

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 THOMAS S. LAZAR
Supervising Deputy Attorney General
3 MATTHEW M. DAVIS, State Bar No. 202766
Deputy Attorney General
4 California Department of Justice
110 West "A" Street, Suite 1100
5 San Diego, California 92101
P.O. Box 85266
6 San Diego, California 92186-5266
Telephone: (619) 645-2117
7 Facsimile: (619) 645-2061

8 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:
13 CHARLES FRANCIS MAYBERRY, L.Ac.
228 South Cedros Ave., Suites A & B
14 Solana Beach, CA 92075
15 Acupuncturist License No. AC-3641,
16 Respondent.

Case No. 1A-2008-13
OAH No. 2009030821

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceeding that the following matters are true:

20 **PARTIES**

21 1. Complainant Janelle Wedge is the Executive Officer of the Acupuncture
22 Board and is represented in the above-entitled matter by Edmund G. Brown, Jr., Attorney
23 General of the State of California, by Matthew M. Davis, Deputy Attorney General.

24 2. CHARLES FRANCIS MAYBERRY, L.Ac., (hereinafter "respondent") is
25 represented herein by Jehan Jayakumar, Esq., Carlson and Jayakumar, 2424 S.E. Bristol, Suite
26 300, Newport Beach, CA 92660, Telephone: (949) 222-2008.

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28 ///

ORIGINAL

1 laws, having been fully advised of same by his attorney of record, Jehan Jayakumar, Esq.
2 Respondent, having the benefit of counsel, hereby knowingly, intelligently, freely and voluntarily
3 waives and gives up each and every one of the rights set forth and/or referenced above.

4 **CULPABILITY**

5 9. Respondent admits the complete truth and accuracy of each and every
6 charge and allegation, separately and severally, in Accusation No. 1A-2008-13, agrees that he has
7 thereby subjected his Acupuncturist License No. AC-3641 to disciplinary action, and hereby
8 agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order
9 below. Respondent further agrees that if he ever petitions for modification or early termination
10 of the discipline imposed on Acupuncturist License Number AC-6314, all of the charges and
11 allegations contained in Accusation No. 1A-2008-13, and each of them, separately and severally,
12 shall be deemed true, correct and fully admitted by respondent for purposes of any proceeding
13 involving respondent's petition for modification or early termination and any other licensing
14 proceeding involving respondent in the State of California.

15 **CONTINGENCY**

16 10. This Stipulated Settlement and Disciplinary Order shall be subject to
17 approval by the Board. The parties agree that this Stipulated Settlement and Disciplinary Order
18 shall be submitted to the Board for its consideration in the above-entitled matter and, further, that
19 the Board shall have a reasonable period of time in which to consider and act on this stipulation
20 after receiving it. By signing this stipulation, respondent fully understands and agrees
21 that he may not withdraw his agreement or seek to rescind this stipulation prior to the time the
22 Board considers and acts upon it.

23 11. The parties agree that this Stipulated Settlement and Disciplinary Order
24 shall be null and void and not binding upon the parties unless approved and adopted by the
25 Board, except for this paragraph, which shall remain in full force and effect. Respondent fully
26 understands and agrees that in deciding whether or not to approve and adopt this Stipulated
27 Settlement and Disciplinary Order, the Board may receive oral and written communications from
28 its staff and/or the Attorney General's office. Communications pursuant to this paragraph shall

1 not disqualify the Board, any member thereof, and/or any other person from future participation
2 in this or any other matter affecting or involving respondent. In the event that the Board, in its
3 discretion, does not approve and adopt this Stipulated Settlement and Disciplinary Order, with
4 the exception of this paragraph, it shall not become effective, shall be of no evidentiary value
5 whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party
6 hereto. Respondent further agrees that should the Board reject this Stipulated Settlement and
7 Disciplinary Order for any reason, respondent will assert no claim that the Board, or any member
8 thereof, was prejudiced by its/his/her review, discussion and/or consideration of this Stipulated
9 Settlement and Disciplinary Order or of any matter or matters related hereto.

10 **ADDITIONAL PROVISIONS**

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

14 13. The parties agree that facsimile copies of this Stipulated Settlement and
15 Disciplinary Order, including facsimile signatures thereto shall have the same force and effect as
16 originals.

