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ACUPUNCTURE BOARD

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

12 In the Matter of the First Amended Accusation
Against:

13 HENRY DAVID LEE, L.Ac.
14 8878 Warner Avenue
Fountain Valley, CA 92708

15 Acupuncturist License No. AC-8254

16 Respondent.

Case No. 1A-2007-31

OAH No. L2008090487

FIRST AMENDED ACCUSATION

17
18 Complainant alleges:

19 PARTIES

20 1. Janelle Wedge (Complainant) brings this First Amended Accusation solely
21 in her official capacity as the Executive Officer of the Acupuncture Board.

22 2. On or about March 20, 2002, the Acupuncture Board (Board) issued
23 Acupuncturist License Number AC-8254 to Henry David Lee, L.Ac (Respondent). The
24 Acupuncturist License was in full force and effect at all times relevant to the charges brought
25 herein and will expire on May 31, 2009, unless renewed.

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1 JURISDICTION

2 3. This First Amended Accusation, which supercedes the Accusation filed on
3 July 16, 2008, in the above-entitled matter, is brought before the Board, under the authority of
4 the following laws. All section references are to the Business and Professions Code (Code)
5 unless otherwise indicated.

6 4. Section 4955 of the Code states:

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

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

12 "...

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

16 "...

17 5. Section 4955.1 of the Code states:

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

21 "...

22 "(e) Failing to maintain adequate and accurate records relating to the provision of
23 services to their patients."

24 6. California Code of Regulations, title 16, section 1399.453, states:

25 "An acupuncturist shall keep complete and accurate records on each
26 patient who is given acupuncture treatment, including but not limited to,
27 treatments given and progress made as a result of the acupuncture treatments."

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1 7. Section 726 of the Code states:

2 “The commission of any act of sexual abuse, misconduct, or relations with
3 a patient, client, or customer constitutes unprofessional conduct and grounds for
4 disciplinary action for any person licensed under this division, under any initiative
5 act referred to in this division and under Chapter 17 (commencing with Section
6 9000) of Division 3.

7 “‘This section shall not apply to sexual contact between a physician and
8 surgeon and his or her spouse or person in an equivalent domestic relationship
9 when that physician and surgeon provides medical treatment, other than
10 psychotherapeutic treatment, to his or her spouse or person in an equivalent
11 domestic relationship.’”

12 RECOVERY OF COSTS

13 8. Section 4959 of the Code states:

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

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

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

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

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

7 FIRST CAUSE FOR DISCIPLINE

8 (Sexual Misconduct/Relations with a Patient)

9 9. Respondent is subject to disciplinary action under sections 4955 and 726
10 of the Code, in that he has engaged in sexual misconduct, and/or has had a sexual relations with a
11 patient. The circumstances are as follows:

12 10. From about January 2004, Respondent began providing acupuncture
13 treatment to patient D.T.

14 11. Respondent continued to provide Respondent acupuncture treatment to
15 patient D.T. until about June 2006.

16 12. Between January 2004 and June 2006, Respondent had an ongoing,
17 consensual sexual relationship with patient D.T.

18 13. Between January 2004 and June 2006, Respondent engaged in consensual
19 sexual acts, including but not limited to sexual intercourse, with patient D.T. in Respondent’s
20 office on multiple occasions.

21 SECOND CAUSE FOR DISCIPLINE

22 (Failure to Keep Accurate Records)

23 14. Respondent is further subject to disciplinary action under section 4955.1,
24 subdivision (e) of the Code, and section 1399.453 of Title 16 of the California Code of
25 Regulations, in that he failed to keep complete and accurate records regarding his provision of
26 acupuncture services to patient D.T. The circumstances are as follows:

27 15. Paragraphs 10 and 11, above, are hereby incorporated by reference as if
28 fully set forth herein.

1 16. Between January 2004 and July 9, 2006, patient D.T. wrote checks to
2 Respondent for acupuncture treatments on at least twenty-four occasions.

3 17. Between January 2004 and June 2006, Respondent entered treatment notes
4 in patient D.T.'s medical records only twice, on March 30, 2004 and April 2, 2004.

5 18. Respondent failed to chart the acupuncture treatments he provided to
6 patient D.T., and he additionally failed to chart patient D.T.'s progress from such treatments.

7 19. On or about April 29, 2008, Respondent admitted to Senior Investigator
8 A.H. that he did not chart patient D.T.'s progress because she was his "girlfriend."

9 THIRD CAUSE FOR DISCIPLINE

10 (Violation of Acupuncture Licensure Act or Regulation)

11 20. Respondent is further subject to disciplinary action under section 4955, as
12 defined by section 4955, subdivision (d), of the Code, in that he has violated the terms of the
13 Acupuncture Licensure Act, or a regulation adopted by the Board pursuant to the Acupuncture
14 Licensure Act. The circumstances are as follows:

15 21. Paragraphs 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20, above, are
16 hereby incorporated by reference as if fully set forth herein.

17 FOURTH CAUSE FOR DISCIPLINE

18 (Unprofessional Conduct)

19 22. Respondent is further subject to disciplinary action under section 4955 of
20 the Code, in that he has engaged in unprofessional conduct by breaching the rules or ethical code
21 of conduct of the profession of acupuncture, or by engaging in conduct unbecoming to an
22 acupuncturist in good standing in the profession and which demonstrates an unfitness to practice
23 acupuncture.¹ The circumstances are as follows:

24 23. Paragraphs 10, 11, 12, 13, 14, 17, 18, 19, and 20, above, are hereby
25 incorporated by reference as if fully set forth herein.

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28 1. See *Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.

1 PRAYER

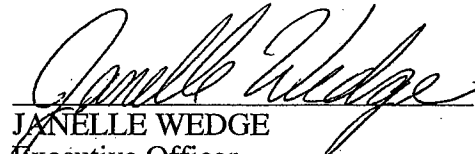
2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Board issue a decision:

4 1. Revoking or suspending Acupuncturist License Number AC-8254, issued
5 to Henry David Lee, L.Ac.;

6 2. Ordering Henry David Lee, L.Ac., to pay the Board the reasonable costs of
7 the investigation and enforcement of this case, pursuant to Business and Professions Code
8 section 4959;

9 3. Taking such other and further action as deemed necessary and proper.

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11 DATED: JAN 6 2009

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14 JANELLE WEDGE
15 Executive Officer
16 Acupuncture Board
17 State of California
18 Complainant
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