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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-2017-242

13 **DONALD C. HUGHES, L.AC.**  
14 **3817 Clarke Street**  
**Oakland CA 94609**

**ACCUSATION**

15 **Acupuncturist License No. AC 16694**

16 Respondent.

1 **PARTIES**

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

4 2. On or about June 12, 2015, the Acupuncture Board issued Acupuncturist License  
5 Number AC 16694 to DONALD C. HUGHES, L.Ac. (Respondent). The Acupuncturist License  
6 was in full force and effect at all times relevant to the charges brought herein and will expire on  
7 July 31, 2022, unless renewed.

8 **JURISDICTION**

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

12 4. Section 4955 of the Code states:

13 The board may deny, suspend, or revoke, or impose probationary conditions  
14 upon, the license of any acupuncturist who is guilty of unprofessional conduct.

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

16 (a) Using or possessing any controlled substance as defined in Division 10  
17 (commencing with Section 11000) of the Health and Safety Code, dangerous drug, or  
18 alcoholic beverage to an extent or in a manner dangerous to the acupuncturist, or to  
19 any other person, or to the public, and to an extent that the use impairs the  
20 acupuncturist's ability to engage in the practice of acupuncture with safety to the  
21 public.

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

25 (c) False or misleading advertising.

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

29 (e) Except for good cause, the knowing failure to protect patients by failing to  
30 follow infection control guidelines of the board, thereby risking transmission of  
31 blood-borne infectious diseases from licensee to patient, from patient to patient, and  
32 from patient to licensee. In administering this subdivision, the board shall consider  
33 referencing the standards, regulations, and guidelines of the State Department of  
34 Public Health developed pursuant to Section 1250.11 of the Health and Safety Code  
35 and the standards, regulations, and guidelines pursuant to the California Occupational  
36 Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5  
37 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other

1 blood-borne pathogens in health care settings. As necessary, the board shall consult  
2 with healing arts boards within this division, including, but not limited to, the Medical  
3 Board of California, the California Board of Podiatric Medicine, the Dental Board of  
California, the Board of Registered Nursing, and the Board of Vocational Nursing  
and Psychiatric Technicians, to encourage appropriate consistency in the  
implementation of this subdivision.

4 The board shall seek to ensure that licensees are informed of the responsibility  
5 of licensees and others to follow infection control guidelines, and of the most recent  
6 scientifically recognized safeguards for minimizing the risk of transmission of  
blood-borne infectious diseases.

7 (f) The use of threats or harassment against any patient or licensee for providing  
8 evidence in a disciplinary action, other legal action, or in an investigation  
contemplating a disciplinary action or other legal action.

9 (g) Discharging an employee primarily for attempting to comply with the terms  
10 of this chapter.

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

13 (i) Any action or conduct that would have warranted the denial of the  
14 acupuncture license.

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

17 (k) The abandonment of a patient by the licensee without written notice to the  
18 patient that treatment is to be discontinued and before the patient has had a reasonable  
opportunity to secure the services of another practitioner.

19 (l) the failure to notify the board of the use of any false, assumed, or fictitious  
20 name other than the name under which the licensee is licensed as an individual to  
practice acupuncture.

21 5. Section 4955.1 of the Code states:

22 The board may deny, suspend, revoke, or impose probationary conditions upon the  
23 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:

24 (a) Securing a license by fraud or deceit.

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

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

1 (d) Altering or modifying the medical record of any person, with fraudulent intent,  
or creating any false medical record.

2 (e) Failing to maintain adequate and accurate records relating to the provision of  
3 services to their patients.

4 6. Section 4955.2 of the Code states:

5 The board may deny, suspend, revoke, or impose probationary conditions upon the  
6 license of any acupuncturist if he or she is guilty of committing any one of the following:

7 (a) Gross negligence.

8 (b) Repeated negligent acts.

9 (c) Incompetence.

