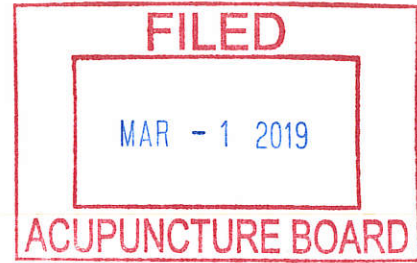


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8 **BEFORE THE**
9 **ACUPUNCTURE BOARD**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 1A-2016-274

13 **XIU PING QI**

14 **1072 S. De Anza Blvd #A108**
15 **San Jose, CA 95129**

A C C U S A T I O N

16 **Acupuncture License No. AC 8226**

17 Respondent.
18

19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about March 14, 2002, the Acupuncture Board (Board) issued Acupuncture
24 License Number AC 8226 to Xiu Ping Qi (Respondent). The Acupuncture License was in full
25 force and effect at all times relevant to the charges brought herein and will expire on March 31,
26 2019, unless renewed.
27
28

JURISDICTION

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

4. Section 4955 of the Code states:

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

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

“...”

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

“...”

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

“...”

5. Section 4955.1 of the Code states:

“The board may deny, suspend, revoke, or impose probationary conditions upon the license of any acupuncturist if he or she is guilty of committing a fraudulent act including, but not be limited to, any of the following:

“...”

“(b) Committing a fraudulent or dishonest act as an acupuncturist.

“(c) Committing any act involving dishonesty or corruption with respect to the qualifications, functions, or duties of an acupuncturist.

“...”

6. California Code of Regulations, title 16, section 1399.469.2 states:

“In addition to the conduct described in Section 4955 of the Business and Professions Code, ‘unprofessional conduct’ also includes but is not limited to the following:

“...”

1 “(d) Failure to report to the board within 30 days any of the following:

2 “ (1) The bringing of an indictment or information charging a felony against the
3 licensee.

4 “...”

5 “(3) The conviction of the licensee, including any verdict of guilty, or pleas of
6 guilty or no contest, of any felony or misdemeanor.

7 **COST RECOVERY**

8 7. Section 4959 of the Code states:

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

13 “(b) The costs to be assessed shall be fixed by the administrative law judge and shall not in
14 any event be increased by the board. When the board does not adopt a proposed decision and
15 remands the case to an administrative law judge, the administrative law judge shall not increase
16 the amount of any costs assessed in the proposed decision.

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

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

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

25

26 ///

27 ///

28 ///

1 **FIRST CAUSE FOR DISCIPLINE**

2 (Unprofessional Conduct: Conviction of a Crime, Dishonesty, and Failure to Report)

3 8. Respondent is subject to disciplinary action under Code sections 4955 (criminal
4 conviction) and 4955.1 (dishonesty) in that on or about May 31, 2016, a felony Criminal
5 Complaint was filed against Respondent in the Santa Clara Superior Court in the State of
6 California, in the matter of *People v. Xiu Ping Qi*, Case No. 160512689, alleging nine (9) counts
7 of felony healthcare fraud, in violation of Penal Code section 550(a)(6). The circumstances are as
8 follows:

- 9 a. On or about August 2014, the Santa Clara District Attorney’s Office initiated an
10 investigation of possible medical insurance fraud at Respondent’s business *Better*
11 *Health Clinic*, located at 1072 S. De Anza Blvd., #108, San Jose, California.
- 12 b. On or about April 16, 2016, an undercover operation was conducted at *Better Health*
13 *Clinic*. An undercover agent contacted Respondent at *Better Health* for a massage
14 appointment. Respondent obtained insurance information from the undercover agent to
15 determine if the undercover agent’s insurance would cover acupuncture even though the
16 undercover agent informed she wanted a massage and not acupuncture services.
17 Respondent explained that insurance billing would show acupuncture because massage
18 was not covered. The undercover agent received a one-hour massage and was not
19 charged for the massage service. The undercover agent returned on or about May 5,
20 2015 and received a massage that Respondent billed as acupuncture service.
21 Investigators later obtained the insurance billings for the above two dates of undercover
22 operation and confirmed Respondent billed the two massages as acupuncture services
23 and received payment for acupuncture services.
- 24 c. On or about September 25, 2018, Respondent was convicted of two felony counts of
25 healthcare fraud, in violation of Penal Code section 550(a)(6). Respondent was
26 sentenced by the court to three (3) years probation, under terms and conditions,
27 including 90 days in the county jail and 300 hours of community service.

1 d. Respondent did not report to the Board the filing of the felony Criminal Complaint or
2 the conviction if the two felony counts of healthcare fraud.


3 9. Respondent's criminal conviction for felony healthcare fraud is substantially related
4 to the qualifications, functions and duties of an acupuncturist, and constitutes unprofessional
5 conduct and cause for discipline pursuant to sections 4955 and 4955.1 of the Code.

6 10. Respondent's failure to report the filing of the felony Criminal Complaint or the
7 conviction of the two felony counts of healthcare fraud constitutes unprofessional conduct and
8 cause for discipline pursuant to section 4955 of the Code.

9
10 **PRAYER**

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

- 13 1. Revoking or suspending Acupuncture License Number AC 8226, issued to Xiu Ping
14 Qi.;
- 15 2. Ordering Xiu Ping Qi to pay the Acupuncture Board the reasonable costs of the
16 investigation and enforcement of this case, pursuant to Business and Professions Code section
17 4959; and,
- 18 3. Taking such other and further action as deemed necessary and proper.
- 19
20

21 DATED: **MAR 01 2019** 

22 _____
23 BENJAMIN BODEA
24 Executive Officer
25 Acupuncture Board
26 Department of Consumer Affairs
27 State of California
28 *Complainant*

SF2019200011