

**BEFORE THE
CALIFORNIA ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

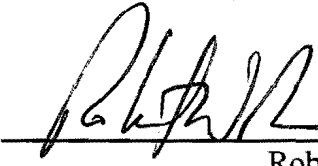
In the Matter of the First Amended)	Case No. 1A-2007-31
Accusation Against:)	
)	OAH No. L-2008090487
HENRY DAVID LEE, L.AC.)	
8878 Warner Avenue)	
Fountain Valley, CA 92708)	
)	
Acupuncture License No. AC 8254)	
)	
Respondent.)	
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DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Acupuncture Board, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on MAY 28 2009 .

It is so ORDERED APR 28 2009 .



Robert Brewer, Chair
Acupuncture Board
Department of Consumer Affairs
State of California

1 EDMUND G. BROWN JR.,
Attorney General of the State of California
2 THOMAS S. LAZAR
Supervising Deputy Attorney General
3 MICHAEL S. COCHRANE, State Bar No. 185730
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8 Attorneys for Complainant

9
10 **BEFORE THE
ACUPUNCTURE BOARD
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.
17

Case No. 1A-2007-31

OAH No. L2008090487

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
19 above-entitled proceedings that the following matters are true:

20 PARTIES

21 1. Janelle Wedge (Complainant) is the Executive Officer of the Acupuncture
22 Board. She brought this action solely in her official capacity and is represented in this matter by
23 Edmund G. Brown, Jr., Attorney General of the State of California, by Michael S. Cochrane,
24 Deputy Attorney General.

25 2. Respondent Henry David Lee, L.Ac. (Respondent) is represented in this
26 proceeding by attorney Edward O. Lear, Esq., whose address is 5200 W. Century Boulevard,
27 Suite 940, Los Angeles, CA 90045.

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1 3. On or about March 20, 2002, the Acupuncture Board (Board) issued
2 Acupuncturist License No. AC-8254 to Respondent. The Acupuncturist License was in full
3 force and effect at all times relevant to the charges brought in First Amended Accusation No.
4 1A-2007-31 and will expire on May 31, 2009, unless renewed.

5 JURISDICTION

6 4. On July 16, 2008, Accusation No. 1A-2007-31 was filed before the Board,
7 and is currently pending against Respondent. A true and correct copy of Accusation No. 1A-
8 2007-31 and all other statutorily required documents were properly served on Respondent on
9 July 16, 2008. Respondent timely filed his Notice of Defense contesting the Accusation.

10 5. On January 6, 2008, First Amended Accusation No. 1A-2007-31 was
11 filed before the Board and is currently pending against Respondent. On January 6, 2008,
12 Respondent was properly served with a true and correct copy of First Amended Accusation 1A-
13 2007-31 together with true and correct copies of all other statutorily required documents, at his
14 address of record then on file with the Board: 8878 Warner Avenue, Fountain Valley, CA 92708.
15 On January 8, 2009, respondent's attorney of record, Edward O. Lear, Esq., was also sent a true
16 and correct copy of the First Amended Accusation and related documents at his address: 5200
17 W. Century Boulevard, Suite 940, Los Angeles, CA 90045. A true and correct copy of First
18 Amended Accusation No. 1A-2007-31 is attached as Exhibit A and incorporated by reference as
19 if fully set forth herein.

20 ADVISEMENT AND WAIVERS

21 6. Respondent has carefully read, fully discussed with counsel, and
22 understands the charges and allegations in First Amended Accusation No. 1A-2007-31.
23 Respondent has also carefully read, fully discussed with counsel, and understands the effects of
24 this Stipulated Settlement and Disciplinary Order.

25 7. Respondent is fully aware of his legal rights in this matter, including the
26 right to a hearing on the charges and allegations in First Amended Accusation No. 1A-2007-31;
27 the right to confront and cross-examine the witnesses against him; the right to present evidence
28 and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance

1 of witnesses and the production of documents; the right to reconsideration and court review of an
2 adverse decision; and all other rights accorded by the California Administrative Procedure Act
3 and other applicable laws.

4 8 Respondent voluntarily, knowingly, and intelligently waives and gives up
5 each and every right set forth above.

6 CULPABILITY

7 9. Respondent admits the truth of each and every charge and allegation in
8 Accusation No. 1A-2007-31. The Admissions made by respondent herein are only for the
9 purpose of this proceeding, or any proceedings in which the Board or any other professional
10 licensing agency is involved, and shall not be admissible in any other criminal or civil
11 proceeding.

12 10. Respondent agrees that his Acupuncturist License No. AC-8254 is subject
13 to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the
14 Disciplinary Order below.

15 CONTINGENCY

16 11. The parties agree that this Stipulated Settlement and Disciplinary Order
17 shall be submitted to the Board for its consideration in the above-entitled matter and, further, that
18 the Board shall have a reasonable period of time in which to consider and act on this Stipulated
19 Settlement and Disciplinary Order after receiving it.

