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FILED

MAR 10 2010

ACUPUNCTURE BOARD

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

11 In the Matter of the Accusation Against:

Case No. 1A-2009-87

12 **STEPHEN SHAW**
13 **58718 Buena Vista Dr.**
Yucca Valley, CA 92284

A C C U S A T I O N

14 **Acupuncturist License No. AC 3923**

15 Respondent.

16
17 Complainant alleges:

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19 **PARTIES**

20 1. Janelle Wedge (Complainant) brings this Accusation solely in her official capacity as
21 the Executive Officer of the Acupuncture Board, Department of Consumer Affairs, State of
22 California (Board).

23 2. On or about July 30, 1990, the Board issued Acupuncturist License Number AC 3923
24 to Stephen Shaw (Respondent). The Acupuncturist License was in full force and effect at all
25 times relevant to the charges brought herein and will expire on July 31, 2010, unless renewed.
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JURISDICTION

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2 3. This Accusation is brought before the Board under the authority of the following
3 laws. All section references are to the Business and Professions Code unless otherwise indicated.

4 4. Section 4927, subdivision (d), of the Code defines "acupuncture" as "the stimulation
5 of a certain point or points on or near the surface of the body by the insertion of needles to
6 prevent or modify the perception of pain or to normalize physiological functions, including pain
7 control, treatment of certain diseases or dysfunctions of the body and includes the techniques of
8 electroacupuncture, cupping, and moxibustion."

9 5. Section 4937 of the Code provides:

10 "An acupuncturist's license authorizes the holder thereof:

11 "(a) To engage in the practice of acupuncture.

12 "(b) To perform or prescribe the use of oriental massage, acupressure,
13 breathing techniques, exercises, or nutrition, including the incorporation of drugless
14 substances and herbs as dietary supplements to promote health. Nothing in this
15 section prohibits any person who does not possess an acupuncturist's license or
16 another license as a healing arts practitioner from performing, or prescribing the use
17 of, oriental massage, breathing techniques, exercises, or nutrition, to promote health,
18 so long as those activities are not performed or prescribed in connection with the
19 practice of acupuncture."

20 6. Section 4955 of the Code provides:

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

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

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

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

"(c) False or misleading advertising.

"(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.

"(e) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the Medical 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.

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

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

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

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

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

"(j) The violation of any law or local ordinance on an acupuncturist's business 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.

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

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

7. Section 4955.1 of the Code provides:

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

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

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

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

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B. On or about and between July 1, 2008, and July 31, 2009, Respondent wrote between 120 and 160 Recommendation Statements for marijuana pursuant to Health and Safety Code section 11362.5.¹

C. Among others, on February 6, 2009, Respondent executed a "Recommendation Statement" which reads, as follows:

"This certifies that [¶] [Patient R.K.² was examined in my office. This patient has a serious medical condition which, in my professional opinion, may benefit from the use of medical cannabis. I have discussed at length

¹ Health and Safety Code section 11362. 5 provides:

- "a) This section shall be known and may be cited as the Compassionate Use Act of 1996.
- "(b) (1) The people of the State of California hereby find and declare that the purposes of the Compassionate Use Act of 1996 are as follows:
 - "(A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.
 - "(B) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.
 - "(C) To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.
 - "(2) Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes.
 - "(c) Notwithstanding any other provision of law, no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes.
 - "(d) Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.
 - "(e) For the purposes of this section, "primary caregiver" means the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person.

² For the purpose of protecting the privacy interests of the patients referred to in this accusation, all n are by initials only. The true names of the patients are known to Respondent and, in any event, will be disclosed to him upon his timely request for discovery.

1 the potential risks and benefits of medical cannabis use with the patient. I
2 approve of the patient's use of cannabis as medication treatment. If my
3 patient chooses to use cannabis as medication, I will continue to monitor the
4 patient's use. I have advised the patient not to use this medication with
5 alcohol or other mind altering medications. Further, I have advised the
6 patient not to drive, operate heavy machinery or engage in any activity
7 which requires alertness while using medical cannabis."

8 D. On or about March 5, 2009, Patient R.K. was arrested for and charged with
9 possession of less than 28.5 grams of marijuana, in violation of Health and
10 Safety Code section 11357, subdivision (b), a misdemeanor. At the time of his
11 arrest, Patient R.K. stated that he had "a medical marijuana care issued by his
12 doctor." When asked to produce the card, Patient R.K. presented the arresting
13 officer with the "Recommendation Statement" executed by Respondent on
14 February 6, 2009.

