BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **RAUL L. CAOILI, L.AC.** **5129 Surfbreaker Point** **San Diego, CA 92154** **Acupuncturist License No. AC 8111** Respondent.	Case No. 1A-2009-30

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Acupuncture Board, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on DEC 4 2009.

It is so ORDERED NOV 4 2009.

FOR THE ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS

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In the Matter of the Accusation Against: **RAUL L. CAOILI, L.AC.** **5129 Surfbreaker Point** **San Diego, CA 92154** **Acupuncturist License No. AC 8111** Respondent.	Case No. 1A-2009-30 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

1. Janelle Wedge (Complainant) is the Executive Officer of the Acupuncture Board. She brought this action solely in her official capacity and is represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California, by Douglas Lee, Deputy Attorney General.

2. Raul L. Caoili, L.Ac. (Respondent) is represented in this proceeding by attorney Jeffrey E. Estes, whose address is 501 West Broadway, Suite 1650, San Diego, CA 92101.

3. On or about September 19, 2001, the Acupuncture Board issued Acupuncturist License No. AC 8111 to Respondent. The Acupuncturist License was in full force and effect at all times relevant to the charges brought in Accusation No. 1A-2009-30 and will expire on October 31, 2010, unless renewed.

JURISDICTION

4. Accusation No. 1A-2009-30 was filed before the Acupuncture Board (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on August 24, 2009. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 1A-2009-30 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 1A-2009-30. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent agrees that, at an administrative hearing, complainant could establish a *prima facie* case with respect to the charges and allegations contained in Accusation No. 1A-2009-30, a true and correct copy of which is attached hereto as Exhibit A.

9. Respondent agrees that if he ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against him before the Acupuncture Board of California, all of the charges and allegations contained in Accuation No. 1A-2009-30, shall be deemed true, correct and fully admitted by respondent for purposes of any such proceeding or any other licensing proceeding involving respondent in the State of California.

10. Respondent agrees that his Acupuncturist License is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

RESERVATION

11. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

12. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

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

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Acupuncturist License No. AC 8111 issued to Respondent RAUL L. CAOILI, L.Ac. (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. PSYCHOLOGICAL EVALUATION Within 90 days of the completion date of the probationary period, respondent shall undergo a psychological evaluation (and psychological testing, if deemed necessary) by a Board appointed California licensed psychologist, who shall receive and review a copy of this Stipulated Settlement and Disciplinary Order. The Board shall receive a written report including respondent's judgment respondent's judgment and/or ability to practice acupucture independently and safely, a current DSM IV diagnosis if any, and whatever other information the Board deems relevant to the case. Respondent shall execute a release authorizing the evaluator to release all information to the Board. The completed evaluation is the sole property of the Board.

If the Board concludes from the results of the evaluation that respondent is unable to practice independently and safely he shall be suspended by Order of the Board and shall not resume practice until notified by the Board. If the Board concludes from the results of the evaluation that respondent would benefit from ongoing psychotherapy or any other public protection measure, respondent shall comply with the Board's directives in that regard. Failure to comply with this condition constitutes a violation of this Order and will be deemed general unprofessional conduct.

Respondent shall pay all costs associated with the psychological evaluation. Failure to pay costs will be considered a violation of the probation order.

2. PRACTICE MONITOR Within 90 days of the effective date of this decision, respondent shall submit to the Board for its prior approval, the name and qualifications of one or more California licensed acupuncturists whose license is clear (no record of complaints) and current and who has agreed to serve as a practice monitor. Once approved, the monitor shall submit to the Board a plan by which respondent's practice shall be monitored; the plan shall be subject to approval by the Board. The monitor's education and experience shall be in the same field of practice as that of the respondent. The monitor shall submit written reports to the Board on a quarterly basis verifying that monitoring has taken place and providing an evaluation of respondent's performance. It shall be respondent's responsibility to assure that the required reports are filed in a timely fashion. The respondent shall provide access to the monitor to respondent's fiscal and client records and shall be permitted to make direct contact with patients. Further, the monitor shall have no prior business, professional, personal or other relationship with respondent. Respondent shall execute a release authorizing the monitor to divulge any information that the Board may request.

Respondent shall notify all current and potential patients of any term or condition of probation which will affect their treatment or the confidentiality of their records (such as this condition which requires a practice monitor). Such notification shall be signed by each patient prior to continuing or commencing treatment.

If the monitor quits or is otherwise no longer available, respondent shall not practice until a new monitor has been approved by the Board. All costs of monitoring shall be borne by the respondent. Monitoring shall consist of at least one hour per week of individual face to face meetings.

3. RESTRICTION OF PATIENT POPULATION Respondent is prohibited from evaluating, treating, or otherwise seeing any female patients for the duration of the probationary period.

After the effective date of this Decision, the first time that a female patient seeking services makes an appointment, respondent shall orally notify the patient that respondent does not see female patients. Respondent shall maintain a log of all patients to whom the required oral notification was made. The log shall contain the: 1) patient's name, address, and phone number; 2) patient's medical record number, if available; 3) the full name of the person making the notification; 4) the date the notification was made; and 5) a description of the notification given. Respondent shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the log for the entire term of probation. Failure to maintain a log as defined in the section, or to make the log available for immediate inspection and copying on the premises during business hours is a violation of probation.

