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

13 In the Matter of the Accusation Against:

Case No. 1A-2011-21

14 **ROBERT PAUL SIMMONS, L.Ac.**
15 **36127 Fair Oak Trl.**
16 **Yucaipa, CA 92320**

OAH No. 2012030094

17 **Acupuncturist License No. AC11640**

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

18 Respondent.

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

21 **PARTIES**

22 1. Terri Thorfinnson (Complainant) is the Executive Officer of the Acupuncture Board.
23 This action was brought by her predecessor, Janelle Wedge, solely in her official capacity as the
24 then Executive Officer of the Acupuncture Board. The Executive Officer of the Acupuncture
25 Board is represented in this matter by Kamala D. Harris, Attorney General of the State of
26 California, by Tessa L. Heunis, Deputy Attorney General.

27 2. Respondent Robert Paul Simmons, L.Ac. (Respondent) is representing himself in this
28 proceeding and has chosen not to exercise his right to be represented by counsel.

1 2. ALCOHOL AND DRUG ABUSE TREATMENT Effective 30 days from the date
2 of this decision, respondent shall enter an inpatient or outpatient alcohol or other drug abuse
3 recovery program (a minimum of six (6) months duration) or an equivalent program as approved
4 by the AC.

5 Quitting the program without permission or being expelled for cause shall constitute a
6 violation of probation by respondent. Subsequent to the program, respondent shall participate in
7 on-going treatment such as receiving individual and/or group therapy from a psychologist trained
8 in alcohol and drug abuse treatment; and/or attend Twelve Step meetings or the equivalent as
9 approved by the Board at least three times a week during the first year of probation; and/or other
10 substance abuse recovery programs approved by the Board. Respondent shall pay all costs of
11 treatment and therapy, and provide documentation of attendance at Twelve Step meetings or the
12 equivalent as approved by the Board. The psychologist shall confirm that respondent has
13 complied with the requirements of this decision and shall notify the Board immediately if he or
14 she believes the respondent cannot safely render acupuncture services. Respondent shall execute
15 a release authorizing the psychologist to divulge the aforementioned information to the Board.

16 3. ABSTAIN FROM DRUGS AND ALCOHOL AND SUBMIT TO TESTS AND
17 SAMPLES Respondent shall abstain completely from the personal use or possession of
18 controlled substances as defined in the California Uniform Controlled Substances Act (Division
19 10, commencing with section 11000, Health and Safety Code) and dangerous drugs as defined by
20 Section 4211 of the Business and Professions Code, or any drugs requiring a prescription.

21 This prohibition does not apply to medications lawfully prescribed to respondent by another
22 practitioner for a *bona fide* illness or condition. Within 15 calendar days of receiving any
23 lawfully prescribed medications, respondent shall notify the Board or its designee of: the issuing
24 practitioner's name, address, and telephone number; medication name, strength, and quantity; and
25 issuing pharmacy name, address, and telephone number.

26 Respondent shall abstain completely from the use of alcoholic beverages.

27 Respondent shall undergo random, biological fluid testing as set out in paragraph 4,
28 immediately below. Respondent shall bear all costs of such testing. Any confirmed positive

1 finding will be considered a violation of probation.

2 4. BIOLOGICAL FLUID TESTING: Respondent shall immediately submit to
3 biological fluid testing, at respondent's expense, upon request of the Board or its designee.
4 "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair
5 follicle testing, or similar drug screening approved by the Board or its designee. Within 15 days
6 of the effective date of this Decision, respondent shall contract with a laboratory or service
7 approved in advance by the Board or its designee that will conduct random, unannounced,
8 observed, biological fluid testing. The contract shall require results of the tests to be transmitted
9 by the laboratory or service directly to the Board or its designee within four hours of the results
10 becoming available. Respondent shall maintain this laboratory or service contract during the
11 period of probation.

12 A certified copy of any laboratory test result may be received in evidence in any
13 proceedings between the Board and respondent.

14 If respondent fails to cooperate in a random biological fluid testing program within the
15 specified time frame, and/or if respondent has a confirmed positive biological fluid test for any
16 substance (whether or not legally prescribed) and has not reported his use thereof to the Board or
17 its designee, respondent shall receive a notification from the Board or its designee to immediately
18 cease the practice of acupuncture. Respondent shall not resume the practice of acupuncture until
19 final decision on an accusation and/or a petition to revoke probation. An accusation and/or
20 petition to revoke probation shall be filed by the Board within 15 days of the notification to cease
21 practice. If the Respondent requests a hearing on the accusation and/or petition to revoke
22 probation, the Board shall provide the Respondent with a hearing within 30 days of the request,
23 unless the Respondent stipulates to a later hearing. A decision shall be received from the
24 Administrative Law Judge or the Board within 15 days unless good cause can be shown for the
25 delay. The cessation of practice shall not apply to the reduction of the probationary time period.

26 If the Board does not file an accusation or petition to revoke probation within 15 days of the
27 issuance of the notification to cease practice or does not provide respondent with a hearing within
28 30 days of such request, the notification of cease practice shall be dissolved.

