

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


In the Matter of the Accusation Against: ) Case No. 1A-2011-21  
)  
ROBERT PAUL SIMMONS, L.AC. )  
36127 Fair Oak Trl. )  
Yucaipa, CA 92399 )  
)  
Acupuncture License No. AC 11640 )  
)  
Respondent. )  
\_\_\_\_\_ )

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Acupuncture Board, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on                         **JUN 05 2013**                        .

It is so ORDERED                         **MAY 06 2013**                        .

  
\_\_\_\_\_  
ANYORK LEE, Chair  
Acupuncture Board  
Department of Consumer Affairs  
State of California

1 KAMALA D. HARRIS  
Attorney General of California  
2 THOMAS S. LAZAR  
Supervising Deputy Attorney General  
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Deputy Attorney General  
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8 *Attorneys for Complainant*

9  
10 **BEFORE THE**  
11 **ACUPUNCTURE BOARD**  
12 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 1A-2011-21

14 **ROBERT PAUL SIMMONS, L.Ac.**  
15 **36127 Fair Oak Trl.**  
16 **Yucaipa, CA 92320**

OAH No. 2012030094

17 **Acupuncturist License No. AC11640**

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

18 Respondent.

19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Terri Thorfinnson (Complainant) is the Executive Officer of the Acupuncture Board.  
23 This action was brought by her predecessor, Janelle Wedge, solely in her official capacity as the  
24 then Executive Officer of the Acupuncture Board. The Executive Officer of the Acupuncture  
25 Board is represented in this matter by Kamala D. Harris, Attorney General of the State of  
26 California, by Tessa L. Heunis, Deputy Attorney General.

27 2. Respondent Robert Paul Simmons, L.Ac. (Respondent) is representing himself in this  
28 proceeding and has chosen not to exercise his right to be represented by counsel.

1           3.     On or about February 23, 2007, the Acupuncture Board issued Acupuncturist License  
2 No. AC11640 to Robert Paul Simmons, L.Ac. (Respondent). The Acupuncturist License was in  
3 full force and effect at all times relevant to the charges brought in Accusation No. 1A-2011-21  
4 and will expire on October 31, 2014, unless renewed.

### JURISDICTION

6           4.     On January 3, 2012, Accusation No. 1A-2011-21 was filed before the Acupuncture  
7 Board (Board), Department of Consumer Affairs, and is currently pending against Respondent. A  
8 true and correct copy of the Accusation and all other statutorily required documents were  
9 properly served on Respondent on January 5, 2012. Respondent timely filed his Notice of  
10 Defense contesting the Accusation. A true and correct copy of Accusation No. 1A-2011-21 is  
11 attached hereto as Exhibit A and incorporated herein by reference.

### ADVISEMENT AND WAIVERS

13           5.     Respondent has carefully read, and fully understands the charges and allegations in  
14 Accusation No. 1A-2011-21. Respondent has also carefully read, and fully understands the  
15 effects of this Stipulated Settlement and Disciplinary Order.

16           6.     Respondent is fully aware of his legal rights in this matter, including the right to a  
17 hearing on the charges and allegations in Accusation No. 1A-2011-21; the right to be represented  
18 by counsel at his own expense; the right to confront and cross-examine the witnesses against him;  
19 the right to present evidence and to testify on his own behalf; the right to the issuance of  
20 subpoenas to compel the attendance of witnesses and the production of documents; the right to  
21 reconsideration and court review of an adverse decision; and all other rights accorded by the  
22 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.

### CULPABILITY

26           8.     Respondent admits the complete truth and accuracy of each and every charge and  
27 allegation in Accusation No. 1A-2011-21.

28     ////

1 9. Respondent agrees that his Acupuncturist License is subject to discipline and he  
2 agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order  
3 below.

4 **CONTINGENCY**

5 10. The parties agree that this Stipulated Settlement and Disciplinary Order shall be  
6 submitted to the Board for its consideration in the above-entitled matter and, further, that the  
7 Board shall have a reasonable period of time in which to consider and act on this Stipulated  
8 Settlement and Disciplinary Order after receiving it.

9 13. The parties agree that this Stipulated Settlement and Disciplinary Order shall be null  
10 and void and not binding upon the parties unless approved and adopted by the Board, except for  
11 this paragraph, which shall remain in full force and effect. Respondent fully understands and  
12 agrees that in deciding whether or not to approve and adopt this Stipulated Settlement and  
13 Disciplinary Order, the Board may receive oral and written communications from its staff and/or  
14 the Attorney General's office. Communications pursuant to this paragraph shall not disqualify  
15 the Board, any member thereof, and/or any other person from future participation in this or any  
16 other matter affecting or involving respondent. In the event that the Board, in its discretion, does  
17 not approve and adopt this Stipulated Settlement and Disciplinary Order, with the exception of  
18 this paragraph, it shall not become effective, shall be of no evidentiary value whatsoever, and  
19 shall not be relied upon or introduced in any disciplinary action by either party hereto.

