## BEFORE THE ACUPUNCTURE BOARD DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MATTHEW SCOTT SCHWARTZ, L.Ac. 4949 Cartwright Avenue North Hollywood, CA 91601 Case No. 1A-2017-240

OAH No. 22222

Acupuncturist License No. AC 11109,

Respondent.

## **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 <u>April 3, 2020</u>

It is so ORDERED March 4, 2020.

Original Signed by AMY MATECKI, MD, LA.C. FOR THE ACUPUNCTURE BOARD DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

| 1  | XAVIER BECERRA                                                                                       |                                                      |  |
|----|------------------------------------------------------------------------------------------------------|------------------------------------------------------|--|
| 2  | AAVIER BECERRA<br>Attorney General of California<br>E. A. JONES III                                  |                                                      |  |
| 2  | E. A. JONES III<br>Supervising Deputy Attorney General<br>WENDY WIDLUS                               |                                                      |  |
| 4  | Deputy Attorney General<br>State Bar No. 82958                                                       |                                                      |  |
| 5  | California Department of Justice<br>300 So. Spring Street, Suite 1702                                |                                                      |  |
| 6  | Los Angeles, CA 90013<br>Telephone: (213) 269-6457                                                   |                                                      |  |
| 7  | Facsimile: (916) 731-2117<br>E-mail: Wendy.Widlus@doj.ca.gov                                         |                                                      |  |
| 8  | Attorneys for Complainant                                                                            |                                                      |  |
| 9  | REEAD                                                                                                | <b>Г ТНГ</b>                                         |  |
| 10 | BEFORE THE<br>ACUPUNCTURE BOARD                                                                      |                                                      |  |
| 11 | DEPARTMENT OF CO<br>STATE OF CA                                                                      |                                                      |  |
| 12 |                                                                                                      |                                                      |  |
| 13 | In the Matter of the Accusation Against:                                                             | Case No. 1A-2017-240                                 |  |
| 14 | MATTHEW SCOTT SCHWARTZ, L.Ac.                                                                        | OAH No. 2019090109                                   |  |
| 15 | 4949 Cartwright Avenue<br>North Hollywood, CA 91601                                                  | STIPULATED SETTLEMENT AND                            |  |
| 16 | Acupuncturist License No. AC 11109                                                                   | DISCIPLINARY ORDER                                   |  |
| 17 | Respondent.                                                                                          |                                                      |  |
| 18 |                                                                                                      | 1                                                    |  |
| 19 | IT IS HEREBY STIPULATED AND AG                                                                       | <b>REED</b> by and between the parties to the above- |  |
| 20 | entitled proceedings that the following matters are                                                  | e true:                                              |  |
| 21 | PARTIES                                                                                              |                                                      |  |
| 22 | 1. Benjamin Bodea (Complainant) is the Executive Officer of the Acupuncture Board                    |                                                      |  |
| 23 | (Board). He brought this action solely in his official capacity and is represented in this matter by |                                                      |  |
| 24 | Xavier Becerra, Attorney General of the State of California, by Wendy Widlus, Deputy Attorney        |                                                      |  |
| 25 | General.                                                                                             |                                                      |  |
| 26 | 2. Matthew Scott Schwartz, L.Ac. (Respondent) is represented in this proceeding by                   |                                                      |  |
| 27 | attorney Gary Wittenberg, whose address is: Baranov & Wittenberg, LLP, 1901 Avenue of the            |                                                      |  |
| 28 | Stars, Suite 1750, Los Angeles, CA 90067.                                                            |                                                      |  |
|    |                                                                                                      | 1                                                    |  |
|    |                                                                                                      | STIPULATED SETTLEMENT (1A-2017-240)                  |  |

