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FILED

OCT 1 2009

ACUPUNCTURE BOARD

7
8 **BEFORE THE**
ACUPUNCTURE BOARD
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:
11 **MIRA HERMAN**
12 312 Grandview Road
Sebastopol, California 95472
13 **Acupuncture License No. AC 7381**
14
15 Respondent.

Case No. 1A-2009-27
FIRST AMENDED ACCUSATION

16 Complainant alleges:

17 **PARTIES**

- 18 1. Janelle Wedge (Complainant) brings this Accusation solely in her official
19 capacity as the Executive Officer of the Acupuncture Board, Department of Consumer Affairs.
20 2. On or about August 9, 2000, the Acupuncture Board issued Acupuncture
21 Number AC 7381 to Mira Herman (Respondent). The Acupuncture license was in full force and
22 effect at all times relevant to the charges brought herein and will expire on June 30, 2010, unless
23 renewed.

24
25 **JURISDICTION**

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

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4. **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:

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

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

...

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

..."

5. **Section 4956** of the Code states:

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

"The board may order a license suspended or revoked, or may deny a license, or may impose probationary conditions upon a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing the person to withdraw his or her pleas of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment."

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6. **Section 480** of the Code states:

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

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

...”

7. **Section 490** of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. **Section 493** of the Code states:

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

...”

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1 COSTS

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

6 10. Section 4959 of the Code states:

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

11 ...”

12
13 DRUGS INVOLVED

14 11. Marijuana is a schedule I controlled substance pursuant to Health and
15 Safety Code Section 11054(d)(13).

16
17 FACTUAL BACKGROUND

18 12. On or about April 4, 2007, in Sonoma County Superior Court Case No.
19 SCR-496027, Respondent was convicted on a guilty plea of violating Health and Safety Code
20 section 11358, a felony. Respondent did unlawfully plant, cultivate, harvest, or process
21 marijuana. The circumstances leading to Respondent’s conviction are described in paragraph 13,
22 below.

23 13. On or about August 30, 2006, Respondent was found with over six
24 pounds of marijuana in her vehicle. Respondent’s vehicle also contained what appeared to be a
25 cultivation log. Sebastopol Police obtained warrants and searched three of Respondent’s
26 properties and discovered over 1500 marijuana plants. Police discovered over 200 pounds of
27 marijuana. One of the properties searched, 312 Grandview, Sebastopol, Ca. is Respondent’s
28 address of record with the Board.

1 14. On or about June 30, 2009, in Sonoma County Superior Court Case No.
2 SCR-554049., Respondent was convicted on a plea of no contest to violating Health and Safety
3 Code sections 11358 and 11359, both felonies. Respondent did unlawfully plant, cultivate,
4 harvest, or process marijuana. Respondent unlawfully possessed marijuana for sale. The
5 circumstances leading to Respondent's conviction are described in paragraph 15-17, below.

6 15. On or about February 10, 2009, police searched one of respondents
7 properties located at 4671 Timber Lane, Occidental, Ca. Police found numerous marijuana
8 plants being cultivated by respondent. Police also found marijuana in various states of
9 processing.

10 16. On or about February 10, 2009, police searched respondent's residence at
11 312 Grandview, Sebastopol, Ca. Police found numerous marijuana plants being cultivated by
12 Respondent. Police also found marijuana in various states of processing. Respondent admitted
13 that some of the marijuana was for at least one of her acupuncture and chiropractic patients.

14 17. Respondent was on probation in Sonoma County Superior Court Case No.
15 SCR-496027 when the arrests occurred.

16
17 **FIRST CAUSE FOR DISCIPLINE**

18 (Conviction)

19 18. Respondent is subject to disciplinary action under sections 490 and
20 4955(b) of the Code in Respondent was convicted of a crime that is substantially related to the
21 duties, functions, or qualifications of an Acupuncturist. The circumstances are described in
22 paragraph 12, above.

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24 **SECOND CAUSE FOR DISCIPLINE**

25 (Possession of Marijuana)

26 19. Respondent is subject to disciplinary action under section 4955(a) of the
27 code in that respondent possessed a controlled substance. The circumstances are described in
28 paragraphs 12-13, above.

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THIRD CAUSE FOR DISCIPLINE

(Cause for Denial of License)

20. Respondent is subject to disciplinary action under sections 4955(i) and 480 of the Code in that Respondent was involved in conduct that would be cause for denying an Acupuncture license. The circumstances are describe in paragraphs 12-13, above.

FOURTH CAUSE FOR DISCIPLINE

(Convictions)

21. Respondent is subject to disciplinary action under sections 490 and 4955(b) of the Code in Respondent was convicted of two crimes that are substantially related to the duties, functions, or qualifications of an Acupuncturist. The circumstances are described in paragraph 14, above.

FIFTH CAUSE FOR DISCIPLINE

(Possession of Marijuana)

22. Respondent is subject to disciplinary action under section 4955(a) of the code in that respondent possessed a controlled substance. The circumstances are described in paragraphs 14-17, above.

SIXTH CAUSE FOR DISCIPLINE

(Cause for Denial of License)

23. Respondent is subject to disciplinary action under sections 4955(i) and 480 of the Code in that Respondent was involved in conduct that would be cause for denying an Acupuncture license. The circumstances are describe in paragraph 14-17, above.

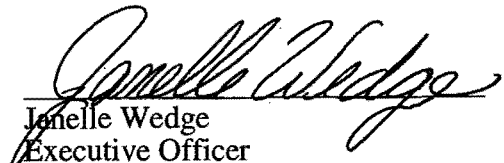
PRAYER

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

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1. Revoking or suspending Acupuncture License Number AC 7381, issued to Mira Herman.
2. Ordering Mira Herman to pay the Acupuncture Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code sections 125.3 and 4959;
3. Taking such other and further action as deemed necessary and proper.

DATED: OCT 1 2009


Janelle Wedge
Executive Officer
Acupuncture Board
Department of Consumer Affairs
State of California
Complainant

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