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8	Autorneys for Complainani							
9	BEFORE THE							
10	ACUPUNCTURE BOARD DEPARTMENT OF CONSUMER AFFAIRS							
11	STATE OF CALIFORNIA							
12	In the Matter of the Accusation Against: Case No. 1A-2009-60							
13	MICHAEL DAVID WOODWORTH, L.AC. 2530 Vista Way, #F 108							
14	Oceanside, CA 92054  A C C U S A T I O N							
15	Acupuncturist License No. AC 10818							
16	Respondent.							
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19	Complainant alleges:							
20	PARTIES							
21	1. Janelle Wedge (Complainant) brings this Accusation solely in her official capacity as							
22	the Executive Officer of the Acupuncture Board.							
23	2. On or about December 5, 2005, the Acupuncture Board, Department of Consumer							
24	Affairs, State of California (Board) issued Acupuncturist License Number AC 10818 to Michael							
25	David Woodworth, L.Ac. (Respondent). The Acupuncturist license was in full force and effect at							
26	all times relevant to the charges brought herein and will expire on February 28, 2011, unless							
27	renewed.							
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	1							

Accusation

**JURISDICTION** 

- 3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.
  - 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 acupuncture license.
- " "
- 5. 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."
  - 6. 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 clapsed, 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."

### FIRST CAUSE FOR DISCIPLINE

(Conviction of Crimes Substantially Related to the Practice of the Acupuncturist)

7. Respondent is subject to disciplinary action under section section 4955, as defined by section 4955, subdivision (b) of the Code in that respondent has been convicted of crimes substantially related to the qualifications, function and duties of the acupuncturist. The circumstances are as follows:

## The 2007 Conviction

A. On or about July 12, 2007, in the Superior Court of California, County of San Diego, in the case of *People v. Michael D. Woodworth*, Case No. CN229233, respondent was convicted on his own guilty plea, of one count of driving an automobile while under the influence resulting in bodily injury to another person in violation of Vehicle Code section 23153, subdivision (a).

As a consequence of the conviction, respondent was sentenced to five (5) years summary probation with terms and conditions including the requirement that he spend 120 days in jail, pay restitution, attend an Alcohol Anonymous Program on a daily basis, and complete an alcohol offender program.

- B. The circumstances of the conviction are as follows: At about 12:46 a.m. on or about May 19, 2007, while operating an automobile in the City of Oceanside, respondent crossed the center line into traffic going the opposite direction. Consequently, respondent collided with another vehicle causing injuries to the driver and passengers in that vehicle. When contacted by the police, respondent smelled of alcohol, had bloodshot and/or watery eyes and could not sit up without assistance. Respondent admitted to the police he had been drinking. Respondent was arrested and blood sample was obtained.
- C. On or about May 23, 2007, the District Attorney for the County of San Diego filed a criminal felony complaint charging respondent with one count of driving an automobile while under the influence of an alcoholic beverage or drugs and while concurrently neglecting a duty imposed by law which proximately caused bodily injury to another in violation of Vehicle Code section 23152, subdivision (a), a felony [Count 1]; and with a second count of driving an automobile while having more than 0.08 percent by weight of alcohol in his blood and while concurrently neglecting a duty imposed by law which proximately caused bodily injury to another in violation of Vehicle Code section 23152, subdivision (b), a felony [Count 2].

The criminal complaint further alleged that respondent committed the charged offenses within 10 years of a prior conviction for violating Vehicle Code section 23152, subdivision (a) within the meaning of Vehicle Code sections 23626 and 23560.

Following respondent's guilty plea to Count 1 of the criminal complaint on July 12, 2007, the District Attorney dismissed Count 2 of the criminal complaint on his own motion.

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D. On or about January 6, 2004, in the Superior Court of California, County of San Diego, in the case of *People v. Michael D. Woodworth*, Case No. M914534, respondent was convicted on his own guilty plea, of one count of driving an automobile while under the influence resulting in bodily injury to another person in violation of Vehicle Code section 23153, subdivision (a). As a consequence of the conviction, respondent was sentenced to five (5) years summary probation with terms and conditions including an 80-day jail time, restricted driver's license, \$1,700 fine and an order to complete a "first conviction program."

E. The circumstances of the conviction are as follows: On or about December 23, 2003, the District Attorney for San Diego County filed a two-count criminal complaint against respondent charging him with one count of driving an automobile while under the influence of an alcoholic beverage or drugs in violation of Vehicle Code section 23152, subdivision (a), a misdemeanor [Count 1], and a second count of driving an automobile while having more than 0.08 percent by weight of alcohol in his blood in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor [Count 2]. On or about January 6, 2004, following respondent's guilty plea, the District Attorney dismissed Count 2 of the criminal complaint.

# SECOND CAUSE FOR DISCIPLINE

(Use or Possession of Controlled Substance or Dangerous Drugs)

8. Respondent is further subject to disciplinary action under section 4955, as defined by section 4955, subdivision (a) of the Code, in that he used or possessed alcoholic beverage to an extent or in a manner dangerous to himself, to other persons, or to the public, and to an extent that the use impairs his ability to engage in the practice of acupuncture with safety to the public, as more particularly alleged in paragraph 7, above, which is hereby incorporated by reference and realleged as if fully set for th herein.

### DISCIPLINE CONSIDERATIONS

9. To determine the degree of discipline, if any, to be imposed on respondent, complainant alleges as follows:

A. On or about December 19, 1996, in a criminal proceeding in Peabody District	et
Court, Peabody, Massachusetts, in the case of the Commonwealth of Massachusetts v. Michael	D.
Woodworth, Case Numbers 9686CR1675A and 9686CR1675D, respondent was convicted on h	nis
own guilty plea, of one count of operating an automobile under the influence of alcohol or drug	gs,
and of one count of possessing drugs with intent to distribute marijuana. As a consequence of	the
conviction was respondent sentenced to probation with terms and conditions that included	
revocation of his driver's license and a \$100 fine.	

- B. On or about October 20, 1994, in a criminal proceeding in Merrimac District Court, Merrimac, Massachusetts, in the case of the *Commonwealth of Massachusetts v. Michael D. Woodworth*, Case No. 9422 CR 2139, respondent (a minor at the time) was convicted on his own guilty plea, of one count of driving a motor vehicle while carrying an alcoholic beverage in violation of section 34, subdivision (c) of Chapter 138 of the General Laws of Massachusetts. As a consequence of the conviction, among other things, respondent's driver's license was suspended and was ordered to pay costs.
- C. On or about April 27, 1993, in a criminal proceeding in Georgetown District Court, Georgetown, Massachusetts, in the case of the *Commonwealth of Massachusetts v. Michael D. Woodworth*, Case No. 9338 CR 0892, respondent (a minor at the time) was convicted of one count of driving a motor vehicle while carrying an alcoholic beverage in violation of section 34, subdivision (c) of Chapter 138 of the General Laws of Massachusetts. As a consequence of the conviction, among toher things, respondent was ordered to pay fine and costs.

### **PRAYER**

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

- 1. Revoking or suspending Acupuncturist License Number AC 10818, issued to Michael David Woodworth, L.Ac.;
- 2. Ordering Michael David Woodworth, 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;

1	3.	Ordering M	lichael David	Woodworth, L.Ac., to pay t	he Board the costs of	probation			
2	monitoring if respondent is placed on probation; and								
3	4.	Taking sucl	h other and fur	ther action as deemed neces	ssary and proper.				
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5	DATED:	SEP	3 2009	_					
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Accusation