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ACUPUNCTURE BOARD

1 KAMALA D. HARRIS,
Attorney General of California
2 JOSE R. GUERRERO
Supervising Deputy Attorney General
3 DAVID CARR
State Bar No. 131672
4 Deputy Attorney General
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5538
6 Facsimile: (415) 703-5480
Attorneys for Complainant

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

10 In the Matter of the Accusation Against:

Case No. 1A-2010-49

11 OAH No. 2011031064

12 **TINA THOA LUU, aka Tina Luu Pham,**

13 2445 Glen Fox Court
14 San Jose, CA 95148

**FIRST AMENDED
ACCUSATION**

15 Acupuncture License No. AC 6799,

16 Respondent.

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20 Complainant alleges:

21 **PARTIES**

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

25 2. On or about July 20, 1999, the Acupuncture Board issued Acupuncture License
26 Number AC 6799 to Tina Thoa Luu, also known as Tina Luu Pham ("Respondent"). The
27 Acupuncture License expired on May 31, 2011 and is presently in delinquent status.

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JURISDICTION

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2 1. This Accusation is brought before the Acupuncture Board ("Board"), Department of
3 Consumer Affairs, under the authority of the following laws. All section references are to the
4 Business and Professions Code unless otherwise indicated.

5 2. 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 ...

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

13 3. Section 4955.1 of the Code states:

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

17 "(a)...

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

20 4. Section 4956 of the Code states:

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

24 "The board may order a license suspended or revoked, or may deny a license, or may
25 impose probationary conditions upon a license, when the time for appeal has elapsed, or the
26 judgment of conviction has been affirmed on appeal, or when an order granting probation is
27 made suspending the imposition of sentence irrespective of a subsequent order under the
28 provisions of Section 1203.4 of the Penal Code allowing the person to withdraw his or her

1 pleas of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
2 dismissing the accusation, complaint, information, or indictment.”

3 5. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
4 surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
5 disciplinary action during the period within which the license may be renewed, restored, reissued
6 or reinstated.

7 6. Section 2052(a) of the Code provides:

8 “Notwithstanding Section 146, any person who practices or attempts to practice, or
9 who advertises or holds himself or herself out as practicing, any system or mode of treating
10 the sick or afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any
11 ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or
12 mental condition of any person, without having at the time of so doing a valid, unrevoked,
13 or unsuspended certificate as provided in this chapter [Chapter 5, the Medical Practice Act],
14 or without being authorized to perform the act pursuant to a certificate obtained in
15 accordance with some other provision of law, is guilty of a public offense, punishable by a
16 fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the state prison, by
17 imprisonment in a county jail not exceeding one year, or by both the fine and either
18 imprisonment.”

19 7. Section 4324(a) of the Code provides that any person who signs the name of another
20 or who falsely makes any prescription for any drug is guilty of forgery and is subject to criminal
21 sanctions.

22 8. Penal Code section 459 defines the crime of burglary.

23 9. Penal Code section 484 defines and prohibits theft; when the theft is of personal
24 property of a value greater than nine hundred fifty dollars, Penal Code section 487(a) provides
25 that the act constitutes grand theft.

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COST RECOVERY

10. Section 4959 of the Code states:

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

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

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

"(d) In any judicial action for the recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment."

"(e) All costs recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the Acupuncture Fund."

FIRST CAUSE FOR DISCIPLINE

(Substantially Related Convictions)

11. Respondent is subject to disciplinary action under code sections 4955(b) and 4956 [substantially related conviction] in that she has incurred two convictions for shoplifting. The circumstances are as follows:

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2010 conviction

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2 12. On or about March 4, 2010, a criminal complaint titled *People of the State of*
3 *California vs. Tina Luu Pham* was filed in Santa Clara County Superior Court, case number
4 C1071069. Count 1 charged Respondent with a misdemeanor violation of Penal Code section
5 666 (Petty Theft, with prior theft conviction).

6 13. On or about May 24, 2010, Respondent entered a plea of nolo contendere to the
7 misdemeanor violation of Penal Code section 666. She was sentenced to two years probation and
8 ordered to serve 30 days in jail.

2008 conviction

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10 14. On or about August 27, 2007, a criminal complaint titled *People of the State of*
11 *California vs. Tina Luu Pham* was filed in Santa Clara County Superior Court, case number
12 CC777773. Count 1 charged Respondent with a misdemeanor violation of Penal Code section
13 484/487(a) [Grand Theft]. Count 2 charged Respondent with a misdemeanor violation of Penal
14 Code section 459/460(b) (Second Degree Burglary).

15 15. On or about February 11, 2010, Respondent entered a plea of nolo contendere to the
16 misdemeanor violation of Penal Code section 484-487(a), [Grand Theft]; the second count was
17 dismissed. She was sentenced to two years probation and ordered to serve 30 days in jail.

18 16. Respondent's license is subject to discipline pursuant to section 4955 in that she has
19 incurred two theft convictions, crimes substantially related to the qualifications, functions, or
20 duties of an acupuncturist.

SECOND CAUSE FOR DISCIPLINE

(Dishonest Acts)

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23 17. Paragraphs 13 through 16 are incorporated herein by reference as if set out in full.