1 5. REIMBURSEMENT FOR PROBATION SURVEILLANCE MONITORING ✓

2 Respondent shall reimburse the Board for the hourly costs it incurs in monitoring the probation to
3 ensure compliance for the duration of the probation period.

4 6. OBEY ALL LAWS Respondent shall obey all federal, state and local laws and all

5 regulations governing the practice of acupuncture in California. A full and detailed account of
6 any and all violations of law shall be reported by the respondent to the Board in writing within
7 seventy-two (72) hours of occurrence.

8 7. QUARTERLY REPORTS Respondent shall submit quarterly declarations under ✓

9 penalty of perjury on forms provided by the Board, stating whether there has been compliance
10 with all the conditions of probation.

11 8. SURVEILLANCE PROGRAM Respondent shall comply with the Board's probation ✓

12 surveillance program and shall, upon reasonable notice, report to the assigned investigative
13 district office. Respondent shall contact the assigned probation surveillance monitor regarding
14 any questions specific to the probation order. Respondent shall not have any unsolicited or
15 unapproved contact with 1) victims or complainants associated with the case; 2) Board members
16 or members of its staff; or 3) persons serving the Board as expert examiners.

17 9. INTERVIEW WITH THE BOARD OR ITS DESIGNEE Respondent shall appear in ✓

18 person for interviews with the Board or its designee upon request at various intervals and with
19 reasonable notice.

20 10. CHANGES OF EMPLOYMENT Respondent shall notify the Board in writing, ✓

21 through the assigned probation surveillance compliance officer of any and all changes of
22 employment, location and address within 30 days of such change.

23 11. TOLLING FOR OUT-OF-STATE PRACTICE OR RESIDENCE In the event ✓

24 respondent should leave California to reside or to practice outside the State, respondent must
25 notify the Board in writing of the dates of departure and return. Periods of residency or practice
26 outside California will not apply to the reduction of this probationary period.

27 12. EMPLOYMENT AND SUPERVISION OF TRAINEES Respondent shall not ✓

28 employ or supervise or apply to employ or supervise acupuncture trainees during the course of

1 this probation. Respondent shall terminate any such supervisory relationship in existence on the
2 effective date of this probation.

3 13. COST RECOVERY Respondent shall pay to the Board its costs of investigation and
4 enforcement in the amount of \$6,300.00. Within 30 days of the effective date of this decision,
5 respondent shall submit to the Committee or its designee for its prior written approval a plan for
6 paying off the said amount in installments, provided that the amount due in terms of this
7 paragraph will be paid in full no less than 120 calendar days prior to the completion of probation.

8 Failure to reimburse the Board's costs for its investigation and prosecution shall constitute a
9 violation of the probation order. The filing of bankruptcy by respondent shall not relieve
10 respondent of his responsibility to reimburse the Board for its costs.

11 14. VIOLATION OF PROBATION If respondent violates probation in any respect, the
12 Board may, after giving respondent notice and the opportunity to be heard, revoke probation and
13 carry out the disciplinary order that was stated. If an accusation or petition to revoke probation is
14 filed against respondent during probation, the Board shall have continuing jurisdiction until the
15 matter is final, and the period of probation shall be extended until the matter is final. No petition
16 for modification or termination of probation shall be considered while there is an accusation or
17 petition to revoke probation pending against respondent.

18 15. COMPLETION OF PROBATION Upon successful completion of probation,
19 respondent's license will be fully restored.

20 ACCEPTANCE

21 I have carefully read the Stipulated Settlement and Disciplinary Order. I fully understand
22 the stipulation and the effect it will have on my Acupuncturist License No. AC 11640. I enter
23 into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently,
24 and agree to be bound by the Decision and Order of the Acupuncture Board.

25 DATED: 9/4/12

26 Robert Paul Simmons
ROBERT PAUL SIMMONS, L.Ac.
Respondent

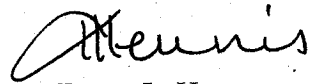
ENDORSEMENT

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

Dated: 9/4/12

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
THOMAS S. LAZAR
Supervising Deputy Attorney General



TESSA L. HEUNIS
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 1A-2011-21

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ACUPUNCTURE BOARD

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

12 In the Matter of the Accusation Against:

Case No. 1A-2011-21

13 **ROBERT PAUL SIMMONS, L.AC.**
14 **34161 Yucaipa Blvd., #E**
15 **Yucaipa, CA 92399**

ACCUSATION

16 **Acupuncturist License**
17 **No. AC 11640**

Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about February 23, 2007, the Acupuncture Board issued Acupuncturist License
24 Number AC 11640 to Robert Paul Simmons, L.Ac. (Respondent). The Acupuncturist License
25 was in full force and effect at all times relevant to the charges brought herein and will expire on
26 October 31, 2012, 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 (Code) unless otherwise
4 indicated.

5 4. Section 4955 of the Code states:

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

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

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

15 “...

16 “(d) ... [V]iolating ... the terms of this chapter or any regulation adopted by the
17 board pursuant to this chapter.

18 “...

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

21 “...”