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

20 **ORDER**

21 IT IS HEREBY ORDERED that Acupuncturist License Number AC-3641
22 heretofore issued to respondent CHARLES FRANCIS MAYBERRY, L.Ac., shall be and hereby
23 is immediately revoked, with the revocation stayed, and respondent placed on probation for a
24 period of three (3) years from the effective date of this Decision and Order, on the following
25 terms and conditions:

26 1. Course work Respondent shall take and successfully complete not less than
27 twenty (20) semester units or thirty (30) quarter units of coursework in the following areas:
28 acupuncture points, needle techniques, and advanced needle techniques. All coursework shall be

1 taken at the graduate level at a school approved by the Board. Classroom attendance must be
2 specifically required. Course content shall be pertinent to the violation and all course work must
3 be completed within the first 3 years of probation. The required course work must be in addition
4 to any continuing education courses that may be required for license renewal. Within 90 days of
5 the effective date of this decision, respondent shall submit a plan for the Board's prior approval
6 for meeting the educational requirements. All costs of the course work shall be borne by the
7 respondent.

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

12 3. Quarterly Reports Respondent shall submit quarterly declarations under
13 penalty of perjury on forms provided by the Board, stating whether there has been compliance
14 with all the conditions of probation.

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

21 5. Interview with the Board or Its Designee Respondent shall appear in person for
22 interviews with the Board or its designee upon request at various intervals and with reasonable
23 notice.

24 6. Changes of Employment Respondent shall notify the Board in writing, through
25 the assigned probation surveillance compliance officer of any and all changes of employment,
26 location and address within 30 days of such change.

27 7. Tolling for Out-of-State Practice or Residence In the event respondent should
28 leave California to reside or to practice outside the State, respondent must notify the Board in

1 writing of the dates of departure and return. Periods of residency or practice outside California
2 will not apply to the reduction of this probationary period.

3 8. Employment and Supervision of Trainees Respondent shall not employ or
4 supervise or apply to employ or supervise acupuncture trainees during the course of this
5 probation. Respondent shall terminate any such supervisory relationship in existence on the
6 effective date of this probation.

7 9. Cost Recovery Respondent shall pay to the Board its costs of investigation and
8 enforcement in the amount of \$3,199.50.

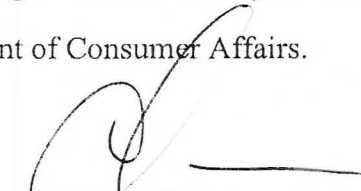
9 10. Violation of Probation If respondent violates probation in any respect, the
10 Board may, after giving respondent notice and the opportunity to be heard, revoke probation and
11 carry out the disciplinary order that was stated. If an accusation or petition to revoke probation is
12 filed against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

16 11. Completion of Probation Upon successful completion of probation,
17 respondent's license will be fully restored.

18 ACCEPTANCE

19 I, CHARLES FRANCIS MAYBERRY, L.Ac., have carefully read this Stipulated
20 Surrender of License and Order. I understand the stipulation and the effect it will have on my
21 Acupuncturist License Number AC-3641. I enter into this Stipulated Settlement and Disciplinary
22 Order freely, voluntarily, intelligently, and agree to be bound by the Decision and Order of the
23 Acupuncture Board of California, Department of Consumer Affairs.

24 DATED: 6/9/04

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26 CHARLES FRANCIS MAYBERRY, L.Ac.,
Respondent


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I have read and fully discussed with respondent Charles Francis Mayberry, L.Ac.,
the terms and conditions and other matters contained in this Stipulated Surrender of License and
Order. I approve its form and content.

DATED: ~~May~~ ^{June} 15, 2009




JEHAN JAYAKUMAR, ESQ.
Attorney for Respondent

ENDORSEMENT

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

DATED: June 19, 2009

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

By 

MATTHEW M. DAVIS
Deputy Attorney General

Attorneys for Complainant

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Attachment "A"
Accusation filed in Case Nos.
1A-2008-13

COPY

FILED

FEB 5 2009

ACUPUNCTURE BOARD

1 EDMUND G. BROWN JR.,
Attorney General of the State of California
2 THOMAS S. LAZAR,
Supervising Deputy Attorney General
3 MATTHEW M. DAVIS State Bar No. 202766
Deputy Attorney General
4 110 West "A" Street, Suite 1100
San Diego, CA 92101

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

12 In the Matter of the Accusation Against:

Case No. 1A-2008-13

13 CHARLES FRANCIS MAYBERRY, L.Ac.
14 228 South Cedros Ave., Suites D
Solana Beach, CA 92075

ACCUSATION

15 Acupuncturist License No. AC-3641

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about August 18, 1989, the Acupuncture Board (Board) issued
23 Acupuncturist License Number AC-3641 to Charles Francis Mayberry, 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 April 30, 2010, unless renewed.

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2 JURISDICTION

3 3. This Accusation is brought before the Board, under the authority of the
4 following laws. All section references are to the Business and Professions Code (Code) unless
5 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 "(e) Except for good cause, the knowing failure to protect patients by failing to
17 follow infection control guidelines of the board, thereby risking transmission of blood-
18 borne infectious diseases from licensee to patient, from patient to patient, and from
19 patient to licensee.

