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ACUPUNCTURE BOARD

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

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

Case No. 1A-2010-138

12 **LAWRANCE H. TSAI**
13 **1373 Lasuen Drive**
Millbrae, CA 94030

STATEMENT OF ISSUES

14 Applicant.

15
16
17 Complainant alleges:

18 PARTIES

- 19 1. Janelle Wedge (Complainant) brings this Statement of Issues solely in her official
20 capacity as the Executive Officer of the Acupuncture Board, Department of Consumer Affairs.
21 2. On or about March 23, 2011, the Acupuncture Board, Department of Consumer
22 Affairs received an application for an Acupuncture license from Lawrance H. Tsai (Applicant).
23 On or about March 22, 2011, Applicant certified under penalty of perjury to the truthfulness of all
24 statements, answers, and representations in the application. The Board denied the application on
25 April 25, 2011. Applicant requested a hearing on May 18, 2011.

JURISDICTION

1
2 3. This Statement of Issues is brought before the Acupuncture Board (Board),
3 Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code unless otherwise indicated.

5 4. Section 4955 of the Code states:

6 "The board may deny, suspend, or revoke, or impose probationary conditions upon, the
7 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 "..."

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

13 "..."

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

16 5. Section 475 of the Code states:

17 "(a) Notwithstanding any other provisions of this code, the provisions of this division shall
18 govern the denial of licenses on the grounds of:

19 "..."

20 "(2) Conviction of a crime.

21 "(4) Commission of any act which, if done by a licentiate of the business or
22 profession in question, would be grounds for suspension or revocation of license.

23 "..."

24 "(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good
25 moral character or any similar ground relating to an applicant's character, reputation, personality,
26 or habits."

27 6. Section 480 of the Code states:

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

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

9 "..."

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

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

15 "(b) Notwithstanding any other provision of this code, no person shall be denied a license
16 solely on the basis that he or she has been convicted of a felony if he or she has obtained a
17 certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of
18 Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has
19 met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate
20 the rehabilitation of a person when considering the denial of a license under subdivision (a) of
21 Section 482.

22 7. Section 490 of the Code states:

23 "(a) In addition to any other action that a board is permitted to take against a licensee, a
24 board may suspend or revoke a license on the ground that the licensee has been convicted of a
25 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
26 or profession for which the license was issued.

27 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
28 discipline a licensee for conviction of a crime that is independent of the authority granted under

1 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
2 of the business or profession for which the licensee's license was issued.

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

9 "..."

10 8. Section 493 of the Code states:

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

20 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
21 'registration.'"

22 CAUSE FOR DENIAL OF APPLICATION

23 (Conviction)

24 9. Applicant's application is subject to denial under code sections 475(1)(2), 480(A)(1)
25 480(3)(B), 490(a) and (c), and 4955(b) in that he has two substantially related misdemeanor
26 convictions. The circumstances are as follows:
27
28

2010 DUI conviction

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2 10. On or about October 20, 2009, at approximately 5:06 p.m., California Highway Patrol
3 Officer Tharp investigated a report of a reckless driver on Main Street in Saint Helena, California.
4 He observed a vehicle matching the report, and conducted a traffic stop. The driver was
5 identified as Applicant, via his driver's license. As the officer spoke to Applicant, the officer
6 smelled a strong odor of alcohol and observed that Applicant appeared to have red wine stains on
7 his mouth. Applicant admitted that he drank a total of six glasses of wine at two wineries earlier
8 that day. Per the officer's instructions, Applicant performed field sobriety tests. Based on his
9 poor performance, objective symptoms of intoxication, admission of drinking alcohol, and poor
10 driving behavior, the officer formed the opinion that Applicant was under the influence of alcohol
11 and arrested Applicant for violating Vehicle Code section 23152(a) [driving under the influence
12 of alcohol] and Vehicle Code section 23152(b) [driving with a blood alcohol content of .08% or
13 more]. A blood sample was obtained from Applicant, which indicated a blood alcohol content of
14 .16%.

15 11. On or about April 1, 2010, in *People of the State of California vs. Lawrance H. Tsai*,
16 Napa County Superior Court case number CR149009, Applicant was convicted on his plea of
17 nolo contendere to a misdemeanor violation of Vehicle Code section 23152(b) [driving with a
18 blood alcohol content above .08%], and he admitted a special allegation per Vehicle Code section
19 23578 [excessive blood alcohol above .15%]. He was sentenced as follows: summary probation
20 for five years under terms and conditions, including payment of fines, serve ten days in jail with
21 credit for two days served, interlock ignition device installed for two years, enroll and
22 successfully complete an 18 month Drinking Drivers Program.

2005 DUI conviction

23
24 12. On or about February 24, 2005, in *People of the State of California vs. Lawrance H.*
25 *Tsai*, Los Angeles County Superior Court case number 5PM00551, Applicant was convicted on
26 his plea of nolo contendere to a misdemeanor violation of Vehicle Code section 23152(b) [driving
27 with a blood alcohol content above .08%.] He was sentenced to three years formal probation,
28

1 ordered to pay fines, enroll and successfully complete a three month First Offender alcohol and
2 drug education program, and his driving privileges were restricted for 90 days.

3 13. Therefore, Applicant's application is subject to denial based on his two misdemeanor
4 convictions for violating Vehicle Code section 23152(b) [driving with a blood alcohol content
5 above .08%] which are substantially related to the qualifications, functions and duties of an
6 acupuncturist and are in violation of code sections 475(1)(2), 480(A)(1) 480(3)(B), 490(a) and
7 (c), and 4955(b).

8 PRAYER

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

- 11 1. Denying the application of Lawrance H. Tsai for an Acupuncture license;
- 12 2. Taking such other and further action as deemed necessary and proper.

13 DATED: JUL 12 2011

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15 JANNELLE WEDGE
16 Executive Officer
17 Acupuncture Board
18 Department of Consumer Affairs
19 State of California
20 Complainant

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