| 1  | 3. On or about April 27, 2006, the Board issued Acupuncturist License No. AC 11109 to                |  |  |
|----|------------------------------------------------------------------------------------------------------|--|--|
| 2  | Matthew Scott Schwartz, L.Ac. The Acupuncturist License was in full force and effect at all          |  |  |
| 3  | times relevant to the charges brought in Accusation No. 1A-2017-240, and will expire on              |  |  |
| 4  | November 30, 2021, unless renewed.                                                                   |  |  |
| 5  | JURISDICTION                                                                                         |  |  |
| 6  | Accusation No. 1A-2017-240 was filed before the Board, and is currently pending against              |  |  |
| 7  | Respondent. The Accusation and all other statutorily required documents were properly served         |  |  |
| 8  | on Respondent on August 7, 2019. Respondent timely filed his Notice of Defense contesting the        |  |  |
| 9  | Accusation.                                                                                          |  |  |
| 10 | 4. A copy of Accusation No. 1A-2017-240 is attached as exhibit A and incorporated                    |  |  |
| 11 | herein by reference.                                                                                 |  |  |
| 12 | ADVISEMENT AND WAIVERS                                                                               |  |  |
| 13 | 5. Respondent has carefully read, fully discussed with counsel, and understands the                  |  |  |
| 14 | charges and allegations in Accusation No. 1A-2017-240. Respondent has also carefully read,           |  |  |
| 15 | fully discussed with counsel, and understands the effects of this Stipulated Settlement and          |  |  |
| 16 | Disciplinary Order.                                                                                  |  |  |
| 17 | 6. Respondent is fully aware of his legal rights in this matter, including the right to a            |  |  |
| 18 | hearing on the charges and allegations in the Accusation; the right to confront and cross-examine    |  |  |
| 19 | the witnesses against him; the right to present evidence and to testify on his own behalf; the right |  |  |
| 20 | to the issuance of subpoenas to compel the attendance of witnesses and the production of             |  |  |
| 21 | documents; the right to reconsideration and court review of an adverse decision; and all other       |  |  |
| 22 | rights accorded by the California Administrative Procedure Act and other applicable laws.            |  |  |
| 23 | 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and                 |  |  |
| 24 | every right set forth above.                                                                         |  |  |
| 25 | CULPABILITY                                                                                          |  |  |
| 26 | 8. Respondent understands that the charges and allegations in Accusation No. 1A-2017-                |  |  |
| 27 | 240, if proven at a hearing, constitute cause for imposing discipline on his Acupuncturist License   |  |  |
| 28 | No. AC 11109.                                                                                        |  |  |
|    | 2                                                                                                    |  |  |
|    | STIPULATED SETTLEMENT (1A-2017-240)                                                                  |  |  |

| 1  | 9. For the purposes of resolving the Accusation without the expense and uncertainty of               |  |  |
|----|------------------------------------------------------------------------------------------------------|--|--|
| 2  | further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual     |  |  |
| 3  | basis for the charges in the Accusation and that those charges constitute cause for discipline.      |  |  |
| 4  | 10. Respondent agrees that his Acupuncturist License is subject to discipline and he                 |  |  |
| 5  | agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below    |  |  |
| 6  | 11. Respondent agrees the Disciplinary Order below, requiring the disclosure of                      |  |  |
| 7  | probation pursuant to Business and Professions Code section 4962, serves to protect the public       |  |  |
| 8  | interest.                                                                                            |  |  |
| 9  | 12. Respondent agrees that his Acupuncturist License is subject to discipline and he                 |  |  |
| 10 | agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below    |  |  |
| 11 | CONTINGENCY                                                                                          |  |  |
| 12 | 13. This stipulation shall be subject to approval by the Acupuncture Board. Respondent               |  |  |
| 13 | understands and agrees that counsel for Complainant and the staff of the Acupuncture Board may       |  |  |
| 14 | communicate directly with the Board regarding this stipulation and settlement, without notice to     |  |  |
| 15 | or participation by Respondent or his counsel. By signing the stipulation, Respondent                |  |  |
| 16 | understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation     |  |  |
| 17 | prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation |  |  |
| 18 | as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force o   |  |  |
| 19 | effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, |  |  |
| 20 | and the Board shall not be disqualified from further action by having considered this matter.        |  |  |
| 21 | 14. The parties understand and agree that Portable Document Format (PDF) and facsimil                |  |  |
| 22 | copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile             |  |  |
| 23 | signatures thereto, shall have the same force and effect as the originals.                           |  |  |
| 24 | 15. In consideration of the foregoing admissions and stipulations, the parties agree that            |  |  |
| 25 | the Board may, without further notice or formal proceeding, issue and enter the following            |  |  |
| 26 | Disciplinary Order:                                                                                  |  |  |
| 27 | DISCIPLINARY ORDER                                                                                   |  |  |
| 28 | IT IS HEREBY ORDERED that Acupuncturist License No. AC 11109 issued to                               |  |  |
|    | 3                                                                                                    |  |  |
|    | STIPULATED SETTLEMENT (1A-2017-240)                                                                  |  |  |