20 "...".

21 5. Section 4955.2 of the Code states:

22 "The board may deny, suspend, revoke, or impose probationary conditions
23 upon the license of any acupuncturist if he or she is guilty of committing any of
24 the following:

25 "(a) Gross negligence.

26 "(b) Repeated negligent acts.

27 "(c) Incompetence."

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3 6. California Code of Regulations, title 16, section 1399.451, states:

4 “... .

5 “(c) Acupuncture points, where needles are to be inserted, shall be cleaned with
6 an appropriate antiseptic before insertion of the needle.

7 “... .

8 “(e) Any complication, including but not limited to, hematoma, peritonitis
9 or pneumothorax arising out of acupuncture treatment shall be referred
10 immediately to a physician or dentist or podiatrist, if appropriate, if immediate
11 medical treatment is required.

12 “...”.

13 **RECOVERY OF COSTS**

14 7. Section 4959 of the Code states:

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

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

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

1 any licensee directed to pay costs.

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3 “(d) In any judicial action for the recovery of costs, proof of the board’s
4 decision shall be conclusive proof of the validity of the order of payment and the
5 terms for payment.

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

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Gross Negligence)**

10 8. Respondent is subject to disciplinary action under section 4955.2,
11 subdivision (a) of the Code, in that he has committed acts of gross negligence in the practice of
12 acupuncture. The circumstances are as follows:

13 **Patient T.D..**

14 (a) Beginning on or about November 18, 2007, Respondent provided
15 acupuncture treatment to patient T.D. Respondent continued to provide
16 acupuncture treatment to patient T.D. until December 1, 2007.

17 (b) On or about December 1, 2007, patient T.D. sought acupuncture
18 treatment from respondent for chronic right shoulder pain.

19 (c) On or about December 1, 2007, respondent treated patient T.D. for
20 shoulder pain. Respondent inserted an acupuncture needle into an area anterior
21 and just below patient T.D.’s right shoulder. The needle was inserted through a
22 sweatshirt and a tee shirt. The area of insertion was not cleaned prior to insertion.

23 (d) Shortly after insertion of the needle Patient T.D. began to cry and reported
24 pain to respondent.

25 (e) On or about December 1, 2007, Patient T.D. discovered bruising and
26 swelling at the insertion point below her right shoulder. Patient T.D. called
27 respondent and reported her injury and level of pain.

28 (f) On or about December 2, 2007, respondent called patient T.D. and told

1 her that bruising sometimes happens and it should clear up in about one week.

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3 (g) Patient T.D. suffered with pain for about two weeks and sought treatment
4 from Kaiser for her injuries.

5 (h) Patient T.D.'s bruise dissipated after about four (4) weeks. During this
6 time respondent never followed up with patient T.D. despite receiving a letter
7 describing patient T.D.'s ongoing pain and bruising.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Incompetence)**

10 9. Respondent is further subject to disciplinary action under section 4955.2,
11 subdivision (c) of the Code, and section 1399.451, subdivision (c) of Title 16 of the California
12 Code of Regulations, in that he has demonstrated incompetence by failing to clean the area of
13 needle insertion with an appropriate antiseptic before insertion of the needle treatment. The
14 circumstances are as follows:

15 10. Paragraphs 8(a), 8(b), 8(c), 8(d), 8(e), 8(f), 8(g) and 8(h), above, are
16 hereby incorporated by reference and realleged as if fully set forth herein.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Incompetence)**

19 11. Respondent is further subject to disciplinary action under section 4955.2,
20 subdivision (c) of the Code, and section 1399.451, subdivision (e) of Title 16 of the California
21 Code of Regulations, in that he has demonstrated incompetence by failing to immediately refer
22 patient T.D. to a physician when complications arose during the provision of acupuncture
23 treatment. The circumstances are as follows:

24 12. Paragraphs 8(a), 8(b), 8(c), 8(d), 8(e), 8(f), 8(g) and 8(h), above, are
25 hereby incorporated by reference and realleged as if fully set forth herein.

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FOURTH CAUSE FOR DISCIPLINE

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(Violation of Acupuncture Licensure Act or Regulation)

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13. Respondent is further subject to disciplinary action under section 4955, as defined by section 4955, subdivision (d), of the Code, in that he has violated the terms of the Acupuncture Licensure Act, or a regulation adopted by the Board pursuant to the Acupuncture Licensure Act. The circumstances are as follows:

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14. Paragraphs 8(a), 8(b), 8(c), 8(d), 8(e), 8(f), 8(g) and 8(h), above, are hereby incorporated by reference and realleged as if fully set forth herein.

