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ACUPUNCTURE BOARD

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**BEFORE THE
 ACUPUNCTURE BOARD
 DEPARTMENT OF CONSUMER AFFAIRS
 STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1A-2010-211

JIAJIE WANG, L.Ac.

ACCUSATION

10728 Ramona Boulevard #E
 El Monte, California 91731

Acupuncture License number AC 5271,
 Respondent.

Complainant alleges:

PARTIES

1. Terri Thorfinnson (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the California Acupuncture Board (Board).
2. On or about September 6, 1995, the Board issued Acupuncture license number AC 5271 to Jiajie Wang (Respondent). That license was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2014, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

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

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

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

5 "(a) Using or possessing any controlled substance as defined in Division 10
6 (commencing with Section 11000) of the Health and Safety Code, or dangerous drug
7 or alcoholic beverage to an extent or in a manner dangerous to himself or herself, or
8 to any other person, or to the public, and to an extent that the use impairs his or her
9 ability to engage in the practice of acupuncture with safety to the public.

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

13 "..."

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

17 "..."

18 "(i) Any action or conduct that would have warranted the denial of the
19 acupuncture license.

20 "..."

21 5. Section 4955.1 of the Code states:

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

1 " ...

2 " ... "

3 6. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
4 administrative law judge to direct a licentiate found to have committed a violation or violations of
5 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
6 enforcement of the case.

7 7. Section 141 of the Code states:

8 "(a) For any licensee holding a license issued by a board under the jurisdiction of the
9 department, a disciplinary action taken by another state, by any agency of the federal government,
10 or by another country for any act substantially related to the practice regulated by the California
11 license, may be a ground for disciplinary action by the respective state licensing board. A
12 certified copy of the record of the disciplinary action taken against the licensee by another state,
13 an agency of the federal government, or another country shall be conclusive evidence of the
14 events related therein.

15 "(b) Nothing in this section shall preclude a board from applying a specific statutory
16 provision in the licensing act administered by that board that provides for discipline based upon a
17 disciplinary action taken against the licensee by another state, an agency of the federal
18 government, or another country."

19 8. Section 477 of the Code states:

20 As used in this division:

21 "(a) 'Board' includes 'bureau,' 'commission,' 'committee,' 'department,' 'division,'
22 'examining committee,' 'program,' and 'agency.'

23 "(b) 'License' includes certificate, registration or other means to engage in a
24 business or profession regulated by this code."

25 9. Section 490 of the Code states:

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

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

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

13 "(d) The Legislature hereby finds and declares that the application of this section has been
14 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
15 554, and that the holding in that case has placed a significant number of statutes and regulations
16 in question, resulting in potential harm to the consumers of California from licensees who have
17 been convicted of crimes. Therefore, the Legislature finds and declares that this section
18 establishes an independent basis for a board to impose discipline upon a licensee, and that the
19 amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not
20 constitute a change to, but rather are declaratory of, existing law."

21 10. Section 493 of the Code states:

22 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
23 the department pursuant to law to deny an application for a license or to suspend or revoke a
24 license or otherwise take disciplinary action against a person who holds a license, upon the
25 ground that the applicant or the licensee has been convicted of a crime substantially related to the
26 qualifications, functions, and duties of the licensee in question, the record of conviction of the
27 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
28 and the board may inquire into the circumstances surrounding the commission of the crime in

1 order to fix the degree of discipline or to determine if the conviction is substantially related to the
2 qualifications, functions, and duties of the licensee in question.

3 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
4 'registration.'"

5 11. Section 490 of the Code provides, in pertinent part, that a board may suspend or
6 revoke a license on the ground that the licensee has been convicted of a crime substantially
7 related to the qualifications, functions, or duties of the business or profession for which the
8 license was issued.

9 12. Section 32 of the California Penal Code states:

10 Every person who, after a felony has been committed, harbors, conceals or aids a principal
11 in such felony, with the intent that said principal may avoid or escape from arrest, trial, conviction
12 or punishment, having knowledge that said principal has committed such felony or has been
13 charged with such felony or convicted thereof, is an accessory to such felony.

14 13. Section 19701(a) of the California Revenue and Taxation Code states, in pertinent
15 part:

16 "Any person who does any of the following is liable for a penalty of not more than five
17 thousand dollars (\$5,000):

18 "(a) With or without intent to evade any requirement of Part 10 (commencing with
19 Section 17001), Part 11 (commencing with Section 23001), or this part or any lawful requirement
20 of the Franchise Tax Board, repeatedly over a period of two years or more, fails to file any return
21 or to supply any information required, or who, with or without that intent, makes, renders, signs,
22 or verifies any false or fraudulent return or statement, or supplies any false or fraudulent
23 information, resulting in an estimated delinquent tax liability of at least fifteen thousand dollars
24 (\$15,000)."

