

1 XAVIER BECERRA
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 CHRIS LEONG
Deputy Attorney General
4 State Bar No. 141079
California Department of Justice
5 300 South Spring Street, Suite 1702
Los Angeles, California 90013
6 Telephone: (213) 269-6460
Facsimile: (916) 731-2117
7 E-mail: chris.leong@doj.ca.gov
Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 1A-2018-144

13 **DIANA LILIANA ROMAN, L.AC.**
14 **810 Cooper Avenue**
15 **Los Angeles, CA 90042**
16 **Acupuncturist License No. AC 8486**

ACCUSATION

Respondent.

17 Complainant alleges:

18 **PARTIES**

- 19 1. Benjamin Bodea (Complainant) brings this Accusation solely in his official capacity
20 as the Executive Officer of the Acupuncture Board, Department of Consumer Affairs. (Board).
21 2. On or about May 21, 2002, the Board issued Acupuncturist License Number AC 8486
22 to Diana Liliana Roman, L.Ac. (Respondent). The Acupuncturist License was in full force and
23 effect at all times relevant to the charges brought herein and will expire on December 31, 2021,
24 unless renewed.

25 **JURISDICTION**

- 26 3. This Accusation is brought before the Board, under the authority of the following
27 laws. All section references are to the Business and Professions Code (Code) unless otherwise
28 indicated.

1 4. Section 4928.1 of the Code states:

2 Protection of the public shall be the highest priority for the Acupuncture Board in
3 exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of
4 the public is inconsistent with other interests sought to be promoted, the protection of the
5 public shall be paramount.

6 5. Section 4955 of the Code states:

7 The board may deny, suspend, or revoke, or impose probationary conditions
8 upon, the license of any acupuncturist who is guilty of unprofessional conduct.

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

10 (a) Using or possessing any controlled substance as defined in Division 10
11 (commencing with Section 11000) of the Health and Safety Code, dangerous drug, or
12 alcoholic beverage to an extent or in a manner dangerous to the acupuncturist, or to
13 any other person, or to the public, and to an extent that the use impairs the
14 acupuncturist's ability to engage in the practice of acupuncture with safety to the
15 public.

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

19 (c) False or misleading advertising.

20 (d) Aiding or abetting in, or violating or conspiring in, directly or indirectly, the
21 violation of the terms of this chapter or any regulation adopted by the board pursuant
22 to this chapter.

23 (e) Except for good cause, the knowing failure to protect patients by failing to
24 follow infection control guidelines of the board, thereby risking transmission of
25 blood-borne infectious diseases from licensee to patient, from patient to patient, and
26 from patient to licensee. In administering this subdivision, the board shall consider
27 referencing the standards, regulations, and guidelines of the State Department of
28 Public Health developed pursuant to Section 1250.11 of the Health and Safety Code
29 and the standards, regulations, and guidelines pursuant to the California Occupational
30 Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5
31 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other
32 blood-borne pathogens in health care settings. As necessary, the board shall consult
33 with healing arts boards within this division, including, but not limited to, the Medical
34 Board of California, the California Board of Podiatric Medicine, the Dental Board of
35 California, the Board of Registered Nursing, and the Board of Vocational Nursing
36 and Psychiatric Technicians, to encourage appropriate consistency in the
37 implementation of this subdivision.

38 The board shall seek to ensure that licensees are informed of the responsibility
39 of licensees and others to follow infection control guidelines, and of the most recent
40 scientifically recognized safeguards for minimizing the risk of transmission of
41 blood-borne infectious diseases.

42 (f) The use of threats or harassment against any patient or licensee for providing
43 evidence in a disciplinary action, other legal action, or in an investigation

1 contemplating a disciplinary action or other legal action.

2 (g) Discharging an employee primarily for attempting to comply with the terms
3 of this chapter.

4 (h) Disciplinary action taken by any public agency for any act substantially
5 related to the qualifications, functions, or duties of an acupuncturist or any
6 professional health care licensee.