20 12. The parties agree that this Stipulated Settlement and Disciplinary Order
21 shall be null and void and not binding upon the parties unless approved and adopted by the
22 Board, except for this paragraph, which shall remain in full force and effect. Respondent fully
23 understands and agrees that in deciding whether or not to approve and adopt this Stipulated
24 Settlement and Disciplinary Order, the Board may receive oral and written communications from
25 its staff and/or the Attorney General's office. Communications pursuant to this paragraph shall
26 not disqualify the Board, any member thereof, and/or any other person from future participation
27 in this or any other matter affecting or involving respondent. In the event that the Board, in its
28 discretion, does not approve and adopt this Stipulated Settlement and Disciplinary Order, with

1 the exception of this paragraph, it shall not become effective, shall be of no evidentiary value
2 whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party
3 hereto. Respondent further agrees that should the Board reject this Stipulated Settlement and
4 Disciplinary Order for any reason, respondent will assert no claim that the Board, or any member
5 thereof, was prejudiced by its/his/her review, discussion and/or consideration of this Stipulated
6 Settlement and Disciplinary Order or of any matter or matters related hereto.

7 **ADDITIONAL PROVISIONS**

8 13. This Stipulated Settlement and Disciplinary Order is intended by the
9 parties herein to be an integrated writing representing the complete, final and exclusive
10 embodiment of the agreements of the parties in the above-entitled matter.

11 14. The parties agree that facsimile copies of this Stipulated Settlement and
12 Disciplinary Order, including facsimile signatures of the parties, may be used in lieu of original
13 documents and signatures and, further, that facsimile copies shall have the same force and effect
14 as originals.

15 15. In consideration of the foregoing admissions and stipulations, the parties
16 agree that the Board may, without further notice to or opportunity to be heard by respondent,
17 issue and enter the following Order:

18 **DISCIPLINARY ORDER**

19 IT IS HEREBY ORDERED that Acupuncturist License No. AC-8254 issued to
20 Respondent Henry David Lee, L.Ac. (Respondent) is revoked. However, the revocation is
21 stayed and Respondent is placed on probation for three (3) years from the effective date of this
22 Decision on the following terms and conditions.

23 1. **REIMBURSEMENT FOR PROBATION SURVEILLANCE**

24 **MONITORING**

25 Respondent shall reimburse the Board for probation monitoring costs it incurs in
26 monitoring the probation to ensure compliance for the duration of the probation period, not to
27 exceed \$500 per year.

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1 2. **PROFESSIONAL BOUNDARIES PROGRAM**

2 Within sixty (60) calendar days of the effective date of this Decision, respondent
3 shall enroll in a professional boundaries program, at respondent's expense, equivalent to the
4 Professional Boundaries Program, Physician Assessment and Clinical Evaluation (PACE)
5 Program at the University of California, San Diego School of Medicine ("Program").
6 Respondent, at the Program's discretion, shall undergo and complete the Program's assessment
7 of respondent's competency, mental health and/or neuropsychological performance, at a
8 minimum, a 24 hour program of interactive education and training in the area of boundaries,
9 which takes into account data obtained from the assessment and the Decision, First Amended
10 Accusation, and any other information that the Board or its designee deems relevant. The
11 Program shall evaluate respondent at the end of the training and the Program shall provide any
12 data from the assessment and training as well as the results of the evaluation to the Board or its
13 designee.

14 Failure to compete the entire Program not later than six months after respondent's
15 initial enrollment shall constitute a violation of probation unless the Board or its designee agrees
16 in writing to a later time for completion. Based on respondent's performance in and evaluations
17 from the assessment, education, and training, the Program shall advise the Board or its designee
18 of its recommendation(s) for additional education, training, psychotherapy and other measures
19 necessary to ensure that respondent can practice medicine safely. Respondent shall comply with
20 Program recommendations. At the completion of the Program, respondent shall submit to a final
21 evaluation. The Program shall provide the results of the evaluation to the Board or its designee.

22 3. **MEDICAL RECORD KEEPING COURSE**

23 Within sixty (60) calendar days of the effective date of this Decision, respondent
24 shall enroll in a course in medical record keeping, at respondent's expense, approved in advance
25 by the Board or its designee. Failure to successfully complete the course during the first six
26 months of probation is a violation of probation.

27 Respondent shall submit a certification of successful completion to the Board or
28 its designee not later than fifteen (15) calendar days after successfully completing the course, or

1 not later than fifteen (15) calendar days after the effective date of the Decision, whichever is
2 later.

3 **4 COMMUNITY SERVICE**

4 Respondent shall submit a plan to complete community service within sixty (60)
5 days of the effective date of this Decision, respondent shall submit to the Board for its prior
6 approval a community service program in which respondent shall provide services to a
7 community or charitable facility or agency for at least twelve (12) hours per quarter for the first
8 year of probation (totaling at least 48 hours).

