

1 KAMALA D. HARRIS
Attorney General of California
2 THOMAS S. LAZAR
Supervising Deputy Attorney General
3 JOSEPH F. MCKENNA III
Deputy Attorney General
4 State Bar No. 231195
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2001
7 Facsimile: (619) 645-2061
Attorneys for Complainant

FILED

DEC 24 2013

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. D1-2011-21

13 **ROBERT PAUL SIMMONS, L.AC.**
14 **36127 Fair Oak Trail**
Yucaipa, CA 92399

ACCUSATION AND PETITION TO
REVOKE PROBATION

15 **Acupuncturist License**
16 **No. AC 11640**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Terri Thorfinnson (Complainant) brings this Accusation and Petition to Revoke
22 Probation solely in her official capacity as the Executive Officer of the Acupuncture Board,
23 Department of Consumer Affairs.

24 2. On or about February 23, 2007, the Acupuncture Board issued Acupuncturist License
25 Number AC 11640 to Robert Paul Simmons, L.Ac. (respondent). The Acupuncturist License was
26 in full force and effect at all times relevant to the charges brought herein and will expire on
27 October 31, 2014, unless renewed.

28 ///

1 **PRIOR DISCIPLINARY HISTORY**

2 3. On or about May 6, 2013, the Acupuncture Board issued a Decision and Order in the
3 case entitled, "*In the Matter of the Accusation Against Robert Paul Simmons, L.Ac.*," Case No.
4 1A-2011-21. The Decision and Order, which became effective June 5, 2013, revoked
5 respondent's Acupuncturist License No. AC 11640. However, the revocation was stayed and
6 respondent's Acupuncturist License was placed on probation for five (5) years with certain terms
7 and conditions. A copy of the Decision and Order is attached as Exhibit "A" and is incorporated
8 herein by reference.

9 **JURISDICTION**

10 4. This Accusation and Petition to Revoke Probation is brought before the Acupuncture
11 Board (Board) under the authority of the following laws. All section references are to the
12 Business and Professions Code (Code) unless otherwise indicated.

13 5. Section 4955 of the Code states:

14 "The board may deny, suspend, or revoke, or impose probationary conditions upon,
15 the license of any acupuncturist if he or she is guilty of unprofessional conduct.[¹]"

16 6. Section 4959 of the Code states:

17 "(a) The board may request the administrative law judge, under his or her
18 proposed decision in resolution of a disciplinary proceeding before the board, to
19 direct any licensee found guilty of unprofessional conduct to pay to the board a
20 sum not to exceed actual and reasonable costs of the investigation and prosecution
21 of the case.

22 "(b) The costs to be assessed shall be fixed by the administrative law judge
23 and shall not in any event be increased by the board. When the board does not
24 adopt a proposed decision and remands the case to an administrative law judge, the

25 ///

26 ¹ (Cf. *Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575 [unprofessional
27 conduct under California Business and Professions Code section 2234 is conduct which breaches the rules
28 or ethical code of the medical profession, or conduct which is unbecoming a member in good standing of
the medical profession, and which demonstrates an unfitness to practice medicine].)

1 administrative law judge shall not increase the amount of any costs assessed in the
2 proposed decision.

3 “...”

4 **FIRST CAUSE TO REVOKE PROBATION**

5 **(Failure to Get Psychological Evaluation)**

6 7. At all times after the effective date of the Board’s Decision and Order in Case
7 No. 1A-2011-21, Probation Condition No. 1 stated:

8 A. **“1. PSYCHOLOGICAL EVALUATION**

9 “Within 90 days of the effective date of this decision and on a periodic
10 basis thereafter as may be required by the Board or its designee, respondent shall
11 undergo a psychological evaluation (and psychological testing, if deemed
12 necessary) by a Board- appointed California licensed psychologist. The Board
13 shall receive a current DSM IV diagnosis and a written report regarding the
14 respondent's judgment and/or ability to function independently as an acupuncturist
15 with safety to the public, and whatever other information the Board deems relevant
16 to the case. Respondent shall execute a release authorizing the evaluator to release
17 all information to the Board. The completed evaluation is the sole property of the
18 Board.

