

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

In the Matter of the First Amended Accusation
Against:

YU TIAN, L.AC.

**3709 Century Drive
Campbell, CA 95008**

Acupuncturist License No. AC 7936

Respondent.

Case No. 1A-2015-98

OAH No. 2020120360

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Acupuncture Board, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on September 2, 2021.

It is so ORDERED August 3, 2021.

Original Signature on File with the Board
FOR THE ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS

1 ROB BONTA
Attorney General of California
2 MARY CAIN-SIMON
Supervising Deputy Attorney General
3 HANSA M. MURTHY
Deputy Attorney General
4 State Bar No. 274745
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 510-3495
6 Facsimile: (415) 703-5480
E-mail: Hamsa.Murthy@doj.ca.gov
7 *Attorneys for Complainant*

8
9 **BEFORE THE**
ACUPUNCTURE BOARD
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the First Amended Accusation
13 Against:

14 **YU TIAN, L.AC.**

15 **3709 Century Drive**
16 **Campbell, CA 95008**

17 **Acupuncturist License No. AC 7936**

18 Respondent.

Case No. 1A-2015-98

OAH No. 2020120360

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

19
20 In the interest of a prompt and speedy settlement of this matter, consistent with the public
21 interest and the responsibility of the Acupuncture Board of the Department of Consumer Affairs,
22 the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will
23 be submitted to the Board for approval and adoption as the final disposition of the First Amended
24 Accusation.

25 **PARTIES**

26 1. Benjamin Bodea (Complainant) is the Executive Officer of the Acupuncture Board
27 (Board). He brought this action solely in his official capacity and is represented in this matter by
28

1 Rob Bonta, Attorney General of the State of California, by Hamsa M. Murthy, Deputy Attorney
2 General.

3 2. Respondent Yu Tian, L.Ac. (Respondent) is represented in this proceeding by
4 attorney David Balfour of Nossaman LLP. Mr. Balfour's business address is: 1925 Palomar
5 Oaks Way, Ste. 220, Carlsbad, CA 92008.

6 3. On or about August 9, 2001, the Board issued Acupuncturist License No. AC 7936 to
7 Yu Tian, L.Ac. (Respondent). The Acupuncturist License was in full force and effect at all times
8 relevant to the charges brought in First Amended Accusation No. 1A-2015-98, and will expire on
9 January 31, 2023, unless renewed.

10 **JURISDICTION**

11 4. First Amended Accusation No. 1A-2015-98 was filed before the Board, and is
12 currently pending against Respondent. An Accusation and all other statutorily required
13 documents were properly served on Respondent on March 16, 2020. Respondent timely filed her
14 Notice of Defense contesting the Accusation. The First Amended Accusation was subsequently
15 properly served on Respondent on June 8, 2021. A copy of the First Amended Accusation No.
16 1A-2015-98 is attached as Exhibit A and incorporated herein by reference.

17 **ADVISEMENT AND WAIVERS**

18 4. Respondent has carefully read, fully discussed with counsel, and understands the
19 charges and allegations in First Amended Accusation No. 1A-2015-98. Respondent has also
20 carefully read, fully discussed with counsel, and understands the effects of this Stipulated
21 Settlement and Disciplinary Order.

22 5. Respondent is fully aware of her legal rights in this matter, including the right to a
23 hearing on the charges and allegations in the First Amended Accusation; the right to confront and
24 cross-examine the witnesses against her; the right to present evidence and to testify on her own
25 behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the
26 production of documents; the right to reconsideration and court review of an adverse decision;
27 and all other rights accorded by the California Administrative Procedure Act and other applicable
28 laws.

1 **3. Coursework.** Respondent, at his/her own expense, shall enroll and successfully
2 complete coursework substantially related to the violation(s) no later than the end of the first year
3 of probation. Respondent, at her own expense, shall enroll and successfully complete the
4 following sixteen hours coursework, which is substantially related to the violation(s): eight hours
5 of coursework on Ethics and eight hours of coursework on Billing. The required coursework
6 must be via live in-person delivery or live webinar delivery.