20 Respondent further agrees that should the Board reject this Stipulated Settlement and Disciplinary  
21 Order for any reason, respondent will assert no claim that the Board, or any member thereof, was  
22 prejudiced by its/his/her review, discussion and/or consideration of this Stipulated Settlement and  
23 Disciplinary Order or of any matter or matters related hereto.

24 **ADDITIONAL PROVISIONS**

25 14. The parties understand and agree that facsimile copies of this Stipulated Settlement  
26 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and  
27 effect as the originals.

28 ////



1           2.    ALCOHOL AND DRUG ABUSE TREATMENT Effective 30 days from the date  
2 of this decision, respondent shall enter an inpatient or outpatient alcohol or other drug abuse  
3 recovery program (a minimum of six (6) months duration) or an equivalent program as approved  
4 by the AC.

5           Quitting the program without permission or being expelled for cause shall constitute a  
6 violation of probation by respondent. Subsequent to the program, respondent shall participate in  
7 on-going treatment such as receiving individual and/or group therapy from a psychologist trained  
8 in alcohol and drug abuse treatment; and/or attend Twelve Step meetings or the equivalent as  
9 approved by the Board at least three times a week during the first year of probation; and/or other  
10 substance abuse recovery programs approved by the Board. Respondent shall pay all costs of  
11 treatment and therapy, and provide documentation of attendance at Twelve Step meetings or the  
12 equivalent as approved by the Board. The psychologist shall confirm that respondent has  
13 complied with the requirements of this decision and shall notify the Board immediately if he or  
14 she believes the respondent cannot safely render acupuncture services. Respondent shall execute  
15 a release authorizing the psychologist to divulge the aforementioned information to the Board.

16           3.    ABSTAIN FROM DRUGS AND ALCOHOL AND SUBMIT TO TESTS AND  
17 SAMPLES Respondent shall abstain completely from the personal use or possession of  
18 controlled substances as defined in the California Uniform Controlled Substances Act (Division  
19 10, commencing with section 11000, Health and Safety Code) and dangerous drugs as defined by  
20 Section 4211 of the Business and Professions Code, or any drugs requiring a prescription.

21           This prohibition does not apply to medications lawfully prescribed to respondent by another  
22 practitioner for a *bona fide* illness or condition. Within 15 calendar days of receiving any  
23 lawfully prescribed medications, respondent shall notify the Board or its designee of: the issuing  
24 practitioner's name, address, and telephone number; medication name, strength, and quantity; and  
25 issuing pharmacy name, address, and telephone number.

26           Respondent shall abstain completely from the use of alcoholic beverages.

27           Respondent shall undergo random, biological fluid testing as set out in paragraph 4,  
28 immediately below. Respondent shall bear all costs of such testing. Any confirmed positive

1 finding will be considered a violation of probation.

2 4. BIOLOGICAL FLUID TESTING: Respondent shall immediately submit to  
3 biological fluid testing, at respondent's expense, upon request of the Board or its designee.  
4 "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair  
5 follicle testing, or similar drug screening approved by the Board or its designee. Within 15 days  
6 of the effective date of this Decision, respondent shall contract with a laboratory or service  
7 approved in advance by the Board or its designee that will conduct random, unannounced,  
8 observed, biological fluid testing. The contract shall require results of the tests to be transmitted  
9 by the laboratory or service directly to the Board or its designee within four hours of the results  
10 becoming available. Respondent shall maintain this laboratory or service contract during the  
11 period of probation.

12 A certified copy of any laboratory test result may be received in evidence in any  
13 proceedings between the Board and respondent.

14 If respondent fails to cooperate in a random biological fluid testing program within the  
15 specified time frame, and/or if respondent has a confirmed positive biological fluid test for any  
16 substance (whether or not legally prescribed) and has not reported his use thereof to the Board or  
17 its designee, respondent shall receive a notification from the Board or its designee to immediately  
18 cease the practice of acupuncture. Respondent shall not resume the practice of acupuncture until  
19 final decision on an accusation and/or a petition to revoke probation. An accusation and/or  
20 petition to revoke probation shall be filed by the Board within 15 days of the notification to cease  
21 practice. If the Respondent requests a hearing on the accusation and/or petition to revoke  
22 probation, the Board shall provide the Respondent with a hearing within 30 days of the request,  
23 unless the Respondent stipulates to a later hearing. A decision shall be received from the  
24 Administrative Law Judge or the Board within 15 days unless good cause can be shown for the  
25 delay. The cessation of practice shall not apply to the reduction of the probationary time period.

26 If the Board does not file an accusation or petition to revoke probation within 15 days of the  
27 issuance of the notification to cease practice or does not provide respondent with a hearing within  
28 30 days of such request, the notification of cease practice shall be dissolved.

