1 XAVIER BECERRA Attorney General of California FILED 2 JANE ZACK SIMON Supervising Deputy Attorney General 3 Joshua M. Templet MAR 2 1 2017 Deputy Attorney General 4 State Bar No. 267098 455 Golden Gate Avenue, Suite 11000 ACUPUNCTURE BOARD 5 San Francisco, CA 94102-7004 Telephone: (415) 703-5529 6 Facsimile: (415) 703-5480 E-mail: Joshua.Templet@doj.ca.gov 7 Attorneys for Complainant 8 BEFORE THE ACUPUNCTURE BOARD 9 DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA 10 11 In the Matter of the Petition to Revoke Case No. D1-2013-168 Probation Against, 12 PETITION TO REVOKE PROBATION MICHAEL JOHN GUEN 13 130 Steiner Court 14 Santa Rosa, CA 95404 Acupuncture License No. AC 4412 15 Respondent. 16 17 18 Complainant alleges: 19 **PARTIES** 20 1. Benjamin Bodea (Complainant) brings this Petition to Revoke Probation solely in his 21 official capacity as the Executive Officer of the Acupuncture Board, Department of Consumer 22 Affairs. 23 2. On October 14, 1992, the Acupuncture Board (Board) issued Acupuncture License 24 Number AC 4412 to Michael John Guen (Respondent). The Board retains jurisdiction over the 25 license, which expired on February 29, 2016 and has not been renewed. 26 3. In a disciplinary action entitled "In the Matter of Accusation Against Michael John 27 Guen," Case No. 1A-2013-168, the Board issued a decision, effective May 18, 2016, in which 28 Respondent's Acupuncture License was revoked. The revocation was stayed and Respondent's

7. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

## **CAUSE TO REVOKE PROBATION**

(Psychological Evaluation)

- 8. In its Decision in Case No. 1A-2013-168, the Board ordered Respondent to complete a psychological evaluation in response to its finding that he engaged in sexual misconduct with a patient. Timely fulfillment of the condition is necessary to confirm that Respondent does not present a risk to public safety. Respondent has failed to submit to a psychological evaluation within 90 days from the effective date of that Decision, as required by the terms of his probation.
- 9. Term 2 of Respondent's probation, "Psychological Evaluation," requires Respondent to undergo a psychological evaluation by a Board-approved psychologist. The original 90-day deadline to complete the evaluation was January 15, 2017 (this was calculated based on a period of tolling of Respondent's probation while he was out of the country). The Board notified Respondent of the deadline during his initial probation meeting on December 1, 2016, and also mailed him documentation of the same. Board staff then approved an extension of the deadline until February 15, 2017. Board staff mailed Respondent documentation of the approved extension, which included the following notice:

Should you not meet this deadline and successfully complete this requirement, you will be in violation of your probation and your file will be referred back to the Attorney General's Office to begin revocation proceedings.

10. Respondent scheduled an evaluation after the extended deadline, on February 17,2017. Then, a day before his scheduled evaluation, Respondent called the evaluating psychologist and cancelled his appointment.

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1	11. Respondent's failure to time	ly submit to a psychological evaluation constitutes a
2	violation of Term 2 of his probation as well as unprofessional conduct pursuant to Business and	
3	Professions Code section 4955. As a result of his violation of probation, Respondent's probation	
4	is subject to revocation.	
5		
6	<u>PRAYER</u>	
7	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,	
8	and that following the hearing, the Acupuncture Board issue a decision:	
9	1. Revoking the probation that	was granted by the Board in Case No. 1A-2013-168 and
10	imposing the disciplinary order that was stayed thereby revoking Acupuncture License No. AC	
11	4412 issued to Respondent;	
12	2. Revoking or suspending Acupuncture License No. AC 4412, issued to Respondent;	
13	3. Ordering Respondent, if placed on additional probation, to pay the costs of probation	
14	monitoring;	
15	4. Ordering Respondent to pay the Board the actual and reasonable costs of the	
16	investigation and enforcement of this case, in addition to the costs he was previously ordered to	
17	pay in in Case No. 1A-2013-168;	
18	5. Taking such other and further action as deemed necessary and proper.	
19		
20	DATED: MAR 2 1 2017	BENJAMIN BODEA
21		Executive Officer Acupuncture Board
22		Department of Consumer Affairs State of California
23	SF2017202945	Complainant
24	41720379.docx	
25		
26		
27		
28		

## Exhibit A

Decision and Order

Acupuncture Board Case No. 1A-2013-168