7 The coursework shall be in addition to that required for license renewal. Within thirty (30)
8 days of the Effective date of the Decision, Respondent shall submit a written plan to comply with
9 this requirement to the Board or its designee. The Board or its designee shall review such a plan
10 and notify Respondent if the plan is approved. Respondent must await the approval of the Board
11 or its designee prior to enrollment in any course of study intended to satisfy the coursework
12 requirements of this paragraph.

13 Upon successful completion of the coursework, Respondent shall submit original
14 completion certificates to the Board within thirty (30) days of course completion.

15 **4. Monitoring Program.** Respondent shall comply with the Board's probation
16 monitoring program and shall, upon reasonable notice, report to the assigned probation monitor.
17 Respondent shall contact the assigned probation monitor regarding any questions specific to the
18 probation order. Unless the Respondent obtains prior approval from his or her assigned Board
19 probation monitor to allow for contact, Respondent shall not have any contact with (1) victims,
20 witnesses, and/or complainants associated with the case; (2) Board members and/or members of
21 its staff; (3) persons serving the Board as subject matter experts; and/or (4) persons who
22 previously rendered expert opinions on behalf of the Board in Respondent's disciplinary
23 proceeding.

24 **5. Practice/Billing Monitor.** Within ninety (90) days of the effective date of this
25 Decision, Respondent shall submit to the Board or its designee for prior approval as a Billing
26 monitor(s), the name and qualifications of one or more California licensed acupuncturists whose
27 license is clear and active, in good standing and not disciplined by the Board. Prior to the
28 Board's approval, Respondent shall provide a copy of the Board's First Amended Accusation and

1 Decision to the monitor(s). A monitor shall have no prior or current business or personal
2 relationship with Respondent, or other relationship that could reasonably be expected to
3 compromise the ability of the monitor to render fair and unbiased reports to the Board or its
4 designee and must agree to serve as Respondent's monitor. Respondent shall pay all monitoring
5 costs. The Board in its sole discretion shall have the option of rejecting the proposed monitor(s)
6 for any reason, and Respondent shall work to provide an alternative monitor(s) as set forth above.

7 Upon approval of the monitor(s), the Board or its designee shall provide a monitoring
8 plan. Within fifteen (15) days of receipt of the monitoring plan, the monitor shall submit a signed
9 statement that the monitor has read the Decision(s) and First Amended Accusation, fully
10 understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If
11 the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised
12 monitoring plan with the signed statement.

13 Within one-hundred twenty (120) days of the effective date of this Decision, and
14 continuing through probation, Respondent shall make all records available for immediate
15 inspection and copying on the premises by the monitor at all times during business hours and
16 shall retain the records for the entire term of probation.

17 Respondent shall notify all current and potential patients in writing of any term or
18 condition of probation which will affect their treatment or the confidentiality of their records
19 (such as this condition which requires a practice monitor). Such written notification shall be
20 signed by each patient prior to continuing or commencing treatment and the written notification
21 shall be kept as part of the patient's healthcare record.

22 The monitor(s) shall submit a quarterly written report to the Board or its designee which
23 includes an evaluation of Respondent's performance, indicating whether Respondent's practices
24 are within the standards of practice of acupuncture or billing, or both, and whether Respondent is
25 practicing acupuncture safely, billing appropriately, or both. It shall be the sole responsibility of
26 Respondent to ensure that the monitor submits written reports to the Board or its designee
27 quarterly.

28 If the monitor resigns or is no longer available, Respondent shall, within five days of such

1 resignation or unavailability notify the Board. Within thirty (30) days, Respondent shall submit
2 to the Board or its designee, for prior approval, the name and qualifications of a replacement
3 monitor. Upon approval, the monitor shall assume immediate responsibility. If Respondent fails
4 to obtain approval of a replacement monitor within sixty (60) days of the resignation or
5 unavailability of the monitor, after notification by the Board, Respondent shall be suspended from
6 the practice of acupuncture until a replacement monitor is approved and prepared to assume
7 immediate monitoring responsibility.

8 Failure to maintain all records, or to make all appropriate records available for immediate
9 inspection and copying on the premises, or to comply with this condition as outlined above, is a
10 violation of probation.

