

1 XAVIER BECERRA  
Attorney General of California  
2 MARY CAIN-SIMON  
Supervising Deputy Attorney General  
3 CAROLYNE EVANS  
Deputy Attorney General  
4 State Bar No. 289206  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 510-3448  
6 Facsimile: (415) 703-5480  
*Attorneys for Complainant*



7  
8 **BEFORE THE**  
9 **ACUPUNCTURE BOARD**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:  
13 **DAVID LAU, AC**  
14 **1098 Foster City Blvd Ste 301**  
15 **Foster City, CA 94404-2375**  
16 **Acupuncture License No. AC 16170,**  
17 Respondent.

Case No. 1A-2017-188

**A C C U S A T I O N**

18  
19  
20  
21 Complainant alleges:

22 **PARTIES**

- 23 1. Benjamin Bodea (Complainant) brings this Accusation solely in his official capacity  
24 as the Executive Officer of the Acupuncture Board, Department of Consumer Affairs.
- 25 2. On or about September 25, 2014, the Acupuncture Board (Board) issued Acupuncture  
26 License Number AC 16170 to David Lau, AC (Respondent). The Acupuncture License was in  
27 full force and effect at all times relevant to the charges brought herein and will expire on August  
28 31, 2018, unless renewed.

## JURISDICTION

3. This Accusation is brought before the Acupuncture Board (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:

“ . . . ”

“(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 4955.2 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 any one of the following:

“(a) Gross negligence.

“(b) Repeated negligent acts.

“(c) Incompetence.”

6. California Code of Regulations, title 16, section 1399.451, states:

“In treating a patient, an acupuncturist shall adhere to the following procedures:

“ . . . ”

“(e) Any complication, including but not limited to, hematoma, peritonitis or pneumothorax arising out of acupuncture treatment shall be referred immediately to a physician or dentist or podiatrist, if appropriate, if immediate medical treatment is required.

“ . . . ”

1 **COST RECOVERY**

2 7. Section 4959 of the Code states:

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

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

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

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

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

22 **CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct, Gross Negligence, Repeated Negligence, and/or Incompetence)**

24 8. Respondent is subject to disciplinary action for unprofessional conduct under Code  
25 section 4955, and section 4955.2, including subsections (a) and/or (b) and/or (c) and Cal. Code  
26 Regs., title 16, section 1399.451, in that Respondent was grossly negligent, and/or repeatedly  
27 negligent, and/or incompetent in his care and treatment of Patient A. The circumstances are as  
28 follows:

1           9.     On or about May 2, 2015, Patient A<sup>1</sup> was a then twenty-seven-year-old male who  
2 sought treatment at ACULAU Acupuncture located in Foster City, California for the purpose of  
3 relieving back pain and shoulder pain. At this first session, Respondent performed acupuncture  
4 on Patient A. After Respondent placed the needle, Patient A complained of pain. Respondent  
5 responded that pain is good. After the first session, Respondent recommended further treatment.

6           10.    On May 21, 2015, at about 9:00 a.m., Patient saw Respondent for acupuncture  
7 treatment for pain in his left shoulder and pain between his upper back and right scapula.  
8 Respondent placed needles in Patient' A's upper back primarily between his spine and right  
9 shoulder blade and noted in the medical records that he placed needles at the following points: "SI  
10 14, SI 15, SJ 15, LI 16, Ashi point along the spine." The treatment took about 1 hour.

11          11.    On the same day, at about 12:00 p.m., Patient A called Respondent to inform him that  
12 he was feeling pain in his chest area and difficulty with breathing and speaking. At about 12:45  
13 p.m., Respondent returned Patient A's phone call and advised Patient A to sit down and take light  
14 breaths to see if the symptoms would subside. Respondent also offered to evaluate Patient A if he  
15 could present himself at the clinic in Foster City before 5:00 p.m. Patient A responded that he  
16 could not present himself because he had work obligations past 5:00 p.m. and worked 28 miles  
17 away.

18          12.    Between noon and 4:00 p.m., Patient A's symptoms got worse and he felt something  
19 wobbly in his lung as if something had detached. He also felt some bubbles during speech. At  
20 around 4:38 pm., Patient A called Respondent and told him that his symptoms were worse and  
21 described his symptoms. Patient A also told Respondent that he had researched his symptoms on  
22 the internet and was concerned that he may have an acupuncture induced pneumothorax  
23 (collapsed lung)<sup>2</sup>. Respondent told Patient A that he could not possibly have a pneumothorax, or  
24

---

25           <sup>1</sup> The patient is identified herein as Patient A to preserve confidentiality. Respondent  
26 knows the identity of Patient A.

27           <sup>2</sup> A pneumothorax, or a collapsed lung, is a potentially life threatening condition. A  
28 pneumothorax occurs when air leaks into the space between the lung and chest wall. A  
pneumothorax can be caused by a blunt or penetrating chest injury.

1 he would already have died. Respondent offered to evaluate Patient A if he could present himself  
2 at his clinic.

3 13. About 15 minutes later, Respondent phoned Patient A and told him that he had  
4 consulted with another acupuncturist at the clinic and now believed that Patient A could be  
5 suffering from acupuncture induced pneumothorax. Respondent told Patient A that he may have  
6 placed a needle too far into the lung area causing a piercing and advised that he come into the  
7 clinic or go to the emergency room.

8 14. About 12 hours after the acupuncture treatment, Patient A was transported to the  
9 emergency room at Stanford Hospital. Upon admission, Patient A was diagnosed with  
10 acupuncture-induced pneumothorax and hospitalized for treatment.

11 15. Respondent's overall conduct, acts, and/or omissions, with regard to Patient A,  
12 constitute unprofessional conduct through gross negligence and/or repeated acts of negligence  
13 and/or incompetence. More specifically, Respondent is guilty of unprofessional conduct as  
14 follows:

15 a. Respondent needled several dangerous points close to Patient A's lungs with extreme  
16 and undue force and at such a depth that he pierced the patient's lung;

17 b. Respondent failed to consider whether a distal acupuncture point should have been  
18 needled rather than an area near a vital organ;

19 c. Respondent failed to timely recognize the symptoms of possible pneumothorax, such  
20 as complaints of pain, difficulty breathing and speaking.

21 d. Respondent failed to advise Patient A to seek immediate emergency care for his  
22 symptoms. Even as Patient A's symptoms progressively worsened, Respondent's advice to return  
23 to the clinic later in the day for evaluation postponed much needed emergency care for a collapsed  
24 lung.

25  
26 **PRAYER**

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

- 1           1.    Revoking or suspending Acupuncture License Number AC 16170, issued to David  
2 Lau, AC.;
- 3           2.    Ordering David Lau, AC to pay the Acupuncture Board the reasonable costs of the  
4 investigation and enforcement of this case, pursuant to Business and Professions Code section  
5 4959; and,
- 6           3.    Taking such other and further action as deemed necessary and proper.
- 7  
8  
9

10 DATED:           **MAY 21 2018**          

  
\_\_\_\_\_  
BENJAMIN BODEA  
Executive Officer  
Acupuncture Board  
Department of Consumer Affairs  
State of California  
*Complainant*

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28