12

FIFTH CAUSE FOR DISCIPLINE

13

(Unprofessional Conduct)

14

15. Respondent is further subject to disciplinary action under section 4955 of the Code, in that he has engaged in unprofessional conduct by breaching the rules or ethical code of conduct of the profession of acupuncture, or by engaging in conduct unbecoming to an acupuncturist in good standing in the profession and which demonstrates an unfitness to practice acupuncture.¹ The circumstances are as follows:

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16. Paragraphs 8(a), 8(b), 8(c), 8(d), 8(e), 8(f), 8(g) and 8(h), above, are hereby incorporated by reference and realleged 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

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

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1. Revoking or suspending Acupuncturist License Number AC- 3641, issued to Charles Francis Mayberry, L.Ac.;

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2. Ordering Charles Francis Mayberry, 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; and

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DATED: FEB 5 2009

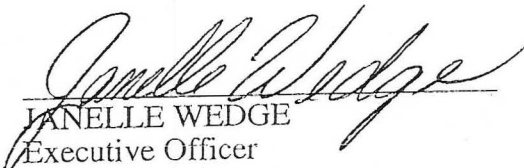
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JANELLE WEDGE
Executive Officer
Acupuncture Board
State of California
Complainant

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SD2008802965

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3 MATTHEW M. DAVIS, State Bar No. 202766
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8 Attorneys for Complainant

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12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

14 CHARLES FRANCIS MAYBERRY, L.A.C.

15 Respondent.

Case No. 1A-2008-13

STATEMENT TO RESPONDENT

[Gov. Code §§ 11504, 11505(b)]

16
17 TO RESPONDENT:

18 Enclosed is a copy of the Accusation that has been filed with the Acupuncture
19 Board of the Department of Consumer Affairs (Board), and which is hereby served on you.

20 Unless a written request for a hearing signed by you or on your behalf is delivered
21 or mailed to the Board, represented by Deputy Attorney General Matthew M. Davis, within
22 fifteen (15) days after a copy of the Accusation was personally served on you or mailed to you,
23 you will be deemed to have waived your right to a hearing in this matter and the Board may
24 proceed upon the Accusation without a hearing and may take action thereon as provided by law.

25 The request for hearing may be made by delivering or mailing one of the enclosed
26 forms entitled "Notice of Defense," or by delivering or mailing a Notice of Defense as provided
27 in section 11506 of the Government Code, to

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1 Matthew M. Davis
2 Deputy Attorney General
3 110 West "A" Street, Suite 1100
4 San Diego, California 92101

5 P.O. Box 85266
6 San Diego, California 92186-5266.

7 You may, but need not, be represented by counsel at any or all stages of these
8 proceedings.

9 The enclosed Notice of Defense, if signed and filed with the Board, shall be
10 deemed a specific denial of all parts of the Accusation, but you will not be permitted to raise any
11 objection to the form of the Accusation unless you file a further Notice of Defense as provided in
12 section 11506 of the Government Code within fifteen (15) days after service of the Accusation
13 on you.

14 If you file any Notice of Defense within the time permitted, a hearing will be held
15 on the charges made in the Accusation.

16 The hearing may be postponed for good cause. If you have good cause, you are
17 obliged to notify the Office of Administrative Hearings, 1350 Front Street, Suite 6022, San
18 Diego, CA 92101, within ten (10) working days after you discover the good cause. Failure to
19 notify the Office of Administrative Hearings within ten (10) days will deprive you of a
20 postponement.

21 Copies of sections 11507.5, 11507.6, and 11507.7 of the Government Code are
22 enclosed.

23 If you desire the names and addresses of witnesses or an opportunity to inspect
24 and copy the items mentioned in section 11507.6 of the Government Code in the possession,
25 custody or control of the Board you may send a Request for Discovery to the above designated
26 Deputy Attorney General.

27 **NOTICE REGARDING STIPULATED SETTLEMENTS**

28 It may be possible to avoid the time, expense and uncertainties involved in an
administrative hearing by disposing of this matter through a stipulated settlement. A stipulated
settlement is a binding written agreement between you and the government regarding the matters

1 charged and the discipline to be imposed. Such a stipulation would have to be approved by the
2 Acupuncture Board but, once approved, it would be incorporated into a final order.


3 Any stipulation must be consistent with the Board's established disciplinary
4 guidelines; however, all matters in mitigation or aggravation will be considered. A copy of the
5 Board's Disciplinary Guidelines will be provided to you on your written request to the state
6 agency bringing this action.

7 If you are interested in pursuing this alternative to a formal administrative hearing,
8 or if you have any questions, you or your attorney should contact Deputy Attorney General
9 Matthew M. Davis at the earliest opportunity.

10 DATED: 1/8/09

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

THOMAS S. LAZAR
Supervising Deputy Attorney General

14
15 
16 MATTHEW M. DAVIS
17 Deputy Attorney General

Attorneys for Complainant

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