10 7. Section 4961 of the Code states:

11 (a) (1) Every person who is licensed to practice acupuncture in this state shall  
12 register, on forms prescribed by the board that may include an application for an  
initial license for renewal of a license, each place of practice.

13 (2) A wall license shall be renewed biennially, coinciding with the license  
14 renewal date. A licensee with a wall license issued before January 1, 2021, shall not  
15 be required to apply for a new wall license until the licensee's next license renewal  
date.

16 (3) If the licensee has no place of practice, the licensee shall notify the board of  
17 that fact on a form prescribed by the board. a wall license is not required to be posted  
18 when a licensee performs acupuncture treatments outside of the licensee's place of  
practice. However, the licensee shall carry a pocket license during treatments outside  
of the licensee's place of practice and make the pocket license available upon request.

19 (4) A licensee shall register each place of practice within 30 days after the date  
20 of the licensee being licensed by the board or the establishment of a new place of  
practice, whichever occurs first.

21 (b) (1) An acupuncturist licensee shall post wall license issued by the board to  
the licensee in practice at all times.

22 (2) If an acupuncturist has more than one place of practice, the licensee shall  
23 obtain from the board a separate wall license for each additional location and post the  
assigned wall license at each location.

24 (c) A licensed acupuncturist shall not display any acupuncture wall license that  
25 is not currently active and valid.

26 (d) (1) If a licensee changes the location of a place of practice, the licensee shall  
27 apply for the change of location within 30 days of changing the licensee's place of  
practice on forms prescribed by the board.

28 (2) If a licensee fails to apply for a new wall license with the board due to a  
change of location within the time prescribed by this subdivision, the board may deny

renewal of the license.

1 (e) (1) A wall license is nontransferable.

2 (2) Any change to the registered location in connection with the wall license,  
3 such as moving, requires a new wall license, and the former wall license shall be  
4 returned to the board with a request for cancellation.

5 (3) The licensee shall apply to the board to obtain a new wall license using the  
6 forms prescribed by the board for the new wall license or change of location.

7 (f) (1) An acupuncturist shall be responsible for the acupuncture, Asian  
8 massage services, or any other practice specified under Section 4937 rendered  
9 pursuant to the license of the acupuncturist in each place of practice maintained by  
10 the acupuncturist.

11 (2) An acupuncturist maintaining more than one place of practice shall ensure  
12 that each place of practice is in compliance with the standards of practice  
13 requirements of this chapter.

14 (3) The licensee shall apply to the board to obtain a new wall license using the  
15 forms prescribed by the board for the new wall license or change of location.

16 (f) (1) An acupuncturist shall be responsible for the acupuncture, Asian  
17 massage services, or any other practice specified under Section 4937 rendered  
18 pursuant to the license of the acupuncturist in each place of practice maintained by  
19 the acupuncturist.

20 (2) An acupuncturist maintaining more than one place of practice shall ensure  
21 that each place of practice is in compliance with the standards of practice  
22 requirements of this chapter.

23 (g) As used in this section:

24 (1) "Place of practice" means an acupuncture office where any act of  
25 acupuncture is practiced and includes a place of practice in which the applicant holds  
26 a proprietary interest of any nature whatsoever or in which the licensee holds any  
27 right to participate in the management or control thereof.

28 (2) "Wall license" means an official document that is issued by the board upon  
application for a place of practice and has a unique identification number that is  
specific to the location provided by the licensee in the application.

(h) This section shall become operative on January 1, 2021.

8. California Code of Regulations, title 16, section 1399.450 states:

(a) Every acupuncture office shall be maintained in a clean and sanitary  
condition at all times, and shall have a readily accessible bathroom facility in  
accordance with Title 24, Part 2, Building Standards Code Sections 494A.1 and 1994  
Uniform Building Code Section 2902.3.

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

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

1 (a) The acupuncturist's hands shall be brush-scrubbed with soap and warm water  
2 immediately before examining patients or handling acupuncture needles and other  
3 instruments, and between patients.