15 E. A complaint against Respondent was brought before the Acupuncture Board.
16 On or about November 17, 2009, Respondent was interviewed by investigators
17 for the Division of Investigation. Respondent stated the following:

- 18 1) He has been an acupuncturist since 1990.
- 19 2) He rented office space at California Alternative Medicinal Services
20 (CAMS) where he was approached by the Executive Director for CAMS
21 and asked if he would be able to write recommendations for medical
22 marijuana. Respondent said that he did not think he was allowed but that
23 the Executive Director stated that he, the Executive Director, had
24 consulted with his attorney and that Respondent was qualified to write the
25 recommendations. Respondent treated approximately 4-10 patients a
26 week while at CAMS. He was paid by the patient and not by CAMS.
- 27 3) Respondent initially denied ever signing anything with CAMS. He
28 indicated that it was a verbal agreement. When presented with a CAMS

1 employment agreement bearing his signature, Respondent indicated that
2 he forgot he signed an agreement. He added that he did not mean to
3 “accidentally lie[.]”

4 4) The agreement signed with CAMS contains the following: “the Agency
5 agrees to pay the Contractor \$40.00 for treatment performed on an Agency
6 client.”

7 5) When asked if he ever confirmed with the Acupuncture Board that he was
8 qualified to write recommendations for medical marijuana, Respondent
9 said, “No.”

10 6) Respondent stated that he began writing recommendations for medical
11 marijuana in approximately July 2008 and stopped in February 2009.
12 During this period, he wrote approximately 120-160 recommendations. He
13 denied being involved in medical marijuana dispensing. He stated that his
14 patients averaged 45 years of age; that they have low income; and, that
15 they have chronic pain and cannot afford medications such as Vicodin.
16 He also indicated that some of his patients were 60 to 70 years of age and
17 did not have medical insurance. Some of his patients are taking high
18 levels of pain killers. Respondent added that he felt bad for them and was
19 just trying to help them.

20 7) When asked why his agreement with CAMS was terminated, Respondent
21 said that he was informed by the Executive Director that a chiropractor
22 wanted to rent the office occupied by Respondent and that they were
23 going to use a physician to write the recommendations. Respondent said
24 that he was very hurt by the decision; took his patient charts; and, cleaned
25 out his office. A few weeks later, he found out that CAMS was no longer
26 honoring his medical marijuana recommendation letters.

27 8) When asked how he learned that CAMS was no longer honoring his
28 recommendations, Respondent stated that he had received several calls

1 from some of his patients complaining that his letters were not being
2 honored at CAMS.

3 9) Respondent said that after his contract was terminated with CAMS, in
4 March 2009, he "ended up at Good Time Smoke Shop." Respondent
5 further elaborated that "David," the owner of the smoke shop, called him
6 requesting a letter of recommendation for medical marijuana and,
7 subsequently, offered Respondent the opportunity to see patients at the
8 smoke shop. Respondent explained that there was no set schedule. He
9 saw patients "as needed."

10 10) When reminded that earlier he had indicated he stopped writing
11 recommendations in February 2009, Respondent said, "Oh that's right, I
12 meant to say July 2009."

13 11) When asked if he performed examinations on his patients prior to
14 providing them with a recommendation statement, Respondent explained
15 that he always went over their medical history and reviewed documents.
16 He indicated that he required everyone to bring their medical records or
17 any documentation confirming their diagnosis.

18 12) When asked how he confirmed the legitimacy of documents provided to
19 him by his patients, Respondent stated that his patients had no reason to
20 lie and that the documents reviewed looked legitimate.

21 13) When asked if he continued to see patients needing acupuncture
22 treatment, Respondent replied that most of his patients were dealing with
23 chronic pain issues and mostly interested in the recommendation letters.
24 He added that he does not have an office at which to treat acupuncture
25 patients.

26 14) When presented with the recommendation written for R.K., Respondent
27 admitted to having written it. He also said that R.K. called him to thank
28 him. He further said that R.K. was one of the two patients who got

1 arrested for possession of marijuana, but later had their charges dropped
2 because of his letter. Respondent could not recall the other patient's
3 name.

4 15) When asked if he was ever contacted by a law enforcement officer
5 regarding his recommendation letters, Respondent said that an officer
6 from the Palm Desert Sheriff's department called him to confirm that he
7 wrote the letter.

8 16) When asked why he stopped writing the letters of recommendation for
9 medical marijuana, Respondent said that he began receiving threatening
10 phone calls from people demanding their money back, because his
11 recommendations were no longer being honored by CAMS. According to
12 Respondent, in July 2009, one of his patients threatened him with a gun.
13 The patient was upset that his recommendation letter was not honored and
14 demanded his money back. Respondent then said that it was because of
15 this incident that he found out his letters were no longer being honored at
16 CAMS.

17 17) When asked which patient threatened him, Respondent said that he was
18 too nervous to notice who it was.