19 “...”

20 B. Probation Condition No. 1 required respondent to undergo a
21 psychological evaluation by a Board-appointed California licensed psychologist on
22 or before September 3, 2013. Respondent failed to do this. On or about
23 September 10, 2013, respondent submitted to the Board a five (5) page document
24 entitled, “Quarterly Report, Probation Case No. 1A-2011-21” (Quarterly Report)
25 that he had signed under penalty of perjury, which documented respondent’s
26 progress and compliance to date with each of the probation conditions imposed in
27 the Order. Significantly, respondent admitted in his Quarterly Report that he was
28 not in compliance with Probation Condition No. 1, wherein, he wrote, that he was

1 “hoping to have this [psychological evaluation] completed by end of September.”

2 As of the date of the filing of this Accusation, the Board has not received any
3 proof of completion by respondent of Probation Condition No. 1.

4 8. Respondent’s probation is subject to revocation because he failed to comply
5 with Probation Condition No. 1, referenced above, in that he failed to undergo a
6 psychological evaluation by a Board-appointed California licensed psychologist within
7 ninety (90) days of the effective date of the Board’s Decision and Order, as more
8 particularly alleged in paragraph 7, which is hereby incorporated by reference and
9 realleged as if fully set forth herein.

10 **SECOND CAUSE TO REVOKE PROBATION**

11 **(Failure to Enter an Alcohol and Drug Abuse Treatment Recovery Program)**

12 9. At all times after the effective date of the Board’s Decision and Order in Case No.
13 1A-2011-21, Probation Condition No. 2 stated:

14 A. “2. **ALCOHOL AND DRUG ABUSE TREATMENT**

15 “Effective 30 days from the date of this decision, respondent shall
16 enter an inpatient or outpatient alcohol or other drug abuse recovery program (a
17 minimum of six (6) months duration) or an equivalent program as approved by the
18 AC.

19 “Quitting the program without permission or being expelled for
20 cause shall constitute a violation of probation by respondent. Subsequent to the
21 program, respondent shall participate in on going treatment such as receiving
22 individual and/or group therapy from a psychologist trained in alcohol and drug
23 abuse treatment; and/or attend Twelve Step meetings or the equivalent as approved
24 by the Board at least three times a week during the first year of probation; and/or
25 other substance abuse recovery programs approved by the Board. Respondent
26 shall pay all costs of treatment and therapy, and provide documentation of
27 attendance at Twelve Step meetings or the equivalent as approved by the Board.

28 The psychologist shall confirm that respondent has complied with the

1 requirements of this decision and shall notify the Board immediately if he or she
2 believes the respondent cannot safely render acupuncture services. Respondent
3 shall execute a release authorizing the psychologist to divulge the aforementioned
4 information to the Board.”

5 B. Probation Condition No. 2 required respondent to enter into an
6 alcohol or drug abuse recovery program on or before July 5, 2013. Respondent
7 failed to do this. Significantly, respondent admitted in his Quarterly Report that
8 he had not submitted proof of enrollment to the Board in any such recovery
9 program. In respondent’s hand written response to a question that had asked
10 whether the Board had received any proof that respondent had entered into an
11 alcohol or drug abuse recovery program, he wrote, “No, in progress.” As of the
12 date of the filing of this Accusation, the Board has not received any proof from
13 respondent that he has entered into an alcohol or drug abuse recovery program. In
14 addition, Probation Condition No. 2 required respondent to attend Twelve Step
15 meetings or the equivalent as approved by the Board, at least three (3) times a
16 week during the first year of his probation; and, to provide the Board with
17 documentation showing proof of his attendance at these weekly meetings. As of
18 the date of the filing of this Accusation, the Board has not received any
19 documentation showing proof that he attended weekly Twelve Step meetings or
20 the equivalent as approved by the Board.

