BEFORE THE
CALIFORNIA ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke Probation Against: Michael Guen 130 Steiner Court Santa Rosa, CA 95404 Acupuncture License No. AC-4412 Respondent.	))))))))))	Case No. D1-2013-168

DECISION AND ORDER

The attached Default Decision and Order is hereby adopted by the California Acupuncture Board, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on August 16, 2017.

IT IS SO ORDERED July 17, 2017.

Hildegarde Aguinaldo, L.Ac., Chair
Acupuncture Board
Department of Consumer Affairs
State of California

XAVIER BECERRA
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General
JOSHUA M. TEMPLET
Deputy Attorney General
State Bar No. 267098
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5529
Facsimile: (415) 703-5480
Attorneys for Complainant

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke Probation Against: **MICHAEL JOHN GUEN** **130 Steiner Court** **Santa Rosa, CA 95404** **Acupuncture License No. AC 4412** Respondent	Case No. D1-2013-168 OAH No. 2017041094 **DEFAULT DECISION AND ORDER** [Gov. Code §11520]

On or about March 21, 2017, an employee of the Acupuncture Board (Board), served by Certified Mail a copy of the Petition to Revoke Probation No. D1-2013-168, Statement to Respondent, Notice of Defense in blank, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to the address of record of Michael John Guen (Respondent), which was and is 130 Steiner Court, Santa Rosa, CA 95404. On or about April 12, 2017, Respondent signed and returned a Notice of Defense. (Exhibit Package[1], **Exhibit 1**: Petition to Revoke Probation, related documents, Declaration of Service, and Notice of Defense.)

[1] The evidence in support of this Default Decision and Order is separately contained in the "Exhibit Package."

On or about April 26, 2017, via certified mail, Respondent was served at his address of record at 130 Steiner Court, Santa Rosa, CA 95404, with a Notice of Hearing informing him that a hearing would be held on June 1, 2017 at the Office of Administrative Hearings at 1515 Clay Street, Suite 206, Oakland, California 94612. The United States Postal Service tracking results confirm that the certified mail was delivered on April 29, 2017 (Exhibit Package, **Exhibit 2**: Notice of Hearing, proof of service, U. S. Postal Service tracking results.)

The matter was called for hearing at the date, time and location as set forth in the Notice of Hearing. Deputy Attorney General Joshua M. Templet of the Attorney General's Office appeared on behalf of the Complainant. There was no appearance by or on behalf of Respondent. At 1:15 p.m., Administrative Law Judge Jill Schlichtmann declared the matter a default, and at the request of Complainant's counsel, the matter was remanded to the agency for action under Government Code section 11520. (Exhibit Package, **Exhibit 3**: Findings and Declaration of Default; Order of Remand.)

FINDINGS OF FACT

I

Complainant Benjamin Bodea is the Executive Officer of the Board. The charges and allegations in Petition to Revoke Probation No. D1-2013-168 were at all times brought and made solely in the official capacity of the Board's Executive Officer.

II

On or about October 14, 1992, the Board issued Acupuncture License No. AC 4412 to Respondent. The Acupuncture License expired on February 29, 2016, and has not been renewed. (Exhibit Package, **Exhibit 4**: Certificate of License.)

III

Business and Professions Code section 118 states, in pertinent part:

"(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its

authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the license on any such ground."

IV

California Government Code section 11520 states, in pertinent part:

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

V

On or about March 21, 2017, Respondent was served with a Petition to Revoke Probation, alleging causes for discipline against Respondent. The Petition and accompanying documents were duly served on Respondent. Respondent filed a Notice of Defense. Respondent was served with a Notice of Hearing scheduled for June 1, 2017 at the Office of Administrative Hearings. There was no appearance by or on behalf of Respondent. The matter was remanded to the Board for action under Government Code section 11520.

VI

The allegations of the Petition are true as follows:

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.

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.

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. On February 21, 2017, Board staff mailed Respondent a Notice of Probation Violation. (Exhibit Package, **Exhibit 5**: Declaration of Cricket Borges, Acupuncture Board Enforcement Analyst.)

Respondent's failure to timely submit to a psychological evaluation constitutes a violation of Term 2 of his probation as well as unprofessional conduct pursuant to Business and Professions Code section 4955.

The Board seeks cost recovery pursuant to Code section 125.3 in the amount of $4,650.00 (Exhibit Package, **Exhibit 6**: Declaration of Costs.)

DETERMINATION OF ISSUES

Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on Respondent's express admissions by way of default and the evidence before it, contained in Exhibits 1-6, finds that the allegations in Petition to Revoke Probation No. D1-2013-168 are true.

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ORDER

IT IS SO ORDERED that Acupuncture License No. AC 4412, heretofore issued to Respondent Michael John Guen, is revoked.

Respondent is ordered to reimburse the Acupuncture Board the amount of $4,650.00 for its investigative and enforcement costs.

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

This Decision shall become effective on _____.

_____
FOR THE ACUPUNCTURE BOARD

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EXHIBIT 1