19 18) When reminded he had stated that he found out his letters were no longer
20 being honored at CAMS in March 2009 when his agreement with CAMS
21 ended. Respondent initially said nothing and then, "I just remembered
22 what actually happened." He explained that he went to see the Executive
23 Director to request an explanation about the recommendations, and that is
24 when the incident occurred.

25 19) When asked he reported the threat, Respondent said, "No." Respondent
26 further said that he feared for his life and that the "guy" may have known
27 where Respondent lived. When asked to explain why he thought the
28 "guy" knew where he lived, Respondent said that he had spoken with him

1 earlier and they had agreed to meet at CAMS. The "guy" told him that if
2 he did not show, he would go find him.

3 20) When reminded that earlier he indicated he went to CAMS to speak with
4 the Executive Director about the recommendation letter and that he was
5 "too nervous to notice who the guy was," Respondent said, "I'm sorry, I
6 did not mean to accidentally lie." Respondent admitted to forgetting a few
7 details. He said that after the incident, he no longer wanted to write letters
8 of recommendations. He knew that his life was in danger and CAMS was
9 no longer honoring his letters. Respondent decided to stop writing
10 recommendations in June 2009 or July 2009. Respondent said that after
11 he stopped he had no intentions of starting again.

12 21) When reminded that he had written a letter to the Board on July 31, 2009,
13 requesting help and confirmation from the Board that he was qualified to
14 write recommendations, Respondent remained quiet for a moment and
15 then said that he had spoken to the Board on two occasions and just
16 wanted to follow up with a letter. When asked why, if he was no longer
17 interested in writing recommendations, Respondent said, "Ok, I give up, I
18 made a mistake. I should not have written the letter. I just want all this to
19 go away."

20 22) Respondent was questioned about the recommendation letter and, in
21 particular, the heading which reads, "From the Medical Offices of Stephen
22 Shaw." When asked if he considered himself a medical doctor, physician
23 or M.D., Respondent said, "No." but that he did not think it would be an
24 issue to use the term "medical offices" because the seal in his original
25 certificate clearly states that his license was issued by the "Medical Board
26 of California."

27 23) The heading bore the address of 58967 Business Center Drive, Yucca
28 Valley, CA 92284 (CAMS address). When asked if CAMS was aware

1 that he, Respondent, had continued to use its business address,
2 Respondent said, "No[.]" He explained that he had been using the CAMS
3 address for so long that he did not think it would be an issue if he
4 continued and added that he does not currently have his own business
5 address and he felt it would not be a "big deal" to continue using CAMS
6 address.

7 24) Respondent was then asked to read and review Health & Safety Code
8 Section 11362.5. Respondent noted that it specifically states, in part, "To
9 ensure that seriously ill Californians have the right to obtain and use
10 marijuana for medical purposes where that medical use is deemed
11 appropriate and has been recommended by a physician who has
12 determined that the person's health would benefit from the use of
13 marijuana in the treatment of cancer, anorexia, AIDS, chronic pain,
14 spasticity, glaucoma, arthritis, migraine, or any other illness for which
15 marijuana provides relief." Respondent admitted that what he read
16 specifically refers to physicians and he could not tell me why he failed to
17 read it before today.

18 25) When asked if he owned <http://www.losecancer.com>, Respondent said
19 that he did and has for many years. He added, however, he is no longer
20 able to afford a webmaster or the fee to keep it. He thinks that it will be
21 taken down any day now. He indicated that everything in his life is going
22 wrong. He is losing his house. He lost his business locations because he
23 could not afford the rent. He is down to one vehicle and has to share it
24 with his wife. He cannot afford the website or anything that is related to
25 his business because in trouble with the Acupuncture Board. Respondent
26 repeated that he just wants everything to go away.
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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Acts Involving Corruption or Dishonesty)**

3 10. Respondent is subject to disciplinary action under Business and Professions Code
4 section 4955.1, subdivision (c), in that Respondent has committed acts involving dishonesty or
5 corruption, as follows:

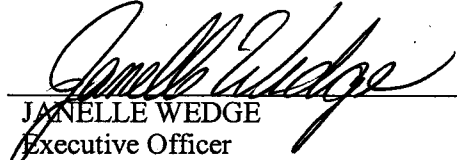
6 A. Complainant refers to and, by this reference, incorporates herein paragraph 9,
7 subparagraphs A through E, inclusive, above, as though fully set forth.

8
9 **PRAYER**

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

- 12 1. Revoking or suspending Acupuncturist License Number AC 3923, issued to Stephen
13 Shaw Stephen Shaw;
- 14 2. Ordering Stephen Shaw to pay the Acupuncture Board the reasonable costs of the
15 investigation and enforcement of this case, pursuant to Business and Professions Code section
16 4959; and,
- 17 3. Taking such other and further action as deemed necessary and proper.

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19 DATED: **MAR 10 2010**



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

Complainant

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