In addition to the required oral notification, after the effective date of this Decision, the first time that a female patient who seeks services presents to respondent, respondent shall provide a written notification to the patient stating that respondent does not see female patients. Respondent shall maintain a copy of the written notification in the patient's file, shall make the notification available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the notification for the entire term of probation. Failure to maintain the written notification as defined in the section, or to make the notification available for immediate inspection and copying on the premises during business hours is a violation of probation.

4. PROFESSIONAL BOUNDARIES PROGRAM Within 60 calendar days from the effective date of this Decision, respondent shall enroll in a professional boundaries program, at respondent's expense, equivalent to the Professional Boundaries Program, Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine ("Program"). Respondent, at the Program's discretion, shall undergo and complete the Program's

assessment of respondent's competency, mental health and/or neuropsychological performance, and at a minimum, a 24 hour program of interactive education and training in the area of boundaries, which takes into account data obtained from the assessment and from the Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. The Program shall evaluate respondent at the end of the training and the Program shall provide any data from the assessment and training as well as the results of the evaluation to the board or its designee.

Failure to complete the entire Program not later than six months after respondent's initial enrollment shall constitute a violation of probation unless the Board or its designee agrees in writing to a later time for completion. Based on respondent's performance in and evaluations from the assessment, education, and training, the Program shall advise the Board or its designee of its recommendation(s) for additional education, training, psychotherapy and other measures necessary to ensure that respondent can practice safely. Respondent shall comply with Program recommendations. At the completion of the Program, respondent shall submit to a final evaluation. The Program shall provide the results of the evaluation to the Board or its designee.

The Program's determination whether or not respondent successfully completed the Program shall be binding.

Failure to participate in and complete successfully all phases of the Program, as outlined above, is a violation of probation.

If respondent fails to complete the Program within the designated time period, respondent shall cease the practice of medicine within 72 hours after being notified by the Board or its designee that respondent failed to complete the Program.

5. REIMBURSEMENT FOR PROBATION SURVEILLANCE MONITORING Respondent shall reimburse the Board for the hourly costs it incurs in monitoring the probation to ensure compliance for the duration of the probation period.

6. OBEY ALL LAWS Respondent shall obey all federal, state and local laws and all regulations governing the practice of acupuncture in California. A full and detailed account of

any and all violations of law shall be reported by the respondent to the Board in writing within seventy-two (72) hours of occurrence.

7. QUARTERLY REPORTS Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

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

9. INTERVIEW WITH THE BOARD OR ITS DESIGNEE Respondent shall appear in person for interviews with the Board or its designee upon request at various intervals and with reasonable notice.

10. CHANGES OF EMPLOYMENT Respondent shall notify the Board in writing, through the assigned probation surveillance compliance officer of any and all changes of employment, location and address within 30 days of such change.

11. TOLLING FOR OUT-OF-STATE PRACTICE OR RESIDENCE In the event respondent should leave California to reside or to practice outside the State, respondent must notify the Board in writing of the dates of departure and return. Periods of residency or practice outside California will not apply to the reduction of this probationary period.

12. COST RECOVERY Respondent shall pay to the Board its costs of investigation and enforcement in the amount of $5143.00, within 12 months of the effective date of this decision.

13. VIOLATION OF PROBATION If respondent violates probation in any respect, the Board may, after giving respondent notice and the opportunity to be heard, revoke probation and carry out the disciplinary order that was stated. If an accusation or petition to revoke probation is filed against respondent during probation, the Board shall have continuing

jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final. No petition for modification or termination of probation shall be considered while there is an accusation or petition to revoke probation pending against respondent.

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

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Jeffrey E. Estes. I understand the stipulation and the effect it will have on my Acupuncturist License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Acupuncture Board.

DATED: 9/22/09

RAUL L. CAOILI, L.AC.
Respondent

I have read and fully discussed with Respondent RAUL L. CAOILI, L.Ac., the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 9/22/09

Jeffrey E. Estes
Attorney for 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: 9/22/09

Respectfully Submitted,

EDMUND G. BROWN JR.
Attorney General of California
STEVEN V. ADLER
Supervising Deputy Attorney General

DOUGLAS LEE
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 1A-2009-30

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Attorneys for Complainant

FILED

AUG 24 2009

ACUPUNCTURE BOARD

BEFORE THE
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DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **RAUL L. CAOILI, L.AC.** **5129 Surfbreaker Point** **San Diego, CA 92154** **Acupuncturist License No. AC 8111** Respondent.	Case No. 1A-2009-30 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about September 19, 2001, the Acupuncture Board issued Acupuncturist License No. AC 8111 to RAUL L. CAOILI, L.Ac. (Respondent). The Acupuncturist License was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2010, unless renewed.

