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FILED

JUN 1 2011

ACUPUNCTURE BOARD

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

13 In the Matter of the Statement of Issues
14 Against:

Case No. 1A-2010-222

15 **ROD KENNETH ANDERSON**
16 **5470 Adams Avenue**
San Diego, CA 92115

STATEMENT OF ISSUES

17 Applicant.

18 Complainant alleges:

19 PARTIES

- 20 1. Janelle Wedge (Complainant) brings this Statement of Issues solely in her official
21 capacity as the Executive Officer of the Acupuncture Board, Department of Consumer Affairs.
- 22 2. On or about October 6, 2010, the Acupuncture Board, Department of Consumer
23 Affairs (the Board) received an application for examination and licensure as a California
24 acupuncturist (the application) from ROD KENNETH ANDERSON (Applicant). On or about
25 October 4, 2010, Applicant certified under penalty of perjury to the truthfulness of all statements,
26 answers and representations in the application.
- 27 3. On or about December 10, 2010, the Board learned of a prior criminal conviction of
28 Applicant which he had concealed in the application. On or about the same date, the Board sent a

1 letter to Applicant, advising him of this fact and requesting details of the prior criminal conviction
2 and a written explanation for its omission from the application.

3 4. On or about March 21, 2011, Applicant signed a supplementary application and again
4 certified under penalty of perjury to the truthfulness of all statements, answers and representations
5 in the application. The supplementary application was received by the Board on or about March
6 24, 2011.

7 5. The Board denied Applicant's application for licensure on April 25, 2011. On May 2,
8 2011, Applicant requested a hearing to contest said denial.

9 JURISDICTION

10 6. This Statement of Issues is brought before the Board under the authority of the
11 following laws. All section references are to the Business and Professions Code (Code) unless
12 otherwise indicated.

13 7. Section 4955 of the Code states:

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

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

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

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

24 "...

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

28 ///

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

3 “...”

4 8. Section 480 of the Code states:

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

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

14 “... ”

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

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

20 “... ”

21 “(c) A board may deny a license regulated by this code on the ground that the
22 applicant knowingly made a false statement of fact required to be revealed in the
23 application for the license.”

24 9. Section 4955.1 of the Code states:

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

28 “... ”

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

3 “...”

4 10. Section 4956 of the Code states:

5 “A plea or verdict of guilty or a conviction following a plea of nolo contendere made
6 to a charge which is substantially related to the qualifications, functions, or duties of an
7 acupuncturist is deemed to be a conviction within the meaning of this chapter.

8 “The board may order a license suspended or revoked, or may deny a license, or may
9 impose probationary conditions upon a license, when the time for appeal has elapsed, or the
10 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 allowing the person to withdraw his or her
13 pleas of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
14 dismissing the accusation, complaint, information, or indictment.”

15 11. Section 493 of the Code provides:

16 “Notwithstanding any other provision of law, in a proceeding conducted by a board
17 within the department pursuant to law to deny an application for a license or to suspend or
18 revoke a license or otherwise take disciplinary action against a person who holds a license,
19 upon the ground that the applicant or the licensee has been convicted of a crime
20 substantially related to the qualifications, functions, and duties of the licensee in question,
21 the record of conviction of the crime shall be conclusive evidence of the fact that the
22 conviction occurred, but only of that fact, and the board may inquire into the circumstances
23 surrounding the commission of the crime in order to fix the degree of discipline or to
24 determine if the conviction is substantially related to the qualifications, functions, and
25 duties of the licensee in question.

26 “...”

