

FILED

OCT 5 2010

ACUPUNCTURE BOARD

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

11 In the Matter of the Statement of Issues
 12 Against:

Case No. 1A-2010-45

13 **DIXIE SHANNON WALL**
 14 **1100 IRVINE BLVD., SUITE 187**
TUSTIN, CA 92780

STATEMENT OF ISSUES

Respondent.

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 18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about March 15, 2010, the Acupuncture Board, Department of Consumer
 23 Affairs, received an application for an acupuncture license from DIXIE SHANNON WALL
 24 (Respondent). On or about March 12, 2010, Dixie Shannon Wall certified under penalty of
 25 perjury to the truthfulness of all statements, answers, and representations in the application. The
 26 Board denied the application on or about May 5, 2010.

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1 **JURISDICTION**

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

5 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 drug
11 or alcoholic beverage to an extent or in a manner dangerous to himself or herself, or
12 to any other person, or to the public, and to an extent that the use impairs his or her
13 ability to engage in the practice of acupuncture with safety to the public.

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

17 "(c) False or misleading advertising.

18 "(d) Aiding or abetting in, or violating or conspiring in, directly or indirectly,
19 the violation of the terms of this chapter or any regulation adopted by the board
20 pursuant to this chapter.

21 "(e) Except for good cause, the knowing failure to protect patients by failing to
22 follow infection control guidelines of the board, thereby risking transmission of
23 blood-borne infectious diseases from licensee to patient, from patient to patient, and
24 from patient to licensee. In administering this subdivision, the board shall consider
25 referencing the standards, regulations, and guidelines of the State Department of
26 Health Services developed pursuant to Section 1250.11 of the Health and Safety Code
27 and the standards, regulations, and guidelines pursuant to the California Occupational
28 Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5

1 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other
2 blood-borne pathogens in health care settings. As necessary, the board shall consult
3 with the Medical Board of California, the California Board of Podiatric Medicine, the
4 Dental Board of California, the Board of Registered Nursing, and the Board of
5 Vocational Nursing and Psychiatric Technicians, to encourage appropriate
6 consistency in the implementation of this subdivision.

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

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

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

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

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

21 "(j) The violation of any law or local ordinance on an acupuncturist's business
22 premises by an acupuncturist's employee or a person who is working under the
23 acupuncturist's professional license or business permit, that is substantially related to
24 the qualifications, functions, or duties of an acupuncturist. These violations shall
25 subject the acupuncturist who employed the individuals, or under whose
26 acupuncturist license the employee is working, to disciplinary action.

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

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

7 4. Section 480 of the Code states:

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

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

17 (2) Done any act involving dishonesty, fraud, or deceit with the intent to
18 substantially benefit himself or herself or another, or substantially injure another.

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

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

24 (b) Notwithstanding any other provision of this code, no person shall be denied a
25 license solely on the basis that he or she has been convicted of a felony if he or she has
26 obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section
27 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a
28 misdemeanor if he or she has met all applicable requirements of the criteria of

1 rehabilitation developed by the board to evaluate the rehabilitation of a person when
2 considering the denial of a license under subdivision (a) of Section 482.

3 "(c) A board may deny a license regulated by this code on the ground that the
4 applicant knowingly made a false statement of fact required to be revealed in the
5 application for the license."

6 5. Section 493 of the Code provides

7 "Notwithstanding any other provision of law, in a proceeding conducted by the board
8 within the department pursuant to law to deny an application for license or to suspend or
9 revoke a license or otherwise take disciplinary action against a person who holds a license,
10 upon the ground that the applicant or the licensee has been convicted of a crime
11 substantially related to the qualifications, functions, and duties of the licensee in question,
12 the record of conviction of the crime shall be conclusive evidence of the fact that the
13 conviction occurred, but only of that fact, and the board may inquire into the circumstances
14 surrounding the commission of the crime in order to fix the degree of discipline or to
15 determine if the conviction is substantially related to the qualifications, functions, and
16 duties of the licensee in question. . . ."

17 **FIRST CAUSE FOR DENIAL OF APPLICATION**

18 **(Conviction of Crimes Substantially Related to the Practice of an Acupuncturist)**

19 6. Respondent's application is subject to denial under section 4955, as defined by section
20 4955, subdivision (b), of the Code, in that respondent has been convicted of crimes substantially
21 related to the qualifications, functions, and duties of an acupuncturist. The circumstances are as
22 follows:

23 A. On or about August 25, 2000, in the Superior Court of California, County of
24 County of Orange in the case of *People v. Wall, Dixie Shannon*, Case No. 00SF0561, respondent
25 was convicted on her plea of guilty, of one felony count of possession of methamphetamine¹ in
26 violation of Health and Safety Code section 11379, subdivision (a); one misdemeanor count of

27 ¹ Methamphetamine is a Schedule II controlled substance under Health and Safety Code
28 section 11055, subsection (d)(2) and a dangerous drug under Code section 4022.