JURISDICTION

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

4. Section 726 of the code states in pertinent part:

"The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division, under any initiate act referred to in this division and under Chapter 17 (commencing with Section 9000) of Division 3."

"...."

5. Section 820 of the Code states:

"Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to Section 822."

6. Section 822 of the Code states:

"If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

"(a) Revoking the licentiate's certificate or license.

"(b) Suspending the licentiate's right to practice.

"(c) Placing the licentiate on probation.

"(d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper.

"The licensing agency shall not reinstate a revoked or suspended certificate or license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated."

7. Section 4955 of the Code states:

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

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

"...."

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

"...."

8. Unprofessional conduct under Code section 2234 is conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575).

9. California Code of Regulations, title 19, section 1399.453, states:

"An acupuncturist shall keep complete and accurate records on each patient who is given acupuncture treatment, including but not limited to, treatments given and progress made as a result of the acupuncture treatments."

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."

11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct/Sexual Misconduct)

12. Respondent is subject to disciplinary action under sections 726 and 4955 of the Code in that he has committed acts of sexual misconduct and engaged in conduct which breaches the rules or ethical code of the acupuncture profession, or conduct which is unbecoming to a member in good standing of the acupuncture profession, and which demonstrates an unfitness to practice acupuncture. The circumstances are as follows:

(a) At all times relevant, victim A.B. was employed by respondent at his acupuncture clinic.

(b) On or about November 21, 2008, respondent approached victim A.B. and commented that there was something wrong with her shoulders and they were uneven. Respondent told victim A.B. that he wanted to examine her shoulders.

(c) Respondent told victim A.B. to go into an examination room and remove her shirt and bra. Victim A.B. agreed and walked into the examination room where she removed her shirt and bra as directed by respondent. Victim A.B. covered her breasts with a towel.

(d) Respondent entered the room and told victim A.B. to remove the towel covering her breasts. When victim A.B. told respondent that she would prefer to lie on her stomach during the examination, respondent said that she needed her to remain sitting. Respondent also told victim A.B. to remove the towel so he could properly perform the examination.

(e) Victim A.B. removed the towel. Respondent began rubbing both of victim A.B.'s breasts with his hands. Respondent squeezed victim A.B.'s breast and told her she had a lump on the side of her left breast. Victim A.B. grabbed the towel and covered her breasts.

(f) Respondent looked at victim A.B.'s stomach and said, "You're hairy aren't you?" Respondent began unbuttoning the top button of victim A.B.'s jeans. Victim A.B. pushed respondent's hands away. Respondent was able to unfasten one of victim A.B.'s buttons and stuck his hand down her pants.

(g) Eventually, victim A.B. was able to get respondent to remove his hand from her jeans. Respondent kissed victim A.B. on the cheek and said, "You're a pretty girl. Take care of yourself." No examination was ever conducted on victim A.B.'s shoulders by respondent.

SECOND CAUSE FOR DISCIPLINE

(Mental and/or Physical Illness Affecting Competency)

13. Respondent is subject to disciplinary action under sections 820 and 822 of the Code in that his ability to practice Acupuncture safely is impaired because of mental and/or physical illness. The circumstances are as follows:

(a) Paragraph 12, above, is hereby incorporated by reference and realleged as if set forth hereinafter;

(b) On or about January 30, 2009, the San Diego County District Attorney's Office in Case No. CS226051, before the Superior Court of California, County of San Diego, South County Division, charged respondent with three (3) felonies: Sexual Battery - Fraudulent Professional Purpose [Pen. Code § 243.4, subd. (c); count 1]; Rape By Foreign Object - Unconscious Victim [Pen. Code § 289, subd. (d); count 2]; and, Sexual Battery - Fraudulent Professional Purpose [Pen. Code § 243.4, subd. (c); count 3].

(c) Counts 1 and 2, above related to second victim, victim F., whose name is being kept confidential pending resolution of the criminal charges. Specifically, in June of 2007, respondent, during a patient visit, inserted his finger into victim F.'s vagina and attempted to kiss her during a massage therapy session.

(d) On or about July 2, 2009, respondent's criminal defense attorney referred him to K.R.D., a licensed psychologist, for a psychological evaluation to determine the nature and extent of psychological and psycho-sexual problems, treatment needs and amenability to treatment.

(e) On or about July 13, 2009, K.R.D., prepared a written psychological evaluation in which was provided to the San Diego County District Attorney's Office. In that written evaluation, K.R.D. made the following conclusions regarding respondent:

(1) Respondent is confused and conflicted about his sexual needs as well as his needs for emotional intimacy;

(2) It is very likely that working closely with women in an intimate setting is very stimulating to respondent and respondent does not always know how to handle this erotic stimulation; and,

(3) Respondent should not treat women in his acupuncture practice and any woman who works for him should be told of the allegations against him.

PRAYER

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

1. Revoking or suspending Acupuncturist License No. AC 8111, issued to respondent, Raul L. Caoili, L.Ac..

2. Ordering Raul L. Caoili, L.Ac. to pay the Acupuncture Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 4959; and,

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

DATED: AUG 24 2009

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