22 5. Section 480 of the Code states:

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

25 “...

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

28 ////

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

4 “...”

5 6. Section 4959 of the Code states:

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

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

16 “...”

17 **FIRST CAUSE FOR DISCIPLINE**

18 (Using or Possessing Controlled Substance to an Extent that the Use Impairs His
19 Ability to Engage in the Practice of Acupuncture with Safety to the Public)

20 7. Respondent is subject to disciplinary action under section 4955, as defined by section
21 4955, subdivision (a), in that he used or possessed a controlled substance and dangerous drug to
22 an extent or in a manner dangerous to himself, any other person or the public, and to an extent
23 that the use impaired his ability to engage in the practice of acupuncture with safety to the public.

24 The circumstances are as follows:

25 January 28, 2011 arrest:

26 8. On or about January 28, 2011, Deputy Sheriff Jaime Crispin was on duty and in full
27 uniform. Around 1218 hours, she and a fellow Officer were dispatched to a possible welfare
28 check call at defendant’s residence at 33475 Music Camp Drive, in the community of Arrowbear.

1 The two officers arrived on scene at 1249 hours and made contact with defendant and one other
2 male adult.

3 9. In the residence, Officer Crispin noticed an orange pipe lying on the kitchen counter.
4 On the same counter and near the pipe, which was similar to the pipes used for smoking
5 methamphetamine, was a small glass decorative shelf with a small amount of white crystalline
6 substance on it. While speaking to defendant, Officer Crispin also noticed that defendant
7 exhibited signs and symptoms of being under the influence of a controlled substance. In reply to
8 her question about possible drug use, defendant admitted having used some "meth" while at his
9 residence approximately one day previously. Defendant told Officer Crispin that he was a
10 frequent user but had never been arrested for drug use or possession.

11 10. Defendant was arrested and transported to West Valley Detention Center, where he
12 was booked in for a violation of Health and Safety Code section 11350, subdivision (a)
13 (possession of a controlled substance).

14 11. On the same date, Officer Crispin conducted a field test on the white crystalline
15 substance found on the glass shelf in defendant's residence and found the substance to belong to
16 the drug class of amphetamines (including methamphetamine). Subsequently, analysis of a blood
17 sample obtained from defendant on January 28, 2011 confirmed the presence of amphetamines in
18 his blood.

19 12. On or about March 3, 2011, charges were filed against defendant, alleging a violation
20 of Health and Safety Code section 11550, subdivision (a) (being under the influence of a
21 controlled substance).

22 November 9, 2011 arrest:

23 13. After the filing of charges on March 3, 2011, defendant failed to appear on or about
24 March 21, 2011 and a warrant for his arrest was issued. On or about April 20, 2011, defendant
25 appeared at arraignment and was ordered to appear again at the San Bernardino Superior Court on
26 May 4, 2011. On or about May 4, 2011, defendant was present and ordered to appear at a pre-
27 trial hearing on August 29, 2011. Defendant failed to appear at the pre-trial hearing and a second
28 warrant was issued for his arrest.

1 14. On or about November 9, 2011, Officer Crispin was again on duty and in full uniform
2 when she attended the residence of defendant in connection with the active warrant for his arrest.
3 Defendant was at home and opened the door to the officer's second knock and spoken request for
4 entry. Once inside the residence, in the living-room, the officer found several small plastic
5 baggies containing a white crystalline substance which she suspected to be methamphetamine.

6 15. Defendant was placed under arrest pursuant to the active warrant and also for a
7 suspected violation of Health and Safety Code section 11377, subdivision (a), and booked in at
8 West Valley Detention Center.

9 16. On the same date, Officer Crispin conducted a field test on the white crystalline
10 substance found in the baggies in defendant's residence and found the substance to belong to the
11 drug class of amphetamines (including methamphetamine). Subsequently, analysis of a blood
12 sample obtained from defendant on November 9, 2011 confirmed the presence of amphetamines
13 in his blood.

14 SECOND CAUSE FOR DISCIPLINE

15 (Unprofessional Conduct)

16 17. Respondent is further subject to disciplinary action under section 4955, and as
17 defined by section 4955, subdivision (d) and/or section 4955, subdivision (i), in that he committed
18 unprofessional conduct by violating the terms of Chapter 12, Division of the Code, and/or
19 performed any action or conduct that would have warranted the denial of the acupuncture license,
20 as set forth in paragraphs 9 to 19, above.

21 PRAYER

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

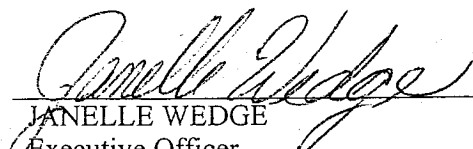
24 1. Revoking, suspending, imposing probationary conditions or other discipline on
25 Acupuncturist License Number AC 11640, issued to Robert Paul Simmons, L.Ac.;

26 2. Ordering Respondent Robert Paul Simmons, L.Ac., to pay the Acupuncture Board the
27 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
28 Professions Code section 4959 and 125.3, subdivision (i); and

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

DATED: JAN 03 2012


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

SD2011801544