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APR 12 2012

ACUPUNCTURE BOARD

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

11
 12 In the Matter of the Accusation Against:

Case No. 1A-2011-103

13 **XIAO HONG QI, L.Ac.**
 14 **913 E. Vista Way**
Vista, CA 92084

ACCUSATION

15 **Acupuncturist License No. AC 11857**

16 Respondent.

17
 18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about October 16, 2007, the Acupuncture Board issued Acupuncturist License
 23 No. AC 11857 to Xiao Hong Qi, L.Ac. (Respondent). Acupuncturist License No. AC 11857 was
 24 in full force and effect at all times relevant to the charges brought herein and will expire on
 25 July 31, 2013, unless renewed.

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JURISDICTION

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

5 4. Section 4955 of the Code states, in pertinent part:

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

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

10 "...

11 "(b) Conviction of a crime substantially related to the qualifications,
12 functions, or duties of an acupuncturist, the record of conviction being conclusive
13 evidence thereof.

14 "..."

15 5. Section 4959 of the Code states:

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

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

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

1 of enforcement shall be in addition to any other rights the board may have as to
2 any licensee directed to pay costs.

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

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

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Conviction of Crimes)**

10 6. Respondent has subjected her Acupuncture License No. 11857 to disciplinary action
11 under section 4955, as defined by section 4955, subdivision (b), of the Code, in that she has been
12 convicted of crimes substantially related to the qualifications, functions or duties of an
13 acupuncturist, as more particularly alleged hereinafter:

14 7. On or about June 15, 2011, Respondent was cited for misdemeanor violations of the
15 following City of Vista Municipal Codes:

16 (a) Count 1: Section 5.56.190 of the Vista Municipal Code, unlawful advertising;

17 (b) Count 2: Section 5.56.070, subdivision (B), of the Vista Municipal Code, unlicensed
18 massage;

19 (c) Count 3: Section 5.56.170, subdivision (P), of the Vista Municipal Code, unlawful
20 massage, unlawful and intentional touching of the client’s genitals;

21 (d) Count 4: Section 5.56.070, subdivision (D), of the Vista Municipal Code, no display
22 of license information;

23 (e) Count 5: Section 5.56.070, subdivision (X), of the Vista Municipal Code, no written
24 customer record;

25 (f) Count 6: Section 5.56.070, subdivision (F), of the Vista Municipal Code, no list of
26 services available; and

27 (g) Count 7: Section 5.56.070, subdivision (A), of the Vista Municipal Code,
28 responsibility for massage therapists on premises.

1 8. Count 8: On or about November 4, 2011, Respondent was additionally cited for a
2 second misdemeanor violation of Section 5.56.190 of the Vista Municipal Code, unlawful
3 advertisement of massage services without including a massage therapy permit number.

4 9. On or about November 4, 2011, in the Superior Court of California, County of San
5 Diego, in the case entitled, *The People vs. Xiao Hong Qi*, Case No. CN 296138, Respondent pled
6 guilty to and was convicted of two misdemeanors:

7 (a) Count 3, violation of Section 5.56.190 subdivision (P), of the Vista Municipal Code,
8 unlawful massage, unlawful and intentional touching of the client's genitals; and

9 (b) Count 8, violation of Section 5.56.190 of the Vista Municipal Code, unlawful
10 advertisement of massage services without including a massage therapy permit number.

11 (c) Counts 1, 2, 4, 5, 6 and 7 were dismissed.

12 10. On or about November 4, 2011, Respondent was placed on probation for three years,
13 and ordered to pay fines of \$500 each for counts 3 and 8. In addition, Respondent was ordered
14 not to operate any type of massage business in the City of Vista, among other probationary terms.

15 FACTORS IN AGGRAVATION

16 11. To determine the degree of discipline, if any, to be imposed on Respondent,
17 Complainant alleges that on April 26, 2011, Respondent was issued a Citation by the Board,
18 under Code Section 4955, for acts of unprofessional conduct that arose under the following facts
19 and circumstances:

20 Conviction of Infraction on October 16, 2008

21 12. On or about October 26, 2007, in response to an investigation by an Anaheim
22 Enforcement Officer, Respondent agreed to perform a 30 minute massage in consideration of
23 payment of \$40, in a facility holding a business license as an acupuncture clinic, but which was
24 without acupuncture supplies and was functioning as an unlicensed massage parlor.

25 13. On or about October 26, 2007, Respondent was charged with:

26 (a) One violation of Anaheim Municipal Code Section 4.29.030, the operator's license
27 requirement;

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1 (b) One violation of Anaheim Municipal Code Section 4.29.060, the massage technician
2 permit requirement; and

3 (c) One infraction of Anaheim Municipal Code section 3.04.050, the business license
4 requirement.

5 14. On or about October 16, 2008, Respondent pled guilty to and was convicted of one
6 infraction of Anaheim Municipal Code Section 3.04.050, a violation of the business license
7 requirement.

8 Conviction of Misdemeanor on July 2, 2009

9 15. On or about January 16, 2009, a follow up investigation was performed after an
10 Anaheim Enforcement officer found an inappropriate advertisement for massage at the location at
11 which Respondent was cited on October 26, 2007. Respondent again agreed to perform a 30
12 minute massage for the Enforcement Officer in consideration of payment of \$40. Upon
13 investigation, the Enforcement Officer found that the same municipal code violations cited on
14 October 26, 2007, still existed on January 16, 2009.

15 16. On or about January 16, 2009, Respondent was charged with:

16 (a) One violation of Anaheim Municipal Code Section 4.29.030, the operator's license
17 requirement;

18 (b) One violation of Anaheim Municipal Code Section 4.29.060, the massage technician
19 permit requirement; and

20 (c) One infraction of Anaheim Municipal Code Section 3.04.050, the business license
21 requirement.

22 17. On or about July 9, 2009, Respondent pled guilty to and was convicted of a
23 misdemeanor violation of Anaheim Municipal Code Section 4.29.060, the massage technician
24 permit requirement.

25 Employment as an acupuncturist for unlicensed person

26 18. On or about January 16, 2009, Respondent committed an act of unprofessional
27 conduct by being engaged as an independent contractor acupuncturist for the business of an
28 unlicensed person.

1 Failure to register address of employment with Board

2 19. On or about January 16, 2009, Respondent committed an act of unprofessional
3 conduct in that she failed to register her business address for her employment as an acupuncturist
4 as independent contractor with the Board.

5 **PRAYER**

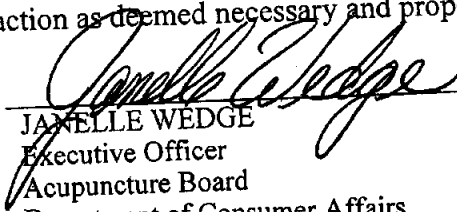
6 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
7 and that following the hearing, the Acupuncture Board issue a decision:

8 1. Revoking or suspending Acupuncturist No. AC 11857, issued to Respondent Xiao
9 Hong Qi, L.Ac.

10 2. Ordering Respondent Xiao Hong Qi, L.Ac. to pay the Acupuncture Board the
11 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
12 Professions Code section 4959;

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

14 DATED: **APR 12 2012**


15 JANELLE WEDGE
16 Executive Officer
17 Acupuncture Board
18 Department of Consumer Affairs
19 State of California
20 Complainant

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