In the Matter of the Accusation Against:

WEI DONG ZHAO, L.Ac.
1205 North Euclid
Anaheim, CA 92801
Acupuncturist License No. AC 15758,
Respondent.

Complainant alleges:

PARTIES

1. Benjamin Bodea (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Acupuncture Board, Department of Consumer Affairs.

2. On or about October 1, 2013, the Acupuncture Board issued Acupuncturist License Number AC 15758 to WEI DONG ZHAO, L.Ac. (Respondent). The Acupuncturist License expired on October 31, 2016, and has not been renewed, and is therefore delinquent.

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.
4. Section 4928.1 of the Code states:

"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."

5. Section 4955 of the Code states in pertinent part:

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

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

"..."

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

"..."

"(i) Any action or conduct that would have warranted the denial of the acupuncture license.

"..."

6. 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."

7. Section 490 of the Code states:

"(a) In addition to any other action that a board is permitted to take against a licensee, a
board may suspend or revoke a license on the ground that the licensee has been convicted of a
crime, if the crime is substantially related to the qualifications, functions, or duties of the business
or profession for which the license was issued.

"(b) Notwithstanding any other provision of law, a board may exercise any authority to
discipline a licensee for conviction of a crime that is independent of the authority granted under
subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
of the business or profession for which the licensee's license was issued.

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
conviction following a plea of nolo contendere. Any action that a board is permitted to take
following the establishment of a conviction may be taken 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.

"(d) The Legislature hereby finds and declares that the application of this section has been
made unclear by the holding in Petropoulos v. Department of Real Estate (2006) 142 Cal.App.4th
554, and that the holding in that case has placed a significant number of statutes and regulations
in question, resulting in potential harm to the consumers of California from licensees who have
been convicted of crimes. Therefore, the Legislature finds and declares that this section
establishes an independent basis for a board to impose discipline upon a licensee, and that the
amendments to this section made by Senate Bill 797 of the 2007-08 Regular Session do not
constitute a change to, but rather are declaratory of, existing law."

8. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within
the department pursuant to law to deny an application for a license or to suspend or revoke a
license or otherwise take disciplinary action against a person who holds a license, upon the
ground that the applicant or the licensee has been convicted of a crime substantially related to the
qualifications, functions, and duties of the licensee in question, the record of conviction of the
crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,

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and the board may inquire into the circumstances surrounding the commission of the crime in
order to fix the degree of discipline or to determine if the conviction is substantially related to the
qualifications, functions, and duties of the licensee in question.

"As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
'registration.'"

9. California Penal Code Section 246 states:

"Any person who shall maliciously and willfully discharge a firearm at an inhabited
dwelling house, occupied building, occupied motor vehicle, occupied aircraft, inhabited housecar,
as defined in Section 362 of the Vehicle Code, or inhabited camper, as defined in Section 243 of
the Vehicle Code, is guilty of a felony, and upon conviction shall be punished by imprisonment in
the state prison for three, five, or seven years, or by imprisonment in the county jail for a term of
not less than six months and not exceeding one year.

"As used in this section, "inhabited" means currently being used for dwelling purposes,
whether occupied or not."

10. California Penal Code Section 273a states, in pertinent part:

"(a) Any person who, under circumstances or conditions likely to produce great bodily
harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable
physical pain or mental suffering, or having the care or custody of any child, willfully causes or
permits the person or health of that child to be injured, or willfully causes or permits that child to
be placed in a situation where his or her person or health is endangered, shall be punished by
imprisonment in a county jail not exceeding one year, or in the state prison for two, four, or six
years."

COSTS

11. Section 4959 of the Code states:

"(a) The board may request the administrative law judge, under his or her proposed
decision in resolution of a disciplinary proceeding before the board, to direct any licensee found
guilty of unprofessional conduct to pay to the board a sum not to exceed actual and reasonable
costs of the investigation and prosecution of the case.
“(b) The costs to be assessed shall be fixed by the administrative law judge and shall not in any event be increased by the board. When the board does not adopt a proposed decision and remands the case to an administrative law judge, the 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
(Conviction of a Crime)

12. Respondent is subject to disciplinary action for unprofessional conduct under Code section 4955, subdivisions (b) and (i), in that he was convicted of violating California Penal Code sections 246, and 273a subdivision (a), commonly known respectively as Shooting At An Inhabited Dwelling, and Child Abuse, crimes which are substantially related to the qualifications, functions, and duties of an acupuncturist. The circumstances are as follows:

13. On or about October 13, 2016, in Superior Court of California proceedings entitled People of the State of California vs. Weidong Zhao, case number KA112335, after his plea of nolo contendere, Respondent was convicted of Count 2, a violation of Penal Code section 246, and Count 3, a violation of Penal Code section 273a, subdivision (a). The remaining counts of the First Amended Felony Complaint were dismissed by the Court in the interests of justice based on the plea and sentence agreement.

14. Following Respondent's plea of nolo contendere, the Court sentenced Respondent to serve seven (7) years in state prison as a result of his plea of nolo contendere to Count 2, and four (4) years in state prison as a result of his plea of nolo contendere to Count 3. The Court ordered
the sentence imposed on Count 3 run concurrent to the sentence imposed on Count 2.

15. The Court further ordered Respondent to obey the protective order with which he was served in open court, and recommended that Respondent be housed in a fire camp facility with the Department of Corrections and Rehabilitations if Respondent qualified for that placement.

16. The facts underlying Respondent’s plea of nolo contendere to Counts 2 and 3 in the above conviction are as follows:

17. On or about April 17, 2016, at approximately 9:00 p.m. Respondent, accompanied by his seven and eight year old sons, tracked his wife to a house where she was eating dinner with two individuals. After arguing with his wife, Respondent left the house. Later, still accompanied by his children in his car, Respondent returned to the house and fired two gunshots from his car at the house. One of the above individuals was sitting in a chair by the front door of the house at the time but was not wounded.

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 Acupuncturist License Number AC 15758, issued to Wei Dong Zhao, L.Ac.;

2. Ordering Wei Dong Zhao, L.Ac. to pay the Acupuncture Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 4959;

3. If placed on probation, ordering him to pay to the Acupuncture Board the costs of probation monitoring; and,
4. Taking such other and further action as deemed necessary and proper.

DATED: FEB 27 2017

BENJAMIN BODEA
Executive Officer
Acupuncture Board
Department of Consumer Affairs
State of California
Complainant