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

12 In the Matter of the Accusation Against:

Case No. 1A-2015-98

13 **YU TIAN, L.AC.**
14 **4633 Old Ironsides Drive #101**
Santa Clara CA 95054

ACCUSATION

15 **Acupuncturist License No. AC 7936**

16 Respondent.
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19 **PARTIES**

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

22 2. On or about August 9, 2001, the Acupuncture Board issued Acupuncturist License
23 Number AC 7936 to YU TIAN, L.Ac. (Respondent). The Acupuncturist License was in full force
24 and effect at all times relevant to the charges brought herein and will expire on January 31, 2021,
25 unless renewed.

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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 (Code) unless otherwise indicated.

4. Section 4955 of the Code provides in pertinent part:

The board may deny, suspend, or revoke, or impose probationary conditions upon, the license of any acupuncturist who 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. . . .

5. Section 4955.1 of the Code provides in pertinent part:

The board may deny, suspend, revoke, or impose probationary conditions upon the license of any acupuncturist if he or she is guilty of committing a fraudulent act including, but not be limited to, any of the following: . . .

(b) Committing a fraudulent or dishonest act as an acupuncturist.

(c) Committing any act involving dishonesty or corruption with respect to the qualifications, functions, or duties of an acupuncturist.

(d) Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record.

(e) Failing to maintain adequate and accurate records relating to the provision of services to their patients.

6. Section 4956 of the Code states in pertinent part:

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.

....

7. Section 810 of the Code states:

(a) It shall constitute unprofessional conduct and grounds for disciplinary action, including suspension or revocation of a license or certificate, for a health care professional to do any of the following in connection with his or her professional activities:

(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.

(2) Knowingly prepare, make, or subscribe any writing, with intent to present or use the same, or to allow it to be presented or used in support of any false or

1 fraudulent claim.

2 (b) It shall constitute cause for revocation or suspension of a license or
3 certificate for a health care professional to engage in any conduct prohibited under
4 Section 1871.4 of the Insurance Code or Section 549 or 550 of the Penal Code. . . .

5 8. Section 550 of the Penal Code states in pertinent part:

6 . . .

7 (b) It is unlawful to do, or to knowingly assist or conspire with any person to
8 do, any of the following:

9 . . .

10 (3) Conceal, or knowingly fail to disclose the occurrence of, an event that
11 affects any person's initial or continued right or entitlement to any insurance benefit
12 or payment, or the amount of any benefit or payment to which the person is entitled.

13 **COST RECOVERY**

14 Section 4959 of the Code provides:

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

20 (b) The costs to be assessed shall be fixed by the administrative law judge and
21 shall not in any event be increased by the board. When the board does not adopt a
22 proposed decision and remands the case to an administrative law judge, the
23 administrative law judge shall not increase the amount of any costs assessed in the
24 proposed decision.

25 (c) When the payment directed in the board's order for payment of costs is not
26 made by the licensee, the board may enforce the order for payment in the superior
27 court in the county where the administrative hearing was held. This right of
28 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.

FACTUAL ALLEGATIONS

9. Respondent owns and operates Ivy Acupuncture and Herb Clinic in Santa Clara, CA.
On April 5, 2019, Respondent was convicted of a felony by a plea of no contest entered in the
Superior Court of California for the County of Santa Clara. In particular, Respondent was
convicted of violating Penal Code section 550, subsection (b)(3).

1 10. In July and August 2016, an investigator from the Division on Investigation
2 conducted three undercover appointments to treat seasonal allergies with Respondent. At no time
3 did the investigator receive acupuncture treatments, including use of needles, cupping, or
4 massage, from Respondent. The investigator only purchased herbs from Respondent.
5 Nevertheless, Respondent submitted three separate and fraudulent claims to Blue Shield of
6 California, representing that she performed acupuncture for the investigator.

7 **FIRST CAUSE FOR DISCIPLINE**

8 (Unprofessional Conduct Due to Conviction of Crime)

9 11. Respondent was convicted of a crime substantially related to the qualifications,
10 functions, or duties of an acupuncturist, as set forth above in paragraph 9. The conviction
11 constitutes unprofessional conduct and serves as grounds for disciplinary action against her
12 license pursuant to Code sections 4955 and 4956.

13 **SECOND CAUSE FOR DISCIPLINE**

14 (Unprofessional Conduct and/or Committing Fraudulent Act)

15 12. Respondent's conduct, as set forth in paragraph 10, constitutes unprofessional
16 conduct and serves as grounds for disciplinary action against her license for committing a
17 fraudulent act or acts. In addition, Respondent has violated Code section 4955.1, subsections
18 (b)(c)(d) and (e).

19 **THIRD CAUSE FOR DISCIPLINE**

20 (Unprofessional Conduct and/or Insurance Fraud by a Health Care Professional)

21 13. Respondent's conduct, as set forth in paragraph 10, constitutes unprofessional
22 conduct and serves as grounds for disciplinary action against her license for presenting a
23 fraudulent insurance claim as a health care professional. In addition, Respondent has violated
24 Code section 810.

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2 **PRAYER**

3 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
4 and that following the hearing, the Acupuncture Board issue a decision:

5 1. Revoking or suspending Acupuncturist License Number AC 7936, issued to YU
6 TIAN, L.Ac.;

7 2. Ordering Yu Tian, L.Ac. to pay the Acupuncture Board the reasonable costs of the
8 investigation and enforcement of this case, pursuant to Business and Professions Code section
9 4959; and,

10 3. Taking such other and further action as deemed necessary and proper.

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DATED: March 16, 2020

Original Signature on File
BENJAMIN BODEA
Executive Officer
Acupuncture Board
Department of Consumer Affairs
State of California
Complainant