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

9 (j) The violation of any law or local ordinance on an acupuncturist's business
10 premises by an acupuncturist's employee or a person who is working under the
11 acupuncturist's professional license or business permit, that is substantially related to
12 the qualifications, functions, or duties of an acupuncturist. These violations shall
13 subject the acupuncturist who employed the individuals, or under whose
14 acupuncturist license the employee is working, to disciplinary action.

15 (k) The abandonment of a patient by the licensee without written notice to the
16 patient that treatment is to be discontinued and before the patient has had a reasonable
17 opportunity to secure the services of another practitioner.

18 (l) the failure to notify the board of the use of any false, assumed, or fictitious
19 name other than the name under which the licensee is licensed as an individual to
20 practice acupuncture.

21 6. Section 4955.1 of the Code states:

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

25 (a) Securing a license by fraud or deceit.

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

27 (c) Committing any act involving dishonesty or corruption with respect to the
28 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.

7. 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

1 granting probation is made suspending the imposition of sentence irrespective of a
2 subsequent order under the provisions of Section 1203.4 of the Penal Code allowing
3 the person to withdraw his or her pleas of guilty and to enter a plea of not guilty, or
4 setting aside the verdict of guilty, or dismissing the accusation, complaint,
5 information, or indictment.

6 8. Section 490 of the Code states:

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

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

16 (c) A conviction within the meaning of this section means a plea or verdict of
17 guilty or a conviction following a plea of nolo contendere. Any action that a board is
18 permitted to take following the establishment of a conviction may be taken when the
19 time for appeal has elapsed, or the judgment of conviction has been affirmed on
20 appeal, or when an order granting probation is made suspending the imposition of
21 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of
22 the Penal Code.

23 (d) The Legislature hereby finds and declares that the application of this section
24 has been made unclear by the holding in *Petropoulos v. Department of Real Estate*
25 (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant
26 number of statutes and regulations in question, resulting in potential harm to the
27 consumers of California from licensees who have been convicted of crimes.
28 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 Chapter 33 of the Statutes of 2008 do not
constitute a change to, but rather are declaratory of, existing law.

9. 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, 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."

(c) This section shall become inoperative on July 1, 2020, and, as of January 1,
2021, is repealed.

1 **COSTS**

2 10. Section 4959 of the Code states:

3
4 (a) The board may request the administrative law judge, under his or her proposed
5 decision in resolution of a disciplinary proceeding before the board, to direct any licensee
6 found guilty of unprofessional conduct to pay to the board a sum not to exceed actual and
7 reasonable costs of the investigation and prosecution of the case.

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

12 (c) When the payment directed in the board’s order for payment of costs is not made
13 by the licensee, the board may enforce the order for payment in the superior court in the
14 county where the administrative hearing was held. This right of enforcement shall be in
15 addition to any other rights the board may have as to any licensee directed to pay costs.

16 (d) In any judicial action for the recovery of costs, proof of the board’s decision shall
17 be conclusive proof of the validity of the order of payment and the terms for payment.

18 (e) All costs recovered under this section shall be considered a reimbursement for
19 costs incurred and shall be deposited in the Acupuncture Fund.

20 **FIRST CAUSE FOR DISCIPLINE**

21 (Conviction of a Crime in 2019)

22 11. Respondent is subject to disciplinary action under Code section 4955, subdivision (b),
23 section 4956, and section 490 of the Code, in that she was convicted in 2019 of violating Revenue
24 and Taxation Code section 19705, subdivision (A)(1), for willfully and unlawfully subscribe any
25 return, statement, or other document, under penalty of perjury, which she did not believe was true
26 and correct as to every material matter, a crime which is substantially related to the qualifications,
27 functions, and duties of an acupuncturist. The circumstances are as follows:

28 12. On or about February 1, 2019, Respondent was charged in the Superior Court of
California, County of Kern, in *People of the State of California v. Diana L. Roman*, case number
BF173890A, with four counts. This included violations of Revenue and Taxation Code (R&TC)
sections 19705(A)(1); 19706 and enhancements of Penal Code section 186.11(A)(1).