9 **5 OBEY ALL LAWS**

10 Respondent shall obey all federal, state and local laws and all regulations
11 governing the practice of acupuncture in California. A full and detailed account of any and all
12 violations of law shall be reported by the respondent to the Board in writing within seventy-two
13 (72) hours of occurrence.

14 **6 QUARTERLY REPORTS**

15 Respondent shall submit quarterly declarations under penalty of perjury on forms
16 provided by the Board, stating whether there has been compliance with all the conditions of
17 probation.

18 **7. SURVEILLANCE PROGRAM**

19 Respondent shall comply with the Board's probation surveillance program and
20 shall, upon reasonable notice, report to the assigned investigative district office. Respondent
21 shall contact the assigned probation surveillance monitor regarding any questions specific to the
22 probation order. Respondent shall not have any unsolicited or unapproved contact with 1)
23 victims or complainants associated with the case; 2) Board members or members of its staff; or
24 3) persons serving the Board as expert examiners.

25 **8. INTERVIEW WITH THE BOARD OR ITS DESIGNEE**

26 Respondent shall appear in person for interviews with the Board or its designee
27 upon request at various intervals and with reasonable notice.

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1 **9. CHANGES OF EMPLOYMENT**

2 Respondent shall notify the Board in writing, through the assigned probation
3 surveillance compliance officer of any and all changes of employment, location and address
4 within thirty (30) days of such change.

5 **10. TOLLING FOR OUT-OF-STATE PRACTICE OR RESIDENCE**

6 In the event respondent should leave California to reside or to practice outside the
7 State, respondent must notify the Board in writing of the dates of departure and return. Periods
8 of residency or practice outside California will not apply to the reduction of this probationary
9 period.

10 **12. EMPLOYMENT AND SUPERVISION OF TRAINEES**

11 Respondent shall not employ or supervise or apply to employ or supervise
12 acupuncture trainees during the course of this probation. Respondent shall terminate any such
13 supervisorial relationship in existence on the effective date of this Decision..

14 **13. COST RECOVERY**

15 Respondent shall pay to the Board its costs of investigation and enforcement in
16 the amount of \$3,000.00.

17 **14. VIOLATION OF PROBATION**

18 If respondent violates probation in any respect, the Board may, after giving
19 respondent notice and the opportunity to be heard, revoke probation and carry out the
20 disciplinary order that was stated. If an accusation or petition to revoke probation is filed against
21 respondent during probation, the Board shall have continuing jurisdiction until the matter is
22 final, and the period of probation shall be extended until the matter is final. No petition for
23 modification or termination of probation shall be considered while there is an accusation or
24 petition to revoke probation pending against respondent.

25 **15. COMPLETION OF PROBATION**

26 Upon successful completion of probation, respondent's license will be fully
27 restored.


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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Edward O. Lear, Esq. I understand the stipulation and the effect it will have on my Acupuncturist License No. AC-8254. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board.

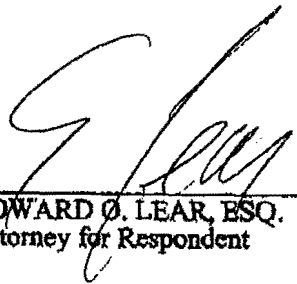
DATED: 01-08-09



Henry David Lee, L.Ac.
Respondent

I have read and fully discussed with Respondent HENRY DAVID LEE, L.Ac., the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 1/8/09



EDWARD O. LEAR, ESQ.
Attorney for Respondent

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Acupuncture Board.

DATED: 01/08/09

EDMUND G. BROWN JR.,
Attorney General of the State of California

THOMAS S. LAZAR
Supervising Deputy Attorney General



MICHAEL S. COCHRANE
Deputy Attorney General

Attorneys for Complainant

Exhibit A
Accusation No. 1A-2007-31

1 EDMUND G. BROWN JR.,
Attorney General of the State of California
2 THOMAS S. LAZAR
Supervising Deputy Attorney General
3 MICHAEL S. COCHRANE, State Bar No. 185730
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Telephone: (619) 645-2074
7 Facsimile: (619) 645-2061
8 Attorneys for Complainant

FILED

JAN 6 2009

ACUPUNCTURE BOARD

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

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.
17

Case No. 1A-2007-31

OAH No. L2008090487

FIRST AMENDED ACCUSATION

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

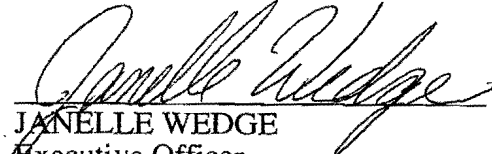
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PRAYER

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

1. Revoking or suspending Acupuncturist License Number AC-8254, issued to Henry David Lee, L.Ac.;
2. Ordering Henry David Lee, L.Ac., to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 4959;
3. Taking such other and further action as deemed necessary and proper.

DATED: JAN 6 2009


JANELLE WEDGE
Executive Officer
Acupuncture Board
State of California
Complainant