4 (b) All instruments shall be sterilized before and between uses in a manner which  
5 will destroy all microorganisms. All needle trays which contain sterile needles shall also be  
6 sterile. Each time instruments are sterilized, the acupuncturist shall use a tape or strip  
7 indicator which shows that sterilization is complete.

8 (c) Acupuncture points, where needles are to be inserted, shall be cleaned with an  
9 appropriate antiseptic before insertion of the needle.

10 (d) In the event an acupuncture needle inserted in a patient breaks subcutaneously,  
11 the treating acupuncturist shall immediately consult a physician. An acupuncturist shall not  
12 sever or penetrate the tissues in order to excise such a needle.

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

16 (f) Acupuncture shall not be performed using hypodermic needles.

17 (g) All instruments to be discarded shall be disposed of safely.

18 (h) Needles shall be disposed of by placing them in a sealed, unbreakable container  
19 marked "Hazardous Waste" and disposed of in accordance with state and local law.

20 10. California Code of Regulations, title 16, section 1399.453, states:

21 An acupuncturist shall keep complete and accurate records on each patient who  
22 is given acupuncture treatment, including progress made as a result of the  
23 acupuncture treatments.

### 24 COST RECOVERY

25 11. Section 4959 of the Code states:

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

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

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

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

4 (e) All costs recovered under this section shall be considered a reimbursement  
5 for costs incurred and shall be deposited in the Acupuncture Fund.

#### 6 **FACTUAL ALLEGATIONS**

7 12. Respondent provided acupuncture to Patient 1, a patient who sought treatment for her  
8 chronic skin conditions, in Humboldt County, CA on November 14, 2017, November 16, 2017,  
9 November 20, 2017, November 27, 2017, November 30, 2017, and December 5, 2017.<sup>1</sup> The first  
10 two visits took place at a public facility at which Respondent rented space for individual  
11 appointments and communal acupuncture sessions. Respondent did not obtain from Patient 1 a  
12 signed informed consent form disclosing the risks of acupuncture treatment and/or herbal  
13 prescriptions before beginning treatment for her. Respondent’s patient records for Patient 1 also  
14 do not reflect verbal discussion of the risks and/ or informed consent discussion. In addition, the  
15 records for Patient 1 do not show an initial evaluation, management procedure, progress notes on  
16 the condition treated, or information regarding discussing Patient 1’s positive or negative status  
17 for HIV and Hepatitis.

18 13. Respondent offered Patient 1 a discount (rate of \$30/ session) if she agreed to receive  
19 treatment in his home. The November 20, 2017, November 27, 2017, November 30, 2017, and  
20 December 5, 2017 visits took place in Respondent’s home. When she first met Respondent at his  
21 home for treatment, Patient 1 gave him \$200, which included advance payment for future  
22 sessions. Patient 1 did not receive all the acupuncture sessions that she paid for. However,  
23 Respondent did not reimburse Patient 1 for acupuncture sessions not performed, and  
24 Respondent’s records for Patient 1 do not indicate any intention and/or efforts to do so.  
25 Respondent also failed to provide Patient 1 with a receipt and/or invoices.

26 14. When he treated Patient 1, Respondent did not employ all the elements of the Clean  
27 Needle Treatment technique. In particular, Respondent failed to perform: proper hand sanitation;  
28 isolation of contaminated sharps, using a sharps container; and/or changing of sheet or table paper

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<sup>1</sup> The patient is referred to as “Patient 1” to protect privacy.

1 for each patient. In addition, Respondent's home acupuncture treatment location, which appeared  
2 to be his bedroom, was not maintained in a sufficiently clean and sanitary condition.

3 15. Respondent did not inform the Board of the addresses of at least three locations in  
4 which he was providing acupuncture treatment in 2017 and 2018. Respondent did not  
5 prominently display his acupuncture license in the places at which he gave acupuncture treatment  
6 to Patient 1.