1 use of methamphetamine in violation of Health and Safety Code section 11550, subdivision (a);
2 and one misdemeanor count of unlawful possession of less than one ounce of marijuana² in
3 violation of Health and Safety Code section 11357, subdivision (b).

4 B. As a consequence of these convictions, respondent was sentenced to three (3) years
5 formal probation with terms and conditions including the requirement that she complete
6 a six-month residential drug rehabilitation program, spend 180 days in jail (which was stayed
7 pending completion of the drug rehabilitation program) and payment of \$200 in fines.

8 C. The circumstances leading to these convictions are as follows: On or about August
9 17, 2000, an Orange County Sheriff's Department officers stopped respondent for driving an
10 automobile with an obstructed rear view window. Upon contact by the officer, respondent
11 appeared sweaty and her hands were trembling. The officers conducted an evaluation and
12 determined respondent was under the influence of a stimulant. Respondent was arrested and a
13 search of respondent's vehicle was conducted. The officers found approximately two grams of
14 methamphetamine and two grams of marijuana in respondent's vehicle.

15 D. On or about August 21, 2000, the District Attorney for the County of Orange filed a
16 criminal complaint charging respondent with one count of possession of methamphetamine for
17 sale in violation of Health and Safety Code section 11378, a felony [Count 1]; one count of
18 unlawful transporting of methamphetamine in violation of Health and Safety Code section 11379,
19 subdivision (a), a felony [Count 2]; one count of unlawful possession of a methamphetamine in
20 violation of Health and Safety Code section 11377, subdivision (a) a misdemeanor [Count 3]; one
21 count of unlawful use of methamphetamine in violation of Health and Safety Code section
22 11500, a misdemeanor [Count 4]; and one count of unlawful possession of marijuana in violation
23 of Health and Safety Code section 11377, subdivision (b), a misdemeanor [Count 5].

24 E. Following respondent's guilty plea to Counts 3, 4 and 5 of the criminal complaint on
25 August 25, 2000, the District Attorney dismissed Counts 1 and 2 of the criminal complaint on his

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27 ² Marijuana is a Schedule 1 controlled substance under Health and Safety Code section
28 11054, subsection (d)(13).

1 own motion. On that same date, entry of judgment was deferred, and respondent was ordered to
2 enroll in a drug rehabilitation program pursuant to the provisions of Penal Code section 1000. On
3 or about October 5, 2000, the "deferred judgment entry" order was vacated because respondent
4 suffered a "relapse" while in the drug rehabilitation program. On or about November 30, 2000,
5 respondent was sentenced to three (3) years formal probation with specified terms and conditions.

6 **SECOND CAUSE FOR DENIAL OF APPLICATION**

7 **(Convictions of Crimes Substantially Related to the Practice of an Acupuncturist)**

8 7. Respondent's application is further subject to denial under section 480, subdivision
9 (b), of the Code, in that she has been convicted of crimes substantially related to the
10 qualifications, functions, and duties of an acupuncturist as more particularly alleged in paragraph
11 6, above, which is hereby incorporated by reference as if fully set forth herein.

12 **THIRD CAUSE FOR DENIAL OF APPLICATION**

13 **(Unlawful Use or Possession of Controlled Substance)**

14 8. Respondent's application is further subject to denial under section 4955, as defined
15 by section 4955, subdivision (a), of the Code, in that she unlawfully used and possessed
16 methamphetamine and unlawfully possessed marijuana, as more particularly alleged in paragraph
17 6, above, which is hereby incorporated by reference as if fully set forth herein.

18 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

19 **(Conduct Which Would Warrant Denial of a License)**

20 9. Respondent's application is further subject to denial under section 4955, as
21 defined by section 4955, subdivision (i), of the Code, in that she has been engaged in
22 conduct that would have warranted the denial of an acupuncture license, as more
23 particularly alleged in paragraph 6, above, which is hereby incorporated by reference as if
24 fully set forth herein.

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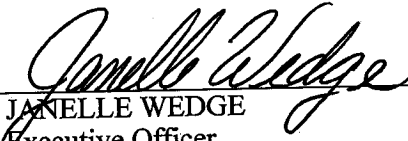
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PRAYER

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

- 4 1. Denying the application of respondent Dixie Shannon Wall for an acupuncturist
5 license;
6 2. Directing respondent Dixie Shannon Wall to pay the Acupuncture Board the costs of
7 investigation and prosecution of this case, and if placed on probation, the costs of probation
8 monitoring; and
9 3. Taking such other and further action as deemed necessary and proper.

10 DATED: **OCT 05 2010**


11 JANELLE WEDGE
12 Executive Officer
13 Acupuncture Board
14 Department of Consumer Affairs
15 State of California
16 Complainant

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