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

12 In the Matter of the First Amended Accusation
Against,

13 **XUE HUA PENG, L.AC.**
14 **265 Lafayette Avenue**
Hayward CA 94544

15 **Acupuncturist License No. AC 9392**

16 One.
17

Case No. 1A-2019-169

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]

18 **FINDINGS OF FACT**

19 1. On or about February 20, 2020, Complainant Benjamin Bodea, in his official capacity
20 as the Executive Officer of the Acupuncture Board, Department of Consumer Affairs, filed
21 Accusation No. 1A-2019-169 against Xue Hua Peng, L.AC. (Respondent) before the
22 Acupuncture Board.

23 2. On or about October 29, 2003, the Acupuncture Board issued Acupuncturist License
24 Number AC 9392 to Xue Hua Peng, L.Ac. (Respondent). The Acupuncturist License was in full
25 force and effect at all times relevant to the charges brought herein and will expire on September
26 30, 2021, unless renewed.¹ (Exhibit Package, Exhibit 1, Certificate of Licensure.)

27 _____
28 ¹ The evidence in support of this Default Decision and Order is submitted herewith as the
"Exhibit Package."

1 3. On or about September 27, 2019, Respondent was arrested by agents of the Federal
2 Bureau of Investigation. (Exhibit Package, Exhibit 2, Minute Order, Case No. 3:19-mj-71565-
3 MAG, ECF 9, dated October 2, 2019.)

4 4. Respondent failed to inform the Board of this arrest. (Exhibit Package, Exhibit 3,
5 Declaration of Kristen Borges.)

6 5. On November 6, 2019, the United States Attorney's Office, United States Department
7 of Justice, filed an information against Respondent, alleging that Respondent violated 18 U.S.C.
8 section 951 – Acting as an Agent of a Foreign Government Without Notice to the Attorney
9 General. Specifically, the information accused Respondent of providing, on at least four
10 occasions, classified information related to the security of the United States of America to agents
11 of the Ministry of State Security (MSS) of the People's Republic of China, without authorization
12 from the government of the United States of America. These actions are alleged to have occurred
13 between June 13, 2015, and July 2, 2018. (Exhibit Package, Exhibit 4, Copy of the Criminal
14 Information, Case No. 4:19-cr-00589-HSG, ECF 25, dated November 6, 2019.)

15 6. Respondent failed to inform the Board that the information had been filed against
16 him. (Exhibit Package, Exhibit 3, Declaration of Kristen Borges.)

17 7. On February 20, 2020, Kristen Borges, an employee of the Complainant Agency,
18 served by Certified Mail a copy of the Accusation No. 1A-20190169, Statement to Respondent,
19 Notice of Defense, Request for Discovery, Government Code sections 11507.5, 11507.6, and
20 11507.7, to Respondent's address of record with the Board, which was and is 265 Lafayette
21 Avenue, Hayward, CA 94544. (Exhibit Package, Exhibit 5, copy of the Accusation and
22 accompanying documents, and Declarations of Service.)

23 8. On March 13, 2020, Complainant received a signed green certificate of service signed
24 by Jiemeng Li, acknowledging that the Accusation was served on Respondent's address of record.
25 (Exhibit Package, Exhibit 6, copy of signed green certificate of receipt returned by the Post
26 Office.)

27 9. Service of the Accusation was effective as a matter of law under the provisions of
28 Government Code section 11505, subdivision (c).

1 10. On March 17, 2020, Respondent was convicted in the United States District Court,
2 Northern District of California, Case No. CR19-00589-001 HSG, of violating 18 U.S.C. section
3 951, Acting as a Foreign Agent Without Notification, a felony. (Exhibit Package, Exhibit 7,
4 Copy of Conviction, Case No. 4:19-CR-00589-HSG, ECF 47, dated March 17, 2020.)

5 11. On March 20, 2020, Kristen Borges, an employee of the Complainant Agency, served
6 by Certified Mail a copy of the First Amended Accusation No. 1A-20190169, Supplemental
7 statement to Respondent, Request for Discovery, Government Code sections 11507.5, 11507.6,
8 and 11507.7, to Respondent's address of record with the Board, which was and is 265 Lafayette
9 Avenue, Hayward, CA 94544. (Exhibit Package, Exhibit 8, Copy of First Amended Accusation
10 and accompanying documents, and Declarations of Service.)

