On or about October 16, 2007, the Acupuncture Board (Board) issued Acupuncturist  
24 License No. AC 11857 to Respondent. (**Exhibit A – Certification of Licensure**).<sup>1</sup>

25  
26  
27 <sup>1</sup> All exhibits are true and correct copies and are fully incorporated by reference, as if set  
28 forth in full herein. Exhibits are located in the attached in the Default Decision and Order Exhibit  
Package.

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

3 3. On or about April 12, 2012, the Board served by Certified and First Class Mail a true  
4 and correct copy of the Accusation No. 1A-2011-103, Statement to Respondent, Notice of  
5 Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7,  
6 to Respondent's address of record with the Board, which was and is 913 E. Vista Way, Vista, CA  
7 92084. (**Exhibit B – Accusation No. 1A-2011-103, related documents and Declaration of**  
8 **Service.**) Service of the Accusation was effective as a matter of law under the provisions of  
9 Government Code section 11505, subdivision (c).

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

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

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

19 6. Respondent failed to file a Notice of Defense within 15 days after service upon her of  
20 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 1A-  
21 2011-103. (**Exhibit D – Declaration of Lori Forcucci.**)

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

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

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

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

9           10. Section 4955 of the Code states, in pertinent part:

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

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

14            "..."

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

18            "..."

19           11. Section 4959 of the Code states:

20            "(a) The board may request the administrative law judge, under his or her  
21 proposed decision in resolution of a disciplinary proceeding before the board, to  
22 direct any licensee found guilty of unprofessional conduct to pay to the board a sum  
23 not to exceed actual and reasonable costs of the investigation and prosecution of the  
24 case.

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

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1 administrative law judge shall not increase the amount of any costs assessed in the  
2 proposed decision.

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

8 “(d) In any judicial action for the recovery of costs, proof of the board’s  
9 decision shall be conclusive proof of the validity of the order of payment and the  
10 terms for payment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 FACTORS IN AGGRAVATION

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

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

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

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

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

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

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

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

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

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

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

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

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

8 Employment as an acupuncturist for unlicensed person

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

12 Failure to register address of employment with Board

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

16 26. The Board further finds that pursuant to Business and Professions Code section 4959,  
17 the costs of investigation and enforcement of the case prayed for in the Accusation total  
18 \$2665.00, based on the Declaration of Costs contained in **Exhibit G – Declaration of Costs of**  
19 **Deputy Attorney General Lori Forcucci.**

20 **DETERMINATION OF ISSUES**

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

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

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

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

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

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

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

11 **ORDER**

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

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

19 This Decision shall become effective on \_\_\_\_\_.

20 It is so ORDERED \_\_\_\_\_

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FOR THE ACUPUNCTURE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS

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