27 ///

28 ///

1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(Conviction of a Crime Substantially Related to the Practice of an Acupuncturist)**

3 12. Applicant's application is subject to denial under Code sections 4955, subdivision (b),
4 and 480, subdivisions (a)(1) and (a)(3)(B), in that he was convicted of a crime substantially
5 related to the qualifications, functions, and duties of an acupuncturist. The circumstances are as
6 follows:

7 a. On or about March 17, 1997, in a criminal proceeding entitled *The People of*
8 *the State of California v. Rod Kenneth Anderson*, Case Number SCD127792 in San Diego County
9 Superior Court, Applicant was charged with one count each of a violation of Health and Safety
10 Code sections 11378 (possession for sale of a controlled substance, to wit, methamphetamine¹),
11 11377, subdivision (a) (possession of a controlled substance, to wit, methamphetamine), and
12 11364 (possession of paraphernalia used for narcotics). On March 26, 1997, Applicant was
13 convicted by plea of guilty to Health and Safety Code section 11378, a felony. The remaining
14 charges were dismissed.

15 b. On or about May 1, 1997, Applicant was sentenced to three (3) years' formal
16 probation with terms and conditions, including the requirement that he complete a six-month
17 substance abuse residential rehabilitation program and aftercare program and spend 180 days in
18 custody (stayed pending successful completion of the substance abuse rehabilitation program),
19 and payment of \$550.00 in fines.

20 c. On September 8, 2003, Applicant's plea of guilty was set aside, a plea of Not
21 Guilty was entered, and the accusatory pleading was dismissed pursuant to Penal Code section
22 1203.4 and 1203.4a.

23 **SECOND CAUSE FOR DENIAL OF APPLICATION**

24 **(Unlawful Use or Possession of a Controlled Substance)**

25 13. Applicant's application is further subject to denial under section 4955, as defined by
26 section 4955, subdivision (a), of the Code, in that he unlawfully possessed methamphetamine, as

27 ¹ Methamphetamine is a Schedule II controlled substance under Health and Safety Code
28 section 11055, subdivision (d)(2) and a dangerous drug under Code section 4022.

1 more particularly alleged in paragraph 11(a), above, which is hereby incorporated by reference as
2 if fully set forth herein.

3 **THIRD CAUSE FOR DENIAL OF APPLICATION**

4 **(Dishonesty)**

5 14. Applicant's application is further subject to denial under Code sections 4955.1,
6 subdivision (c), and 480, subdivision (c), in that he knowingly made a false statement of fact
7 required to be revealed in his application for examination and licensure. The circumstances are as
8 follows:

9 a. On or about October 4, 2010, Applicant submitted his Application for
10 Examination to the Board. The following notice appeared as a preamble to the application:

11 "All items of information are mandatory. ... The information will be used to
12 determine qualification for examination and licensure."

13 b. Question 17 on the application asked:

14 "Have you ever been convicted of, or pled nolo contendere to any offense,
15 misdemeanor or felony in any state, the United States, or a foreign country? **NOTE: You**
16 **are required** to list any conviction that has been set aside and dismissed under Section
17 1203.4 Penal Code or under any other provision of law." (bolding in original)

18 c. At the conclusion of the application was a statement by Applicant, certifying
19 "under penalty of perjury under the laws of the State of California that all statements made herein
20 are true in every respect, and that misstatements, or omissions of material facts may be cause for
21 denial of this application ..."

22 d. Despite knowing that he had been convicted of a felony as set forth in
23 paragraph 11(a), above, and despite the explicit written admonition that he was "**required**² to list
24 any conviction that has been set aside and dismissed under Section 1203.4 Penal Code or under
25 any other provision of law," and despite his certification that all statements contained in the
26 application were "true in every respect," Applicant answered "No" to question 17.

27 _____
28 ² Bolding in original.

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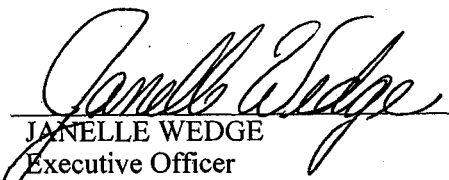
e. Paragraph 11(a) through (c), above, is hereby incorporated by reference as if fully set forth herein.

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. Denying the application of ROD KENNETH ANDERSON for an Acupuncturist License; and
- 2. Taking such other and further action as deemed necessary and proper.

DATED: JUN 01, 2011



JANELLE WEDGE
Executive Officer
Acupuncture Board
Department of Consumer Affairs
State of California
Complainant

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