11 **6. Interview with the Board or Its Designee.** Respondent shall appear in person for
12 interviews with the Board or its designee upon request at various intervals and with or without
13 prior notice throughout the term of probation.

14 **7. Changes of Employment.** Respondent shall notify the Board in writing, through the
15 assigned probation monitor of any and all changes of employment, location and employment
16 address within thirty (30) days of such change.

17 **8. Tolling of Probation.** If Respondent leaves California to reside or practice outside
18 this state, or for any reason, unless by Board order, should Respondent stop practicing
19 acupuncture in California, Respondent must notify the Board in writing of the dates of departure
20 and return or the dates of non-practice within 10 days of departure or return. Non-practice is
21 defined as any period of time exceeding 30 days in which Respondent is not engaging in the
22 practice of acupuncture or any time the license is inactive or in cancelled status. Periods of
23 temporary residency or practice outside the state or of non-practice within the state shall not apply
24 to reduction of the probationary period. It shall be a violation of probation for respondent's
25 probation to remain tolled pursuant to the provisions of this condition for a period exceeding a
26 total, consecutive period of two years.

27 For purposes of this condition, a Board ordered suspension or non-practice in compliance
28 with any other condition of probation shall not be tolled. Any order for payment of cost recovery

1 shall remain in effect whether or not probation is tolled.

2 All provisions of probation shall recommence on the effective date of resumption of
3 practice in California, and the term of probation shall be extended for the period of time
4 respondent was out of state or in state and not practicing.

5 **9. Restriction on Employing and Supervision of Trainees.** Respondent shall not
6 employ or supervise or apply to employ or supervise acupuncture trainees during the course of
7 this probation. Respondent shall terminate any such supervisory relationship in existence on the
8 effective date of this probation. Respondent shall not teach at any Board approved training
9 program or continuing education courses during the course of this probation.

10 **10. Cost Recovery.** Respondent shall pay to the Board its costs of investigation and
11 enforcement in the amount of \$24,000.00. Respondent shall be permitted to pay these costs in a
12 payment plan approved by the Board or its designee, with payments to be completed no later than
13 three months prior to the end of the probation term. Cost recovery will not be tolled.

14 At Respondent's request, if Respondent has not complied with this condition during the
15 probationary term, and Respondent has presented sufficient documentation of her good faith
16 efforts to comply with this condition, and if no other conditions have been violated, the Board or
17 its designee, in its discretion, may grant an extension of Respondent's probation period up to two
18 (2) years without further hearing in order to comply with this condition. During the two (2) years
19 extension, all original conditions of probation will apply. The filing of bankruptcy by Respondent
20 shall not relieve Respondent of her responsibility to reimburse the Board for its investigation and
21 prosecution costs.

22 **11. Probation Monitoring Costs.** Respondent shall pay the costs associated with
23 probation monitoring each and every year of probation, as designated by the Board or its
24 designee, which may be adjusted on an annual basis. Such costs shall be payable to the Board on
25 a schedule as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as
26 directed shall be considered a violation of probation.

27 **12. License Surrender.** Following the effective date of this Decision, if Respondent
28 ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and

1 conditions of probation, Respondent may request the voluntary surrender of his or her license or
2 registration. The Board or its designee reserves the right to evaluate Respondent's request and to
3 exercise its discretion whether or not to grant the request, or to take any other action deemed
4 appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender,
5 Respondent shall, within fifteen (15) days, deliver Respondent's pocket and/or wall certificate to
6 the Board or its designee and Respondent shall no longer practice acupuncture. Upon formal
7 acceptance of the tendered license, Respondent will no longer be subject to the terms and
8 conditions of probation.

9 Voluntary surrender of Respondent's license shall be considered disciplinary action and
10 shall become a part of Respondent's license history with the Board. If Respondent reapplies for
11 an acupuncture license, the application shall be treated as a petition for reinstatement of a revoked
12 or surrendered license.

13 **13. Severability Clause.** Each condition of probation is a separate and distinct condition.
14 If any condition of this Decision and Order, or any application thereof, is declared unenforceable
15 in whole, in part, or to any extent, the remainder of this Decision and Order, and all other
16 applications thereof, shall not be affected. Each condition of this Decision and Order shall
17 separately be valid and enforceable to the fullest extent permitted by law.