7 16. In June 2018, Respondent contacted Patient 1 via text message after he learned that  
8 she complained to the Board regarding the treatment she received from him. Respondent told  
9 Patient 1 to "stand down" or else be subject to a "defamation of character" suit to be filed against  
10 her by him.

11 **FIRST CAUSE FOR DISCIPLINE**

12 (Unprofessional Conduct and/or Gross Negligence)

13 17. The allegations contained in paragraphs 12 to 16 are incorporated herein by reference.  
14 Respondent's certificate is subject to disciplinary action under sections 4955, subdivision (f)  
15 and/or 4955.2, subdivision (a) of the Code because Respondent contacted Patient 1 after learning  
16 she had complained to the Board about the treatment provided by him and threatened to file a  
17 lawsuit against her unless she "stood down."

18 **SECOND CAUSE FOR DISCIPLINE**

19 (Unprofessional Conduct and/or Gross Negligence)

20 18. The allegations contained in paragraphs 12 to 16 are incorporated herein by reference.  
21 Respondent's certificate is subject to disciplinary action under sections 4955 and/or 4955.1,  
22 subdivision (e) and/or 4955.2, subdivision (a) of the Code, and/or California Code of Regulations,  
23 title 16, section 1399.453 because Respondent failed to obtain and/or document the obtaining of  
24 proper informed consent from Patient 1 for the treatment provided to her.

25 **THIRD CAUSE FOR DISCIPLINE**

26 (Unprofessional Conduct and/or Gross Negligence)

27 19. The allegations contained in paragraphs 12 to 16 are incorporated herein by reference.  
28 Respondent's certificate is subject to disciplinary action under sections 4955 and/or 4955.1,



1 subdivision (e) and/or 4955.2, subdivision (a) of the Code, and/or California Code of Regulations,  
2 title 16, section 1399.453 because Respondent failed to keep complete and accurate records  
3 regarding the treatment he provided to Patient 1.

4 **FOURTH CAUSE FOR DISCIPLINE**

5 (Unprofessional Conduct and/or Gross Negligence)

6 20. The allegations contained in paragraphs 12 to 16 are incorporated herein by reference.  
7 Respondent's certificate is subject to disciplinary action under sections 4955 and/or 4955,  
8 subdivision (e) and/or 4955.2, subdivision (a) of the Code, and/or California Code of Regulations,  
9 title 16, section 1399.450 and/or California Code of Regulations, title 16, section 1399.451  
10 because Respondent failed to maintain clean and sanitary conditions while providing acupuncture  
11 treatment to Patient 1 and/or knowingly failed to follow the infection control guidelines of the  
12 Board.

13 **FIFTH CAUSE FOR DISCIPLINE**

14 (Unprofessional Conduct and/or Repeated Negligent Acts)

15 21. The allegations contained in paragraphs 12 to 16 are incorporated herein by reference.  
16 Respondent's certificate is subject to disciplinary action under sections 4955 and/or 4961,  
17 subdivision (b) and/or 4955.2, subdivision (b) because Respondent failed to display his  
18 acupuncture license in a noticeable location during all of Patient 1's visits.

19 **SIXTH CAUSE FOR DISCIPLINE**

20 (Unprofessional Conduct and/or Repeated Negligent Acts)

21 22. The allegations contained in paragraphs 12 to 16 are incorporated herein by reference.  
22 Respondent's certificate is subject to disciplinary action under sections 4955 and/or 4955.2,  
23 subdivision (b) because Respondent did not refund Patient 1 for the treatments she paid for but  
24 did not receive. In addition, the records for Patient 1 do not show that Respondent made any  
25 effort to refund Patient 1 for treatments she paid for but did not receive.

26 **SEVENTH CAUSE FOR DISCIPLINE**

27 (Unprofessional Conduct and/or Repeated Negligent Acts)