Respondent Matthew Scott Schwartz, L.Ac. is revoked. However, the revocation is stayed and 2 Respondent is placed on probation for two years on the following terms and conditions.

OBEY ALL LAWS Respondent shall obey all federal, state and local laws, remain 3 1. in full compliance with any court ordered criminal probation terms, payments, and/or other 4 5 orders, 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 or its 6 designee in writing within seventy-two (72) hours of occurrence. This condition applies to any 7 jurisdiction with authority over the Respondent, whether inside or outside California. 8

2. QUARTERLY REPORTS Respondent shall submit quarterly reports under penalty 9 of perjury on forms provided by the Board or its designee, stating whether there has been 10 compliance with all the conditions of probation. If the final probation report is not submitted as 11 directed, probation shall be extended automatically until such time as the final report is submitted 12 and accepted by the Board or its designee. 13

3. COURSEWORK Respondent, at his/her own expense, shall enroll and successfully 14 complete not less than a four [4] hour course in Record Keeping no later than the end of the first 15 year of probation. The coursework shall be in addition to that required for license renewal. The 16 Board or its designee shall notify Respondent of the course content and number of hours required. 17 Within thirty (30) days of the Board's written notification of assigned coursework, Respondent 18 19 shall submit a written plan to comply with this requirement to the Board or its designee. The Board or its designee shall approve such a plan prior to enrollment in any course of study. Upon 2021 successful completion of the coursework, Respondent shall submit original completion certificates to the Board within thirty (30) days of course completion. 22

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4. MONITORING PROGRAM Respondent shall comply with the Board's probation monitoring program and shall, upon reasonable notice, report to the assigned probation monitor. Respondent shall contact the assigned probation monitor regarding any questions specific to the probation order. Unless the Respondent obtains prior approval from his or her assigned Board probation monitor to allow for contact, Respondent shall not have any contact with (1) victims, witnesses, and/or complainants associated with the case; (2) Board members and/or members of

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its staff; (3) persons serving the Board as subject matter experts; and/or (4) persons who
 previously rendered expert opinions on behalf of the Board in Respondent's disciplinary
 proceeding.

5. <u>INTERVIEW WITH THE BOARD OR ITS DESIGNEE</u> Respondent shall appear in
person for interviews with the Board or its designee upon request at various intervals and with or
without prior notice throughout the term of probation.

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6. <u>CHANGES OF EMPLOYMENT</u> Respondent shall notify the Board in writing, through the assigned probation monitor of any and all changes of employment, location and employment address within thirty (30) days of such change.

TOLLING of PROBATION If Respondent leaves California to reside or practice 10 7. outside this state, or for any reason, unless by Board order, should Respondent stop practicing 11 acupuncture in California, Respondent must notify the Board in writing of the dates of departure 12 and return or the dates of non-practice within 10 days of departure or return. Non-practice is 13 14 defined as any period of time exceeding 30 days in which Respondent is not engaging in the practice of acupuncture or any time the license is inactive or in cancelled status. Periods of 15 temporary residency or practice outside the state or of non-practice within the state shall not apply 16 to reduction of the probationary period. It shall be a violation of probation for respondent's 17 probation to remain tolled pursuant to the provisions of this condition for a period exceeding a 18 19 total, consecutive period of two years. For purposes of this condition, a Board ordered suspension or non-practice in compliance with any other condition of probation shall not be 2021 tolled. Any order for payment of cost recovery shall remain in effect whether or not probation is tolled. All provisions of probation shall recommence on the effective date of resumption of 22 practice in California, and the term of probation shall be extended for the period of time 23 24 respondent was out of state or in state and not practicing.

