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FILED

AUG 30 2011

ACUPUNCTURE BOARD

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

In the Matter of the Accusation Against:

PAUL DAVID LEE
330 W. Tefft Street, Unit I
Nipomo, California 93444

Licensed Acupuncturist No. AC 9195

Respondent.

Case No. 1A-2011-1

ACCUSATION

Complainant alleges:

PARTIES

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

2. On or about September 18, 2003, the Board issued Acupuncture License number AC 9195 to Paul David Lee (Respondent). The Acupuncture license was in full force and effect at times relevant to the charges brought herein and will expire on September 30, 2012, unless renewed.

JURISDICTION

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

1 4. Section 4955 of the Code states in pertinent part:

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

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

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

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

12 “... ”

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

15 “... ”

16 5. Section 480 of the Code states in pertinent part:

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

19 “(1) Been convicted of a crime. A conviction within the meaning of this section
20 means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
21 Any action that a board is permitted to take following the establishment of a
22 conviction may be taken when the time for appeal has elapsed, or the judgment of
23 conviction has been affirmed on appeal, or when an order granting probation is made
24 suspending the imposition of sentence, irrespective of a subsequent order under the
25 provisions of Section 1203.4 of the Penal Code.

26 “... ”

27 6. Health and Safety Code section 11357 subdivision (b), provides:

28 “ Except as authorized by law, every person who possesses not more than 28.5 grams of

1 marijuana, other than concentrated cannabis, is guilty of a misdemeanor and shall be punished by
2 a fine of not more than one hundred dollars (\$100)....”

3 **COST RECOVERY**

4 7. Section 4959 of the Code states:

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

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

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

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

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

26 **FIRST CAUSE FOR DISCIPLINE**

27 (Conviction of a Crime)

28 8. Respondent's license is subject to discipline under Business and professions code
sections 4955, subdivisions (a), (b) and (i), 480, subdivision (a)(1), and under Health and Safety
Code section 11357, subdivision (b), in that he was convicted of a crime substantially related to
the qualifications, functions or duties of an acupuncturist. The circumstances are as follows:

December 13, 2010 Conviction

9. On or about December 13, 2010, in the San Luis Obispo County Superior Court of
San Luis Obispo, California, in proceedings entitled *The People of the State of California vs.*

1 *Paul David Lee*, case number 101008134, Respondent was convicted of one (1) count of
2 possessing more than 28.5 grams of marijuana, in violation of Health and Safety Code Section
3 11357, subdivision (b). The circumstances are as follows:

4 10. On or about October 10, 2010, San Luis Obispo County Sheriff's Department
5 (SLOCSD) detectives were notified by the United States Postal Service that there was an
6 attempted shipment of marijuana through the postal service from the Pismo Beach, California
7 branch of the Post Office. The address of the package, marked "kitchen hardware" from a
8 unknown sender, was addressed to the Respondent at his address of 730 Calle Bendita, apartment
9 A, Arroyo Grande, California.

10 On October 27, 2010, a investigation and surveillance of the Respondent was undertaken by the
11 SLOCSD. Also on October 27, 2010, a controlled delivery of the package containing the
12 marijuana was initiated. After the controlled delivery, the SLOCSD arrested and questioned
13 Respondent. Respondent stated that he was self administering the marijuana in order to assist
14 himself with a weight loss issue. Respondent was asked by the SLOCSD if there was a medical
15 marijuana statement from a physician authorizing the use of marijuana for this purpose.
16 Respondent denied that the marijuana was prescribed by a physician. The package was opened
17 and inspected by the SLOCSD, and three ziploc baggies containing bud marijuana weighing 2.28,
18 2.32, and 2.24 grams respectively. A separate Ziploc baggie with marijuana residue was also
19 found in Respondent's residence which was also searched. Respondent was arrested and charged
20 with the following:

21 Count 1; violation of Health and Safety Code Section 11360, subdivision (a), Sell or
22 furnish marijuana.

23 Count 2; violation of Health and Safety Code Section 11357, subdivision (b),
24 Possession of marijuana over 28.5 grams.

25 Count 3; violation of Health and Safety Code Section 11357, subdivision (b),
26 Possession of marijuana over 28.5 grams.

27 11. On December, 13, 2010, the day the preliminary hearing was set to commence,
28 Respondent through a plea negotiation, pled nolo-contendere to Count 3, and the remaining

1 counts were dismissed. The respondent was required to pay a fine of \$585.00 by April 11, 2011.
2 The Court placed respondent on summary probation for one year.

3 12. On December 28, 2010, Respondent paid the \$585.00 fine in full. On January 11,
4 2011, Respondent requested that the court reduce the misdemeanor to an infraction. The court
5 granted this request on January 11, 2011. In addition, the court also terminated the remaining
6 term of Respondent's probation. Respondent's probation was previously set to terminate on
7 December 13, 2011.

8 **SECOND CAUSE FOR DISCIPLINE**

9 (Unprofessional Conduct)


10 11. Respondent is subject to disciplinary action under section 4955 of the Code in
11 that respondent knowingly engaged in criminal behavior which is unbecoming of a licensed
12 acupuncturist, as more particularly described in paragraphs 8 through 12, above, which are
13 incorporated by reference as if fully set forth herein.

14 **PRAYER**

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

- 17 1. Revoking or suspending Acupuncture License Number AC 9195, issued to Paul
18 David Lee;
- 19 2. Directing Paul David Lee to pay the Acupuncture Board of California the costs of the
20 investigation and enforcement of this case, and if placed on probation, the costs of probation
21 monitoring; and
- 22 3. Taking such other and further action as deemed necessary and proper.

23
24 DATED: **AUG 30 2011**


25 JANELLE WEDGE
26 Executive Officer
27 Acupuncture Board
28 State of California
Complainant

LA2010503509