13. On February 20, 2019, in proceedings entitled *People of the State of California v.*

1 *Diana L. Roman*, then pending in the Superior Court of California, County of Sacramento, Case
2 number BF173890A, after a pleading of no contest, Respondent was convicted of Count 1, a
3 violation of R&TC section 19705(A)(1), as a felony. The remaining counts were dismissed in the
4 interest of justice.

5 14. Following Respondent's plea of guilty the Court placed Respondent on five (5) years
6 probation, and ordered her to pay \$510,167 of restitution to the Franchise Tax Board, plus pay
7 various court fines and fees.

8 15. The facts underlying the above conviction are:

9 16. The California Franchise Tax Board (FTB) conducted an investigation and reported
10 that Respondent willfully filed false State income tax returns for 2010 and 2011 tax years. She
11 was also reported to have willingly filled false state income tax returns to evade tax in the 2012
12 and 2013 years.

13 17. Respondent claimed her mother as a dependent for the 2010, 2011, 2012, and 2013
14 tax years. Respondent also funneled \$692,633 to a non-profit charitable organization which was
15 run by her mother. Respondent supported her mother by paying her expenses and giving her a
16 salary through payments disguised as charitable contributions and claimed \$692,633 charitable
17 deductions on her 2010, 2011, 2012 and 2013 state income taxes. Respondent set up a 501(c)(3)
18 nonprofit public charity. The Articles of Incorporations stated that the specific purpose was to
19 rescue stray and abandoned animals, provide food and shelter, and find homes for these animals.

20 18. The charitable contributions in the amount of \$692, 633, were disallowed on state
21 income tax returns. In addition, Respondent failed to report \$1,524,613 of income on her state
22 income tax returns. The disallowance of the gifts to charity deduction combined with the
23 unreported income resulted in a total tax deficiency of \$180,476 for the 2010, 2011, 2012 and
24 2013 tax years. The willful filing of false state income tax return, with intent to evade tax was a
25 violation of R&TC section 19706 (tax evasion), a felony.

26 **SECOND CAUSE FOR DISCIPLINE**

27 (Unprofessional conduct – Committing an Act of Dishonesty or Corruption)

28 19. Respondent is subject to disciplinary action under Code section 4955.1, subdivision

1 (b), of the Code, in that she has committed acts involving dishonesty or corruption with respect to
2 the duties of an acupuncturist. The circumstances are as follows:

3 20. Complainant refers to, and by reference incorporates herein paragraphs 11 through
4 18, inclusive, above.

5 **THIRD CAUSE FOR DISCIPLINE**

6 (Unprofessional conduct)

7 21. Respondent is subject to disciplinary action under Code section 4955, subdivisions
8 (b), and (d), of the Code, in that she has committed acts constituting unprofessional conduct.

9 22. Complainant refers to, and by reference incorporates herein paragraphs 11 through
10 20, inclusive, above.

11 **PRAYER**

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

14 1. Revoking or suspending Acupuncturist License Number AC 8486, issued to Diana
15 Liliana Roman, L.Ac.;

16 2. Ordering Diana Liliana Roman, L.Ac. to pay the Acupuncture Board the reasonable
17 costs of the investigation and enforcement of this case, pursuant to Business and Professions
18 Code section 4959;

19 3. If placed on probation, ordering her to pay to the Acupuncture Board the cost of
20 probation and monitoring; and

21 4. Taking such other and further action as deemed necessary and proper

22
23 DATED: February 5, 2020

Original Signature on File
24 BENJAMIN BODEA
25 Executive Officer
26 Acupuncture Board
27 Department of Consumer Affairs
28 State of California
Complainant

LA2019505361
54072057.docx