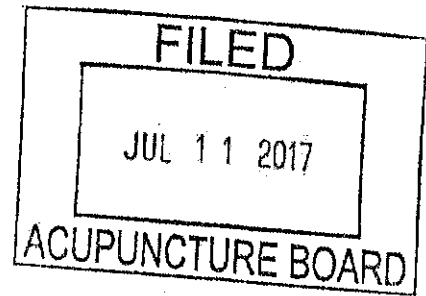


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9 **BEFORE THE**
10 **ACUPUNCTURE BOARD**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Petition to Revoke
14 Probation Against,

Case No. D1-2012-151

15 **FRANK SHYU, L.Ac.**
16 **2162 S. Garfield Avenue**
17 **Monterey Park, CA 91754**
18 **Acupuncturist License No. AC 850,**

PETITION TO REVOKE PROBATION

Respondent.

19 Complainant alleges:

20 **PARTIES**

- 21 1. Benjamin Bodea (Complainant) brings this Petition to Revoke Probation solely in his
22 official capacity as the Executive Officer of the Acupuncture Board (Board).
- 23 2. On or about August 21, 1978, the Acupuncture Board issued Acupuncturist License
24 Number AC 850 to Frank Shyu, L.Ac. (Respondent). The Acupuncturist License was in effect at
25 all times relevant to the charges brought herein and will expire on April 30, 2018, unless renewed.
- 26 3. In a disciplinary action entitled "*In the Matter of Accusation Against Frank Shyu,*
27 *L.Ac.*," Case No. 1A-2012-151, the Acupuncture Board, issued a decision on February 7, 2017,
28 effective March 9, 2017, in which Respondent's Acupuncturist License was revoked. However,
the revocation was stayed and Respondent's Acupuncturist License was placed on probation for a

1 period of five (5) years with certain terms and conditions. A copy of that decision is attached as
2 Exhibit A and is incorporated by reference.

3 JURISDICTION

4 4. This Petition to Revoke Probation is brought before the Acupuncture Board (Board),
5 Department of Consumer Affairs, under the authority of the following laws. All section
6 references are to the Business and Professions Code unless otherwise indicated

7 5. Section 4955 of the Code states:

8 "The board may deny, suspend, or revoke, or impose probationary conditions upon, the
9 license of any acupuncturist if he or she is guilty of unprofessional conduct.

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

11 "...

12 "(d) Aiding or abetting in, or violating or conspiring in, directly or indirectly,
13 the violation of the terms of this chapter or any regulation adopted by the board
14 pursuant to this chapter.

15 "..."

16 6. Section 4959 of the Code states:

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

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

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

1 “(d) In any judicial action for the recovery of costs, proof of the board's decision shall be
2 conclusive proof of the validity of the order of payment and the terms for payment.

3 “(e) All costs recovered under this section shall be considered a reimbursement for costs
4 incurred and shall be deposited in the Acupuncture Fund.”

5 **FIRST CAUSE TO REVOKE PROBATION**

6 (Failure to Interview With the Board or Its Designee)

7 7. At all times after the effective date of Respondent's probation, Condition 4 stated:

8 "Respondent shall appear in person for interview with the Board or its designee upon
9 request at various intervals and with reasonable notice."

10 8. Respondent's probation is subject to revocation because he failed to comply with
11 Probation Condition 4, referenced above. The facts and circumstances regarding this violation are
12 as follows:

13 A. The Board sent Respondent a February 7, 2017, letter enclosing a copy of the
14 February 7, 2017, Decision and Order and noting the March 9, 2017, effective date.

15 B. On or about February 15, 2017, the Board sent Respondent a letter with
16 enclosures to his address of record. The letter signed by the Board's Probation Monitor,
17 included the Monitor's name and phone number and the following statement: "I will be
18 holding a telephonic initial probation meeting with you in the near future to touch base and
19 discuss your probations terms and answer any questions."

20 C. On or about February 15, 2017, the Monitor sent Respondent a second letter to
21 his address of record which stated in part: "Your telephone meeting is scheduled on
22 **Thursday, March 9, 2017, at 8:00 a.m.**" (Emphasis in original.)

23 D. On or about March 9, 2017, at 8:00 a.m., the Monitor called Respondent at the
24 number he provided to the Board to contact him to conduct the initial probation telephone
25 conference to discuss the terms and conditions of Respondent's probation. Respondent
26 failed to be available on March 9, 2017, at 8:00 a.m. Later that morning, at 11:30 a.m., the
27 Monitor called Respondent at the same number to conduct the initial probation telephone
28 conference to discuss the terms and condition of Respondent's probation. After Respondent

1 answered and confirmed the identify of the Monitor he hung up the phone while the
2 Monitor was obtaining an interpreter. Respondent failed to answer the Monitor's
3 subsequent phone calls.

4 E. On or about March 9, 2017, the Monitor sent Respondent a letter to his address
5 of record entitled "Notice of Probation Violation" in which the Monitor stated Respondent
6 was in violation of Term 4 of his probation due to his disconnecting the phone call with the
7 Monitor and failure to answer the Monitor's subsequent calls that day.

