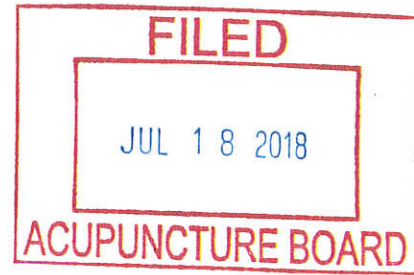


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10 **BEFORE THE**
11 **ACUPUNCTURE BOARD**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Statement of Issues Against:

Case No. 1A-2017-266

14 **LIJIN DENG**
15 2929 N. MACARTHUR DR., SPACE 30
16 TRACY, CA 95376

STATEMENT OF ISSUES

17 Applicant.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Benjamin Bodea ("Complainant") brings this Statement of Issues solely in his official
22 capacity as the Executive Officer of the Acupuncture Board of California ("Board"), Department
23 of Consumer Affairs.

24 2. On or about May 21, 2018, the Acupuncture Board, Department of Consumer Affairs
25 received an application for an Acupuncturist License from Lijin Deng ("Applicant"). On or about
26 May 19, 2018, Applicant certified under penalty of perjury to the truthfulness of all statements,
27 answers, and representations in the application. The Board denied the application on June 6,
28 2018.

JURISDICTION

1
2 3. This Statement of Issues is brought before the Board, under the authority of the
3 following laws. All section references are to the Business and Professions Code (“Code”) unless
4 otherwise indicated.

5 4. Section 480 of the Code states:

6 “(a) A board may deny a license regulated by this code on the grounds that the applicant has
7 done one of the following:

8 “... ”

9 “(3)(A) Done any act that if done by licentiate of the business or profession in question,
10 would be grounds for suspension or revocation of license.

11 “(B) The board may deny a license pursuant to this subdivision only if the crime or act is
12 substantially related to the qualifications, functions, or duties of the business or profession for
13 which application is made.

14 “... ”

15 5. Section 4928 of the Code states:

16 “The Acupuncture Board, which consists of seven members, shall enforce and administer
17 this chapter.”

18 6. Section 4938 of the Code states:

19 “The board shall issue a license to practice acupuncture to any person who makes an
20 application and meets the following requirements:

21 “... ”

22 “(4) Is not subject to denial pursuant to Division 1.5 (commencing with Section 475).

23 “... ”

24 7. Section 4944 of the Code states:

25 “The board shall have the authority to investigate and evaluate each and every applicant
26 applying for a license to practice acupuncture and to make the final determination of the
27 admission of the applicant to the examination, or for the issuance of a license, in conformance
28 with the provisions of this chapter.

1 “...”

2 8. Section 4955 of the Code states:

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

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

6 “...”

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

10 “(i) Any action or conduct that would have warranted the denial of the acupuncture
11 license.

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

17 “...”

18 **FIRST CAUSE FOR DENIAL OF APPLICATION**

19 (Unprofessional Conduct)

20 9. Applicant’s application is subject to denial under sections 480, and 4955 subdivisions
21 (i) and (j) in that she committed unprofessional conduct substantially related to the practice of
22 acupuncture by failing to follow the law and local business ordinances while owning and
23 operating a massage parlor. The circumstances are as follows:

24 2013 Inspection

25 10. On or about July 25, 2013, Officers from Santa Clara Police Department (“SCPD”)
26 conducted an inspection of a massage parlor called “Shelly Spa.” The business was operating
27 under a massage permit from the SCPD under the name of “Skin Care & Wellness” and was
28 owned by Applicant. “Shelly Spa” was on Applicant’s business license with the city of Santa

1 Clara. Tenants in the area near “Shelly Spa” had made complaints to the city that the massage
2 parlor was frequented by an all male clientele and that the customers came in out of the
3 establishment at all hours of the day.

4 11. During the inspection, SCPD Officers entered the location and observed that three of
5 the four massage rooms were occupied by male patrons. Four massage employees were on site.
6 Applicant was not on site. Two of the male patrons, who were laying face up, were observed by
7 SCPD Officers to have their genitals exposed and were covered by small towels during the
8 inspection. During the inspection, SCPD Officers noted that one of the massage employees did
9 not possess a State of California Massage Therapy Council (MTC) permit, and the other three
10 massage employees had not notified the State of California that they were working at the “Shelly
11 Spa” location in violation of state regulations.

12 12. SCPD Officers cited Applicant, the registered owner of “Shelly Spa,” for not having a
13 list of services posted in a public place in violation of Santa Clara Municipal Code (“SCMC”)
14 5.40.070(d), not having the permits of the four massage employees displayed in a public place in
15 violation of SCMC 5.40.030(e), not have a written list of patrons and services rendered available
16 in violation of SCMC 5.40.030(f), having two customers with their genitals exposed in violation
17 of SCMC 5.40.030(n), and having an employee providing massage to a customer who did not
18 have a valid permit from the State of California in violation of SCMC 5.40.030(r).

19 13. On December 4, 2013, an administrative hearing was held before the City of Santa
20 Clara regarding the citations issued on July 25, 2013, in a case entitled, *In the matter of Linjin*
21 *Deng*, Citation Nos. 16626 and 16627. The administrative hearing officer found true that
22 Applicant had not had a list of services posted in a public place in violation of SCMC
23 5.40.070(d), had not had the MTC permits of the four massage employees displayed in a public
24 place in violation of SCMC 5.40.030(e), had not had a written list of patrons and services
25 rendered available in violation of SCMC 5.40.030(f), and had two of her customers with their
26 genitals exposed in violation of SCMC 5.40.030(n) during the inspection. The administrative
27 hearing officer did not find true that she violated SCMC 5.40.030(r), employment of an
28 unpermitted therapist, and did not find that the city had proven that “Shelly Spa” employees had

1 engaged in prostitution. The administrative hearing officer imposed a penalty of \$1,514.50.
2 Applicant did not appeal the decision. The administrative decision was final on December 23,
3 2013.