11 12. On March 27, 2020, Complainant received a signed green certificate of service signed
12 by Jiemeng Li, acknowledging that the First Amended Accusation was served on Respondent's
13 address of record. (Exhibit Package, Exhibit 9, copy of signed green certificate of receipt returned
14 by the Post Office.)

15 13. On April 22, 2020, Courtesy Notice of Default was served upon Respondent at
16 Respondent's address of record, which was and is 265 Lafayette Avenue, Hayward, CA 94544.
17 The Courtesy Notice of Default provided Respondent with a copy of the First Amended
18 Accusation and the Accusation Packet, which included, the Supplemental Statement to
19 Respondent, a Notice of Defense, Request for Discovery, Government Code sections 11507.5,
20 11507.6, and 11507.7, and advised Respondent that he was in default. (Exhibit Package, Exhibit
21 10, copy of the Courtesy Notice of Default and Declaration of Service.)

22 14. On April 28, 2019, the signed green certificate of receipt from the Courtesy Notice of
23 Default was received at the California Department of Justice in San Francisco. (Exhibit Package,
24 Exhibit 11, copy signed green certificate of receipt returned by the Post Office.)

25 15. Respondent failed to file a Notice of Defense within 15 days after service upon him
26 of the Accusation, and the First Amended Accusation and therefore waived his right to a hearing
27 on the merits of Accusation No. 1A-2019-169.

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1 Professions Code sections 4955 (b), (d) and (i), and California Code of Regulations, title 16,
2 section 1399.469.2.

3 23. A copy of the First Amended Accusation and the related documents and Declaration
4 of Service are attached.

5 24. The agency has jurisdiction to adjudicate this case by default.

6 25. Pursuant to its authority under Government Code section 11520, the Board finds
7 Respondent is in default. The Board will take action without further hearing and, based on
8 Respondent's express admissions by way of default and the evidence before it, contained in the
9 Exhibit Package, finds that the allegations in Accusation No. 1A-2019-169 are true:

10 A. On or about September 27, 2019, Respondent was arrested by agents of the
11 Federal Bureau of Investigation.

12 B. Respondent failed to inform the Board of this arrest.

13 C. On November 6, 2019, the United States Attorney's Office, United States
14 Department of Justice, filed an information against Respondent, alleging that Respondent violated
15 18 U.S.C. section 951 – Acting as an Agent of a Foreign Government Without Notice to the
16 Attorney General.

17 D. Specifically, the information accused Respondent of providing, on at least four
18 occasions, classified information related to the security of the United States of America to agents
19 of the Ministry of State Security (MSS) of the People's Republic of China, without authorization
20 from the government of the United States of America. These actions are alleged to have occurred
21 between June 13, 2015, and July 2, 2018.

22 E. Respondent failed to inform the Board that the information had been filed
23 against him.

24 F. On March 17, 2020, Respondent was convicted in the United States District
25 Court, Northern District of California, Case No. CR19-00589-001 HSG, of violating 18 U.S.C
26 section 951, Acting as a Foreign Agent Without Notification, a felony.

27 26. The Acupuncture Board is authorized to revoke Respondent's Acupuncturist License
28 based upon the above-referenced violations alleged in the First Amended Accusation.

1 27. Pursuant to the Business and Professions Code section 4959, the Board finds that the
2 costs of investigation and enforcement of the case prayed for in the First Amended Accusation
3 total \$7,635.00.

4 **ORDER**

5 IT IS SO ORDERED that Acupuncturist License No. AC 9392, heretofore issued to
6 Respondent Xue Hua Peng, is revoked. Respondent is ordered to pay \$7,635.00 in costs, payable
7 to the Acupuncture Board.

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

12 This Decision shall become effective on October 22, 2020.

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14 It is so ORDERED September 22, 2020

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16 Original Signature on File
17 ACUPUNCTURE BOARD
18 DEPARTMENT OF CONSUMER AFFAIRS
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