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FIRST CAUSE FOR DISCIPLINE

(Conviction of a Substantially Related Crime)

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3 12. Respondent is subject to disciplinary action under section 4955(b) and 490 of the
4 Code in that he was convicted of a crime substantially related to the qualifications, functions, or
5 duties of an acupuncturist. The circumstances are as follows:

6 13. Respondent is subject to disciplinary action under sections 4955 (b) and 490 of the
7 Code in that he was convicted of a crime which is substantially related to the qualifications,
8 functions and duties of his license. On or about May 26, 2011, in proceedings entitled *People of*
9 *the State of California v. Jiajie Wang*, case number KA085268, in the Superior Court of
10 California, County of Los Angeles, Respondent was convicted upon his plea of *nolo contendere*
11 to two misdemeanor violations of law as alleged in the First Amended Information as follows: in
12 Count 7, a violation of Penal Code section 32, to wit; being a person who, after a felony has been
13 committed, harbors, conceals or aids a principal in such felony, with the intent that said principal
14 may avoid or escape from arrest, trial, conviction or punishment, having knowledge that said
15 principal has committed such felony or has been charged with such felony or convicted thereof, is
16 an accessory to such felony, commonly known as being an accessory, and in Count 8, to a
17 violation of Section 19701(a) of the California Revenue and Taxation Code, to wit, being a
18 person who, without intent to evade any requirement of Part 10.2 of the Revenue and Taxation
19 Code, failed to supply information required for a California S Corporation Franchise or Income
20 Tax Return for the 2005 tax year, in violation of section 19701, subdivision (a) of the Revenue
21 and Taxation Code.

22 As part of the plea agreement above Respondent stipulated that there was a factual basis for
23 his *nolo contendere* plea. Following the Respondent's plea as stated above the Court dismissed
24 the remaining counts in the interests of justice.

25 On or about May 26, 2011, as a result of his plea, the Superior Court sentenced Respondent
26 to three years probation, assorted fines and assessments, and various other terms and conditions
27 of probation, including an order that Respondent make restitution to the Medi-Cal program in the
28 amount of \$9,500, and to the Franchise Tax Board in the amount of \$59,552.

1 The circumstances underlying Respondent's *nolo contendere* plea and sentence as stated
2 above are as follows:

3 14. On or about August 2008, through December 2008, two investigators from the State
4 of California, Department of Justice, who were assigned to the Bureau of Medi-Cal Fraud and
5 Elder Abuse Section, conducted an investigation regarding a complaint from the California
6 Department of Health Care Services which alleged that Respondent had been billing Medi-Cal for
7 acupuncture services which Respondent had not performed.

8 15. During the course of the investigation, the investigators interviewed people who had
9 been identified as patients by Respondent in his Medi-Cal billing. Many of those denied knowing
10 or receiving acupuncture treatments from Respondent at any of the three clinics at which
11 Respondent allegedly worked. In addition, investigators also served a search warrant at one of
12 the clinics at which Respondent allegedly practiced acupuncture. During the service of the search
13 warrant certain digital evidence containing Respondent's fraudulent billing information was
14 obtained.

15 16. As a result of the evidence obtained during the investigation Respondent was charged
16 with a series of criminal law violations as felonies in the First Amended Information in
17 proceedings entitled *People of the State of California v. Jiajie Wang*, case number KA085268,
18 including the two counts he pled *nolo contendere* to as previously stated in paragraph 13 above.

19 SECOND CAUSE FOR DISCIPLINE

20 (Commission of Acts Involving Dishonesty or Corruption)

21 17. Respondent is subject to disciplinary action under section 4955.1(c) and 490 of the
22 Code in that he was convicted of a crime substantially related to the qualifications, functions, or
23 duties of an acupuncturist. The circumstances are as follows:

24 18. Respondent is subject to disciplinary action under section 4955.1(c) and 490 of the
25 Code, in that he illegally participated in billing Medi-Cal for acupuncture services he failed to
26 provide, and further failed to supply accurate financial information as required by the State of
27 California Revenue and Taxation Code, as alleged in paragraphs 13 through 15, above.

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DISCIPLINE CONSIDERATIONS

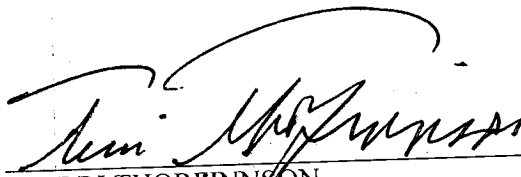
22. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges the facts and circumstances in paragraphs 14 through 19 as incorporated by reference as if set forth in full herein.

PRAYER

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

1. Revoking or suspending Acupuncture License number AC 5271, issued to Jiajie Wang;
2. Ordering him to pay the Acupuncture Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 4959;
3. If placed on probation, ordering him to pay to the Acupuncture the costs of probation monitoring;
4. Taking such other and further action as deemed necessary and proper.

DATED: 2/8/13



TERRI THORFINNSON
Executive Officer
Acupuncture Board
Department of Consumer Affairs
State of California

Complainant

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