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**RESTRICTION ON EMPLOYING and SUPERVISION OF TRAINEES** 

Respondent shall not employ or supervise or apply to employ or supervise acupuncture trainees
during the course of this probation. Respondent shall terminate any such supervisorial
relationship in existence on the effective date of this probation. Respondent shall not teach at any

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Board approved training program or continuing education courses during the course of this 2 probation.

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9. COST RECOVERY Respondent shall pay to the Board its costs of investigation and 3 enforcement in the amount of \$3,000.00. Respondent shall be permitted to pay these costs in a 4 5 payment plan approved by the Board or its designee, with payments to be completed no later than three months prior to the end of the probation term. Cost recovery will not be tolled. At 6 Respondent's request, if Respondent has not complied with this condition during the probationary 7 8 term, and Respondent has presented sufficient documentation of his good faith efforts to comply 9 with this condition, and if no other conditions have been violated, the Board or its designee, in its 10 discretion, may grant an extension of Respondent's probation period up to two (2) years without further hearing in order to comply with this condition. During the two (2) years extension, all 11 original conditions of probation will apply. The filing of bankruptcy by Respondent shall not 12 relieve Respondent of his/her responsibility to reimburse the Board for its investigation and 13 14 prosecution costs.

VIOLATION OF PROBATION If Respondent violates probation in any respect, the 10. 15 Board may, after giving Respondent notice and the opportunity to be heard, revoke probation and 16 carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is 17 filed against Respondent during probation, the Board shall have continuing jurisdiction until the 18 19 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 2021 petition to revoke probation pending against Respondent. If Respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over Respondent, 22 and probation shall automatically be extended until all terms and conditions have been satisfied or 23 24 the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty which was stayed. 25

LICENSE SURRENDER Following the effective date of this Decision, if 26 11. Respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy 27 the terms and conditions of probation, Respondent may request the voluntary surrender of his or 28

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her license or registration. The Board or its designee reserves the right to evaluate Respondent's 1 2 request and to exercise its discretion whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of 3 the surrender, Respondent shall, within fifteen (15) days, deliver Respondent's pocket and/or wall 4 certificate to the Board or its designee and Respondent shall no longer practice acupuncture. 5 Upon formal acceptance of the tendered license, Respondent will no longer be subject to the 6 7 terms and conditions of probation. Voluntary surrender of Respondent's license shall be considered disciplinary action and shall become a part of Respondent's license history with the 8 Board. If Respondent reapplies for an acupuncture license, the application shall be treated as a 9 10 petition for reinstatement of a revoked or surrendered license. 12. SEVERABILITY CLAUSE Each condition of probation is a separate and distinct 11 condition. If any condition of this Decision and Order, or any application thereof, is declared 12 unenforceable in whole, in part, or to any extent, the remainder of this Decision and Order, and all 13 14 other applications thereof, shall not be affected. Each condition of this Decision and Order shall separately be valid and enforceable to the fullest extent permitted by law. 15 NOTIFICATION OF NAME, ADDRESS, TELEPHONE NUMBER OR E-MAIL 13. 16 ADDRESS CHANGES Respondent shall notify the assigned probation monitor, in writing 17 within ten (10) days, of any and all name, address, telephone and/or e-mail address changes. 18 DISCLOSURE of PROBATION STATUS Within ten (10) days of the effective date 19 14. of this Decision, Respondent shall submit a proposed written disclosure to provide to all patients 2021 or a patient's guardian or health care surrogate to the Board for prior approval. The written disclosure shall include the following: 22 (1) Respondent's probation status; 23 (2) Length of probation; 24 (3) Probation end date; 25 (4) All practice restrictions imposed by the probation order; 26 (5) The Board's telephone number; 27 (6) Explanation of how the patient can find further information on Respondent's probation 28 7

STIPULATED SETTLEMENT (1A-2017-240)

by running a license verification on the Board's web site. Once the Board approves Respondent's
written disclosure, Respondent shall obtain from the patient, or the patient's guardian or health
care surrogate, a separate, signed copy of the written disclosure. Before or at a patient's first visit
following the effective date of the Board's Decision, Respondent shall provide the written
disclosure to all patients or a patient's guardian or health care surrogate except when any of the
following applies:

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(1) The patient is unconscious or otherwise unable to comprehend the disclosure and sign the copy of the disclosure pursuant to subdivision (b) and a guardian or health care surrogate is unavailable to comprehend the disclosure and sign the copy.