8 F. On or about March 9, 2017, the Monitor sent Respondent a letter at his address
9 of record to reschedule the initial probation teleconference required by Term 4 of
10 Respondent's probation that stated in part: "Your telephone meeting is scheduled on
11 Thursday, March 23, 2017, at 9:00 a.m." (Emphasis in original.)

12 G. In the March 9, 2017, letter the Monitor further informed Respondent that:
13 **"Failure to be reachable for your scheduled telephonic meeting as indicated will be**
14 **considered a violation of your probation and your case will be referred back to the**
15 **Attorney General's Office to begin revocation proceedings."** (Emphasis in original.)

16 H. On or about March 23, 2017, the Monitor called Respondent at the number he
17 provided to the Board to conduct the initial probation telephone conference to discuss the
18 terms and conditions of his probation. The phone went to voice mail and the Monitor left a
19 message regarding the nature of the call and a request that he return the call. Respondent
20 did not contact the Monitor.

21 I. On or about March 23, 2017, the Monitor sent Respondent another letter to his
22 address of record entitled "Notice of Probation Violation" in which the Monitor stated
23 Respondent was in violation of Term 4 of his probation when he failed to answer his phone
24 or return the Monitor's call on March 23, 2017.

25 SECOND CAUSE TO REVOKE PROBATION

26 (Failure to Pay Costs).

27 9. At all times after the effective date of Respondent's probation, Condition 8, Cost
28 Recovery, stated:

1 "Respondent shall pay to the Board its cost of investigation and enforcement in the
2 amount of \$4,275.00. This amount may be paid in equal monthly installments of \$75 per
3 month for the first four years and nine months of the five-year probation period."

4 10. Respondent's probation is subject to revocation because he failed to comply with
5 Probation Condition 8, referenced above. The facts and circumstances regarding this violation are
6 as follows:

7 A. The Board's Probation Monitor sent Respondent a February 15, 2017, letter at
8 his address of record which advised Respondent that he was required to pay \$4,275.00 for
9 the costs associated with the investigation and enforcement of his case in monthly
10 installments of \$75.00. The letter also stated that the first \$75.00 payment was due on April
11 15, 2017.

12 B. Respondent failed to make the installment payment of \$75.00 on April 15,
13 2017.

14 C. Respondent has failed to pay any subsequent monthly installments.

15 D. On or about May 17, 2017, the Monitor sent Respondent a letter to his address
16 of record entitled "Notice of Probation Violations" in which the Monitor stated Respondent
17 was in violation of term 8 of his probation as a result of his failure to make any of the
18 required cost recovery payments in the amount of \$75.00 per month.

19 **THIRD CAUSE TO REVOKE PROBATION**

20 (Failure to Provide Quarterly Report)

21 11. At all times after the effective date of Respondent's probation, Condition 2, Quarterly
22 Reports, stated:

23 "Respondent shall submit quarterly declarations under the penalty of perjury on forms
24 provided by the Board, stating whether there has been compliance with all the conditions of
25 probation."

26 12. Respondent's probation is subject to revocation because he failed to comply with
27 Probation Condition 2, referenced above. The facts and circumstances regarding this violation are
28 as follows:

1 A. On or about February 15, 2017, the Board sent Respondent a letter with
2 enclosures to his address of record. Included as enclosures were two blank reporting forms
3 for submitting Quarterly Written Probation Reports (Reports) and a list of dates on which
4 the completed Reports were due to be submitted to the Board, starting on April 5, 2017.

5 B. Respondent did not provide the Board with his quarterly report due no later than
6 April 5, 2017. Respondent has not subsequently provided the Board the quarterly report.

7 C. On or about May 17, 2017, the Monitor sent Respondent a letter at his address
8 of record entitled "Notice of Probation Violation" in which the Monitor stated Respondent
9 was in violation of Term 2 of his probation as a result of his failure to submit his quarterly
10 report by April 5, 2017.

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:

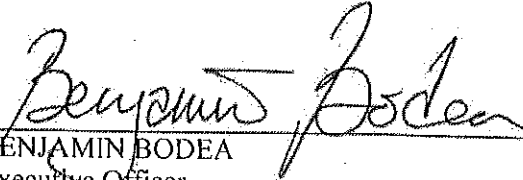
14 1. Revoking the probation that was granted by the Acupuncture Board in Case No. 1A-
15 2012-151 and imposing the disciplinary order that was stayed thereby revoking Acupuncturist
16 License No. AC 850 issued to Frank Shyu, L.Ac.;

17 2. Revoking or suspending Acupuncturist License No. AC 850, issued to Frank Shyu,
18 L.Ac.;

19 3. Ordering Frank Shyu, L.Ac., to pay the Acupuncture Board the reasonable costs of
20 the investigation and enforcement of this case pursuant to Business and Professions Code section
21 4959; and

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

23
24 DATED: JUL 11 2017


25 BENJAMIN BODEA
26 Executive Officer
27 Acupuncture Board
28 Department of Consumer Affairs
State of California
Complainant

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