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ACUPUNCTURE BOARD

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10 **BEFORE THE**
ACUPUNCTURE BOARD
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. 1A-2011-21

13 **ROBERT PAUL SIMMONS, L.AC.**
14 **34161 Yucaipa Blvd., #E**
15 **Yucaipa, CA 92399**

ACCUSATION

16 **Acupuncturist License**
No. AC 11640

17 Respondent.

18
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, Department of Consumer Affairs (Board).

23 2. On or about February 23, 2007, the Acupuncture Board issued Acupuncturist License
24 Number AC 11640 to Robert Paul Simmons, L.Ac. (Respondent). The Acupuncturist License
25 was in full force and effect at all times relevant to the charges brought herein and will expire on
26 October 31, 2012, unless renewed.

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JURISDICTION

1
2 3. This Accusation is brought before the Board under the authority of the following
3 laws. All section references are to the Business and Professions Code (Code) unless otherwise
4 indicated.

5 4. Section 4955 of the Code states:

6 “The board may deny, suspend, or revoke, or impose probationary conditions upon,
7 the 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 “(a) Using or possessing any controlled substance as defined in Division 10
10 (commencing with Section 11000) of the Health and Safety Code, or dangerous
11 drug or alcoholic beverage to an extent or in a manner dangerous to himself or
12 herself, or to any other person, or to the public, and to an extent that the use
13 impairs his or her ability to engage in the practice of acupuncture with safety to
14 the public.

15 “...

16 “(d) ... [V]iolating ... the terms of this chapter or any regulation adopted by the
17 board pursuant to this chapter.

18 “...

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

21 “...”

22 5. Section 480 of the Code states:

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

25 “...

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

28 ////

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

4 “...”

5 6. Section 4959 of the Code states:

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

11 “(b) The costs to be assessed shall be fixed by the administrative law judge
12 and shall not in any event be increased by the board. When the board does not adopt
13 a proposed decision and remands the case to an administrative law judge, the
14 administrative law judge shall not increase the amount of any costs assessed in the
15 proposed decision.

16 “...”

17 **FIRST CAUSE FOR DISCIPLINE**

18 (Using or Possessing Controlled Substance to an Extent that the Use Impairs His
19 Ability to Engage in the Practice of Acupuncture with Safety to the Public)

20 7. Respondent is subject to disciplinary action under section 4955, as defined by section
21 4955, subdivision (a), in that he used or possessed a controlled substance and dangerous drug to
22 an extent or in a manner dangerous to himself, any other person or the public, and to an extent
23 that the use impaired his ability to engage in the practice of acupuncture with safety to the public.

24 The circumstances are as follows:

25 January 28, 2011 arrest:

26 8. On or about January 28, 2011, Deputy Sheriff Jaime Crispin was on duty and in full
27 uniform. Around 1218 hours, she and a fellow Officer were dispatched to a possible welfare
28 check call at defendant's residence at 33475 Music Camp Drive, in the community of Arrowbear.

1 The two officers arrived on scene at 1249 hours and made contact with defendant and one other
2 male adult.

3 9. In the residence, Officer Crispin noticed an orange pipe lying on the kitchen counter.
4 On the same counter and near the pipe, which was similar to the pipes used for smoking
5 methamphetamine, was a small glass decorative shelf with a small amount of white crystalline
6 substance on it. While speaking to defendant, Officer Crispin also noticed that defendant
7 exhibited signs and symptoms of being under the influence of a controlled substance. In reply to
8 her question about possible drug use, defendant admitted having used some "meth" while at his
9 residence approximately one day previously. Defendant told Officer Crispin that he was a
10 frequent user but had never been arrested for drug use or possession.

11 10. Defendant was arrested and transported to West Valley Detention Center, where he
12 was booked in for a violation of Health and Safety Code section 11350, subdivision (a)
13 (possession of a controlled substance).

14 11. On the same date, Officer Crispin conducted a field test on the white crystalline
15 substance found on the glass shelf in defendant's residence and found the substance to belong to
16 the drug class of amphetamines (including methamphetamine). Subsequently, analysis of a blood
17 sample obtained from defendant on January 28, 2011 confirmed the presence of amphetamines in
18 his blood.

19 12. On or about March 3, 2011, charges were filed against defendant, alleging a violation
20 of Health and Safety Code section 11550, subdivision (a) (being under the influence of a
21 controlled substance).

22 November 9, 2011 arrest:

23 13. After the filing of charges on March 3, 2011, defendant failed to appear on or about
24 March 21, 2011 and a warrant for his arrest was issued. On or about April 20, 2011, defendant
25 appeared at arraignment and was ordered to appear again at the San Bernardino Superior Court on
26 May 4, 2011. On or about May 4, 2011, defendant was present and ordered to appear at a pre-
27 trial hearing on August 29, 2011. Defendant failed to appear at the pre-trial hearing and a second
28 warrant was issued for his arrest.

1 14. On or about November 9, 2011, Officer Crispin was again on duty and in full uniform
2 when she attended the residence of defendant in connection with the active warrant for his arrest.
3 Defendant was at home and opened the door to the officer's second knock and spoken request for
4 entry. Once inside the residence, in the living-room, the officer found several small plastic
5 baggies containing a white crystalline substance which she suspected to be methamphetamine.

6 15. Defendant was placed under arrest pursuant to the active warrant and also for a
7 suspected violation of Health and Safety Code section 11377, subdivision (a), and booked in at
8 West Valley Detention Center.

9 16. On the same date, Officer Crispin conducted a field test on the white crystalline
10 substance found in the baggies in defendant's residence and found the substance to belong to the
11 drug class of amphetamines (including methamphetamine). Subsequently, analysis of a blood
12 sample obtained from defendant on November 9, 2011 confirmed the presence of amphetamines
13 in his blood.

14 **SECOND CAUSE FOR DISCIPLINE**

15 (Unprofessional Conduct)

16 17. Respondent is further subject to disciplinary action under section 4955, and as
17 defined by section 4955, subdivision (d) and/or section 4955, subdivision (i), in that he committed
18 unprofessional conduct by violating the terms of Chapter 12, Division of the Code, and/or
19 performed any action or conduct that would have warranted the denial of the acupuncture license,
20 as set forth in paragraphs 9 to 19, above.

21 **PRAYER**

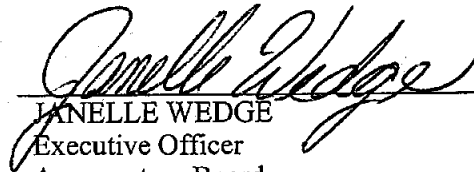
22 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
23 and that following the hearing, the Acupuncture Board issue a decision:

24 1. Revoking, suspending, imposing probationary conditions or other discipline on
25 Acupuncturist License Number AC 11640, issued to Robert Paul Simmons, L.Ac.;

26 2. Ordering Respondent Robert Paul Simmons, L.Ac., to pay the Acupuncture Board the
27 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
28 Professions Code section 4959 and 125.3, subdivision (i); and

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

DATED: JAN 03 2012



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

SD2011801544