4 2015 Inspection

5 14. On or about July 14, 2015, SCPD Officers verified that “Shelly Spa” did not have a
6 valid Business Tax License. In addition, SCPD Officers learned that Applicant’s state massage
7 therapist certificate was not valid and there were no other massage therapists registered to the
8 business after checking with the MTC. SCPD Officers conducted an inspection on “Shelly Spa.”

9 15. Immediately upon arrival, Officers were met by Applicant. Officers informed
10 Applicant that her MTC was expired and that she did not have a valid tax license with the City of
11 Santa Clara. SCPD Officers contacted two massage therapists who were working for Applicant
12 on site. Neither massage therapist employee had their MTC permits publically displayed and
13 neither had registered with the city before starting employment at the massage parlor. In addition,
14 an open bottle of Patron XO Café Liqueur was found in the establishment. Finally, during the
15 inspection the SCPD Officers found an incomplete client ledger that appeared to be missing
16 legally required information.

17 16. SCPD Officers cited Applicant for failing to have a Business Tax License in violation
18 of SCMC 5.40.040, failing to have a valid MTC certificate in violation of SCMC 5.40.030, five
19 violations of failing to notify the SCPD of new massage therapists in violation of SCMC
20 5.40.140, five violations of failing to provide SCPD with MTC Certificates in violation of SCMC
21 5.40.200, a violation for having an open container of alcohol in violation of SCMC 5.40.070(k), a
22 violation for not having a complete patron and services ledger in violation of SCMC 5.040.070(f),
23 and five violations for failing to post MTC Certificates in a public place.

24 17. On October 7, 2015, an administrative hearing was held before the City of Santa
25 Clara regarding the citations issued on July 14, 2015, in a case entitled, *In the matter of Lijin*
26 *Deng*, Citation No. 21553. The administrative hearing officer found true that Applicant was in
27 violation of SCMC 5.40.030 for not having a valid MTC certificate, had committed one violation
28 of SCMC 5.40.140 for failure to notify SCPD, had committed three violations of SCMC 5.40.200

1 for not providing SCPD with MTC certificates, had committed a violation of SCMC 5.40.070(k)
2 for having an open container of alcohol, had committed a violation of SCMC 5.40.070(f) for not
3 have a complete ledger of customers, and had committed three violations of SCMC 5.40.070(c),
4 for not posting MTC certificates in a public place. All other allegations were dismissed. The
5 administrative hearing officer imposed a penalty of \$6,525.39. Applicant did not appeal the
6 decision. The decision was final on October 23, 2015.

7 18. Therefore, Applicant's application is subject to denial based on her commission of
8 acts that would be grounds for discipline as a licensed acupuncturist, in particular working in a
9 regulated industry without proper licensure and for violating local laws and ordinances by failing
10 to ensure that the business and employees were meeting local statutory requirements.

11 SECOND CAUSE FOR DENIAL OF APPLICATION

12 (Denial of Reapplication for California Massage Therapy Council Certificate)

13 19. Applicant's application is subject to denial under sections 480, and 4955, subdivision
14 (h), of the Code in that the California Massage Therapy Council ("MTC") denied Applicant's
15 reapplication for a MTC certificate on or about August 22, 2016. The circumstances are as
16 follows:

17 20. August 25, 2015, the MTC issued a Proposed Denial of Application for
18 Recertification of Applicant's MTC certificate. On September 24, 2015, a telephonic hearing was
19 conducted before the MTC. MTC took action to deny Applicant's application for recertification
20 of Applicant's MTC certificate because of the outcome of the 2013 inspection which led to the
21 upholding of the citations and the administration of fines.

22 21. In its June 22, 2016, findings, the MTC found that Applicant had been held liable in
23 an administrative proceeding for engaging in acts that are substantially related to the
24 qualifications, functions, and duties of a certificate holder. The MTC found that Applicant had
25 engaged in unprofessional conduct and fraudulent, dishonest, or corrupt acts for not complying
26 with local laws, rules, and regulations governing Applicant's profession. The MTC also found
27 that Applicant failed to notify MTC of the 2013 citations as required by rules and bylaws. MTC
28

1 is a statewide agency that provides certification for massage therapists in the state of California
2 pursuant to Business and Professions Code section 4600, *et. al.*

3 22. In its June 22, 2016, findings, MTC found that Applicant had not presented sufficient
4 evidence of rehabilitation to qualify for recertification. The MTC found that Applicant failed to
5 acknowledge wrongdoing and express remorse. The denial of Applicant's applicant for
6 recertification was made effective October 15, 2015, and the decision was made final.


7 23. Therefore, Applicant's application is subject to denial based on her commission of
8 acts that would be grounds for discipline as a licensed acupuncturist, in particular having a
9 statewide agency take disciplinary action against her MTC certificate that is substantially related
10 to the practice of a massage therapist.

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. Denying the application of Lijin Deng to be a Licensed Acupuncturist;
15 2. Taking such other and further action as deemed necessary and proper.

16
17 DATED: **JUL 18 2018**


18 **BENJAMIN BODEA**
19 Executive Officer
20 Acupuncture Board
21 Department of Consumer Affairs
22 State of California
23 *Complainant*

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