18 **14. Notification of Name, Address, Telephone Number or E-mail Address Changes.**
19 Respondent shall notify the assigned probation monitor, in writing within ten (10) days, of any
20 and all name, address, telephone and/or e-mail address changes.

21 **15. Disclosure of Probation Status.** Within ten (10) days of the effective date of this
22 Decision, Respondent shall submit a proposed written disclosure to provide to all patients or a
23 patient's guardian or health care surrogate to the Board for prior approval. The written disclosure
24 shall include the following: (1) Respondent's probation status; (2) Length of probation; (3)
25 Probation end date; (4) All practice restrictions imposed by the probation order; (5) The Board's
26 telephone number; (6) Explanation of how the patient can find further information on
27 Respondent's probation by running a license verification on the Board's web site.

28 Once the Board approves Respondent's written disclosure, Respondent shall obtain from

1 the patient, or the patient's guardian or health care surrogate, a separate, signed copy of the
2 written disclosure.

3 Within five (5) days prior to a patient's first visit following the effective date of the Board's
4 Decision, Respondent shall provide the written disclosure to all patients or a patient's guardian or
5 health care surrogate except when any of the following applies: (1) The patient is unconscious or
6 otherwise unable to comprehend the disclosure and sign the copy of the disclosure pursuant to
7 subdivision (b) and a guardian or health care surrogate is unavailable to comprehend the
8 disclosure and sign the copy; (2) The visit occurs in an emergency room or an urgent care facility
9 or the visit is unscheduled, including consultations in inpatient facilities; (3) The licensee who
10 will be treating the patient during the visit is not known to the patient until immediately prior to
11 the start of the visit; (4) The licensee does not have a direct treatment relationship with the
12 patient.

13 Respondent shall make all records available for immediate inspection and copying on the
14 premises by the Board or its designee at all times during business hours and shall retain the
15 records for the entire term of probation.

16 **16. Maintenance of Clear and Active License.** Respondent shall, at all times, maintain a
17 clear and active current license with the Board, including any period of suspension or tolled
18 probation.

19 If an initial license must be issued (Statement of Issues) or a license is reinstated, probation
20 shall not commence until a license is issued by the Board. Respondent must complete the
21 licensure process within two (2) years from the effective date of the Board's Decision.

22 Should Respondent's license expire, by operation of law or otherwise, upon renewal or
23 reinstatement, Respondent's license shall be subject to any and all conditions of this probation not
24 previously satisfied.

25 **17. Violation of Probation.** If Respondent violates probation in any respect, the Board
26 may, after giving Respondent notice and the opportunity to be heard, revoke probation and carry
27 out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed
28 against Respondent during probation, the Board shall have continuing jurisdiction until the matter

1 is final, and the period of probation shall be extended until the matter is final. No petition for
2 modification or termination of probation shall be considered while there is an accusation or
3 petition to revoke probation pending against Respondent. If Respondent has not complied with
4 any term or condition of probation, the Board shall have continuing jurisdiction over Respondent,
5 and probation shall automatically be extended until all terms and conditions have been satisfied or
6 the Board has taken other action as deemed appropriate to treat the failure to comply as a
7 violation of probation, to terminate probation, and to impose the penalty which was stayed.

8 **18. Completion of Probation.** Upon successful completion of probation, Respondent's
9 license will be fully restored.

10 //

11 //

12 //

13 //

14 //

15 //

16 //

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, David Balfour. I understand the stipulation and the effect it will have on my Acupuncturist License . I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Acupuncture Board.

DATED: 6/9/2021 Original signature on file with Board
YU TIAN, L.AC.
Respondent

I have read and fully discussed with Respondent Yu Tian, L.Ac. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 6/9/2021 Original signature on file with Board
DAVID BALFOUR
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Acupuncture Board.

DATED: 6/9/2021 Respectfully submitted,

ROB BONTA
Attorney General of California
MARY CAIN-SIMON
Supervising Deputy Attorney General

Original Signature on file with Board

HAMSA M. MURTHY
Deputy Attorney General
Attorneys for Complainant

Exhibit A

First Amended Accusation No. 1A-2015-98