24 18. Respondent is subject to disciplinary action under section 4955.1(c) in that her two
25 misdemeanor theft convictions constitute acts involving dishonesty or corruption with respect to
26 the qualifications, functions, or duties of an acupuncturist.

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1 THIRD CAUSE FOR DISCIPLINE

2 (Substantially Related Conviction)

3 19. Respondent is subject to disciplinary action under Code section 4955(b) in that she
4 entered a guilty plea to the felony charge of practicing medicine without a certification, a
5 conviction, as defined by section 4956, of a crime substantially related to the qualifications,
6 functions, or duties of an acupuncturist. The circumstances are as follows:

7 20. In May 2010 the Board received information from the Santa Clara County District
8 Attorney's office regarding possible violations of the Medical Practice Act by Respondent.
9 Working with the District Attorney's investigators, agents of the Department of Consumer Affairs
10 conducted a protracted investigation which revealed that beginning in early 2009 Respondent had
11 advertised in a Vietnamese language newspaper as a medical doctor specializing in treating
12 hemorrhoids. Respondent saw patients in the medical offices of her brother, a licensed
13 osteopath. Patients who underwent Respondent's treatments told investigators that Respondent
14 applied a topical cream of unknown composition to the patients, claiming it would cure their
15 hemorrhoids. Respondent required cash payment for these treatments, for some patients totaling
16 thousands of dollars.

17 21. On October 19, 2010, officers of the San Jose Police Department and agents of the
18 Department of Consumer Affairs executed a search warrant at the medical offices of Dr. James
19 Luu and there arrested Respondent Tina Luu pursuant to a related arrest warrant.

20 22. On or about June 17, 2011, in Superior Court for the County of Santa Clara, criminal
21 case C1989119 was initiated by the filing of a felony complaint charging Respondent Tina Luu
22 with 20 felonies, including multiple acts of Practicing Medicine Without a Certification [Business
23 and Professions Code section 2052(a)]; Grand Theft [Penal Code sections 484/487(a)]; and
24 Forgery of a Prescription [Business and Professions Code section 4324(a)].

25 23. On or about July 22, 2011, Respondent Tina Luu entered a guilty plea to Count 1 of
26 the criminal complaint, Practicing Medicine Without a Certification [Business and Professions
27 Code section 2052(a)].
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1 24. Respondent has subjected her license to discipline under section 4955 by incurring a
2 conviction, as defined by section 4956, of a crime substantially related to the qualifications,
3 functions, or duties of an acupuncturist.

4 FOURTH CAUSE FOR DISCIPLINE

5 (Dishonest Act)

6 25. Paragraphs 20 through 22 herein are incorporated by reference as if set out in full.

7 26. On or about July 22, 2011, Respondent Tina Luu entered a guilty plea to Count 2 of
8 the criminal complaint, Grand Theft [Penal Code sections 484/487(a)].

9 27. Respondent is subject to disciplinary action under section 4955.1(c) in that her
10 conviction for grand theft constitutes an act involving dishonesty or corruption with respect to the
11 qualifications, functions, or duties of an acupuncturist.

12 FIFTH CAUSE FOR DISCIPLINE

13 (Substantially Related Conviction)

14 28. Paragraphs 20 through 22 herein are incorporated by reference as if set out in full.

15 29. On or about July 22, 2011, Respondent Tina Luu entered a guilty plea to Count 3 of
16 the criminal complaint, Forgery of a Prescription [Business and Professions Code section
17 4324(a)].

18 30. Respondent has subjected her license to discipline under section 4955 by incurring a
19 conviction of a crime substantially related to the qualifications, functions, or duties of an
20 acupuncturist.

21 SIXTH CAUSE FOR DISCIPLINE

22 (Substantially Related Conviction)

23 31. Paragraphs 20 through 22 herein are incorporated by reference as if set out in full.

24 32. On or about July 22, 2011, Respondent Tina Luu entered a guilty plea to Count 4 of
25 the criminal complaint, Forgery of a Prescription [Business and Professions Code section
26 4324(a)].

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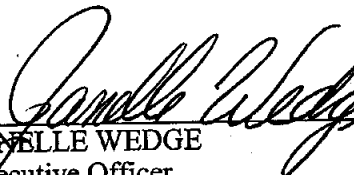
1 33. Respondent has subjected her license to discipline under section 4955 by incurring a
2 conviction of a crime substantially related to the qualifications, functions, or duties of an
3 acupuncturist.

4 PRAYER

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

- 7 1. Revoking or suspending Acupuncture License Number AC 6799, issued to Tina Thoa
8 Luu, also known as Tina Luu Pham;
9 2. Ordering Tina Thoa Luu to pay the Acupuncture Board the reasonable costs of the
10 investigation and enforcement of this case, pursuant to Business and Professions Code section
11 4959; and
12 3. Taking such other and further action as deemed necessary and proper.

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14 DATED: DEC 12 2011


15 JANELLE WEDGE
16 Executive Officer
17 Acupuncture Board
18 Department of Consumer Affairs
19 State of California
20 Complainant

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