1           5.    REIMBURSEMENT FOR PROBATION SURVEILLANCE MONITORING ✓

2 Respondent shall reimburse the Board for the hourly costs it incurs in monitoring the probation to  
3 ensure compliance for the duration of the probation period.

4           6.    OBEY ALL LAWS Respondent shall obey all federal, state and local laws and all ✓

5 regulations governing the practice of acupuncture in California. A full and detailed account of  
6 any and all violations of law shall be reported by the respondent to the Board in writing within  
7 seventy-two (72) hours of occurrence.

8           7.    QUARTERLY REPORTS Respondent shall submit quarterly declarations under ✓

9 penalty of perjury on forms provided by the Board, stating whether there has been compliance  
10 with all the conditions of probation.

11           8.    SURVEILLANCE PROGRAM Respondent shall comply with the Board's probation ✓

12 surveillance program and shall, upon reasonable notice, report to the assigned investigative  
13 district office. Respondent shall contact the assigned probation surveillance monitor regarding  
14 any questions specific to the probation order. Respondent shall not have any unsolicited or  
15 unapproved contact with 1) victims or complainants associated with the case; 2) Board members  
16 or members of its staff; or 3) persons serving the Board as expert examiners.

17           9.    INTERVIEW WITH THE BOARD OR ITS DESIGNEE Respondent shall appear in ✓

18 person for interviews with the Board or its designee upon request at various intervals and with  
19 reasonable notice.

20           10. CHANGES OF EMPLOYMENT Respondent shall notify the Board in writing, ✓

21 through the assigned probation surveillance compliance officer of any and all changes of  
22 employment, location and address within 30 days of such change.

23           11. TOLLING FOR OUT-OF-STATE PRACTICE OR RESIDENCE In the event ✓

24 respondent should leave California to reside or to practice outside the State, respondent must  
25 notify the Board in writing of the dates of departure and return. Periods of residency or practice  
26 outside California will not apply to the reduction of this probationary period.

27           12. EMPLOYMENT AND SUPERVISION OF TRAINEES Respondent shall not ✓

28 employ or supervise or apply to employ or supervise acupuncture trainees during the course of



1 this probation. Respondent shall terminate any such supervisory relationship in existence on the  
2 effective date of this probation.

3 13. COST RECOVERY Respondent shall pay to the Board its costs of investigation and  
4 enforcement in the amount of \$6,300.00. Within 30 days of the effective date of this decision,  
5 respondent shall submit to the Committee or its designee for its prior written approval a plan for  
6 paying off the said amount in installments, provided that the amount due in terms of this  
7 paragraph will be paid in full no less than 120 calendar days prior to the completion of probation.

8 Failure to reimburse the Board's costs for its investigation and prosecution shall constitute a  
9 violation of the probation order. The filing of bankruptcy by respondent shall not relieve  
10 respondent of his responsibility to reimburse the Board for its costs.

11 14. VIOLATION OF PROBATION If respondent violates probation in any respect, the  
12 Board may, after giving respondent notice and the opportunity to be heard, revoke probation and  
13 carry out the disciplinary order that was stated. If an accusation or petition to revoke probation is  
14 filed against respondent during probation, the Board shall have continuing jurisdiction until the  
15 matter is final, and the period of probation shall be extended until the matter is final. No petition  
16 for modification or termination of probation shall be considered while there is an accusation or  
17 petition to revoke probation pending against respondent.

18 15. COMPLETION OF PROBATION Upon successful completion of probation,  
19 respondent's license will be fully restored.

20 ACCEPTANCE

21 I have carefully read the Stipulated Settlement and Disciplinary Order. I fully understand  
22 the stipulation and the effect it will have on my Acupuncturist License No. AC 11640. I enter  
23 into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently,  
24 and agree to be bound by the Decision and Order of the Acupuncture Board.

25 DATED: 9/4/12

26 Robert Paul Simmons  
27 ROBERT PAUL SIMMONS, L.Ac.  
28 Respondent

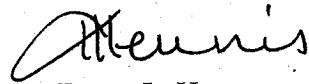
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Acupuncture Board of the Department of Consumer Affairs.

Dated: 9/4/12

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
THOMAS S. LAZAR  
Supervising Deputy Attorney General



TESSA L. HEUNIS  
Deputy Attorney General  
*Attorneys for Complainant*

**Exhibit A**

**Accusation No. 1A-2011-21**

1 KAMALA D. HARRIS  
Attorney General of California  
2 THOMAS S. LAZAR  
Supervising Deputy Attorney General  
3 TESSA L. HEUNIS  
Deputy Attorney General  
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7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

**FILED**

JAN 3 2012

**ACUPUNCTURE BOARD**

9  
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**  
17 **No. AC 11640**

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.

27 // // //

28 // // //

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.





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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