- 10 (2) The visit occurs in an emergency room or an urgent care facility or the visit is
  11 unscheduled, including consultations in inpatient facilities.
- 12 (3) The licensee who will be treating the patient during the visit is not known to the
  13 patient until immediately prior to the start of the visit.
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ient until immediately prior to the start of the visit.
 (4) The licensee does not have a direct treatment relationship with the patient.
 Respondent shall make all records available for immediate inspection and copying on the

Respondent shall make all records available for immediate inspection and copying on the premises by the Board or its designee at all times during business hours and shall retain the records for the entire term of probation.

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ords for the entire term of probation. 15. MAINTENANCE OF CLEAR AND ACTIVE LICENSE Respondent shall, at all

times, maintain a clear and active current license with the Board, including any period of
suspension or tolled probation. If an initial license must be issued (Statement of Issues) or a

20 suspension or tolled probation. If an initial license must be issued (Statement of Issues) or

21 license is reinstated, probation shall not commence until a license is issued by the Board.

22 Respondent must complete the licensure process within two (2) years from the effective date of

23 the Board's Decision. Should Respondent's license expire, by operation of law or otherwise,

24 upon renewal or reinstatement, Respondent's license shall be subject to any and all conditions of

25 this probation not previously satisfied.

26 16. <u>COMPLETION OF PROBATION</u> Upon successful completion of probation,
27 respondent's license will be fully restored.

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| 1  | ACCEPTANCE                                                                                          |  |
|----|-----------------------------------------------------------------------------------------------------|--|
| 2  | I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully         |  |
| 3  | discussed it with my attorney, Gary Wittenberg. I understand the stipulation and the effect it will |  |
| 4  | have on my Acupuncturist License. I enter into this Stipulated Settlement and Disciplinary Order    |  |
| 5  | voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the   |  |
| 6  | Acupuncture Board.                                                                                  |  |
| 7  |                                                                                                     |  |
| 8  | DATED: <u>1/20/2020</u> Original signed by                                                          |  |
| 9  | MATTHEW SCOTT SCHWARTZ, L.Ac.<br>Respondent                                                         |  |
| 10 | I have read and fully discussed with Respondent Matthew Scott Schwartz, L.Ac. the terms             |  |
| 11 | and conditions and other matters contained in the above Stipulated Settlement and Disciplinary      |  |
| 12 | Order. I approve its form and content.                                                              |  |
| 13 | DATED: <u>1/20/2020</u> Original signed by<br>GARY WITTENBERG Attorney for Respondent               |  |
| 14 | GART WITTENBERG Allotney for Respondent                                                             |  |
| 15 |                                                                                                     |  |
| 16 | <u>ENDORSEMENT</u>                                                                                  |  |
| 17 | The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully                   |  |
| 18 | submitted for consideration by the Acupuncture Board.                                               |  |
| 19 | DATED: <u>January 21, 2020</u> Respectfully submitted,                                              |  |
| 20 | XAVIER BECERRA                                                                                      |  |
| 21 | Attorney General of California<br>E. A. JONES III                                                   |  |
| 22 | Supervising Deputy Attorney General                                                                 |  |
| 23 | Original signed by                                                                                  |  |
| 24 | WENDY WIDLUS                                                                                        |  |
| 25 | Deputy Attorney General<br>Attorneys for Complainant                                                |  |
| 26 | LA2019501717<br>54053498.docx                                                                       |  |
| 27 |                                                                                                     |  |
| 28 |                                                                                                     |  |
|    | 9<br>STIPULATED SETTLEMENT (1A-2017-240)                                                            |  |

## Exhibit A

Accusation No. 1A-2017-240