21 10. Respondent’s probation is further subject to revocation because he failed to comply
22 with Probation Condition No. 2, referenced above, in that he failed to enter an inpatient or
23 outpatient recovery program within thirty (30) days of the effective date of the Board’s Decision
24 and Order and, further, he failed to provide the Board with documentation showing proof of his
25 attendance at Twelve Step meetings or the equivalent as approved by the Board, as more
26 particularly alleged in paragraph 9, which is hereby incorporated by reference and realleged as if
27 fully set forth herein.

28 ///

1 **THIRD CAUSE TO REVOKE PROBATION**
2 **(Failure to Provide Biological Fluid Sample and**
3 **Failure to Submit to Biological Fluid Testing)**

4 11. At all times after the effective date of the Board's Decision and Order in Case No.
5 1A-2011-21, Probation Condition No. 4 stated:

6 A. **"4. BIOLOGICAL FLUID TESTING**

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

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

20 "If respondent fails to cooperate in a random biological fluid testing
21 program within the specified time frame, and/or if respondent has a confirmed
22 positive biological fluid test for any substance (whether or not legally prescribed)
23 and has not reported his use thereof to the Board or its designee, respondent shall
24 receive a notification from the Board or its designee to immediately cease the
25 practice of acupuncture. Respondent shall not resume the practice of acupuncture
26 until final decision on an accusation and/or a petition to revoke probation. An
27 accusation and/or petition to revoke probation shall be filed by the Board within 15
28 days of the notification to cease practice. If the Respondent requests a hearing on
the accusation and/or petition to revoke probation, the Board shall provide the

1 Respondent with a hearing within 30 days of the request, unless the Respondent
2 stipulates to a later hearing. A decision shall be received from the Administrative
3 Law Judge or the Board within 15 days unless good cause can be shown for the
4 delay. The cessation of practice shall not apply to the reduction of the
5 probationary time period.

6 “If the Board does not file an accusation or petition to revoke
7 probation within 15 days of the issuance of the notification to cease practice or
8 does not provide respondent with a hearing within 30 days of such request, the
9 notification of cease practice shall be dissolved.”

10 B. Probation Condition No. 4 required respondent to log-in or report by
11 phone, daily, between the hours of 5 a.m. and 5 p.m., to find out if he was required
12 to submit to a biological fluid test at an approved collection site. Respondent has
13 failed to do this on multiple occasions. In his Quarterly Report, which he signed
14 under penalty of perjury, respondent falsely stated that he was “in compliance”
15 with this requirement despite having failed to log-in or report by phone on or about
16 the following twenty-five (25) dates: 8/09/2013; 8/11/2013; 8/18/2013; 8/30/2013;
17 9/01/2013; 9/02/2013; 9/08/2013; 9/12/2013; 9/15/2013; 9/18/2013; 9/22/2013;
18 9/26/2013; 9/27/2013; 9/29/2013; 10/04/2013; 10/12/2013; 10/15/2013;
19 10/19/2013; 10/20/2013; 10/31/2013; 11/03/2013; 11/08/2013; 11/09/2013;
20 11/11/2013; and 11/12/2013.

21 C. Probation Condition No. 4 also required respondent to report to
22 approved collection sites and provide biological fluid samples. Respondent has
23 failed to do this on multiple occasions. In his Quarterly Report, which he signed
24 under penalty of perjury, respondent falsely stated that he was “in compliance”
25 with this requirement despite having failed to appear at an approved collection site
26 and provide a biological fluid sample on or about the following five (5) dates:
27 8/08/2013; 8/20/2013; 9/27/2013; 10/23/2013; and 11/04/2013.

28 ///

1 PRAYER

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


4 1. Revoking the probation that was granted by the Board in Case No. 1A-2011-21 and
5 imposing the disciplinary order that was stayed thereby revoking Acupuncturist License No. AC
6 11640 issued to respondent Robert Paul Simmons, L.Ac.;

7 2. Revoking, suspending, imposing probationary conditions or other discipline on
8 Acupuncturist License No. AC 11640, issued to respondent Robert Paul Simmons, L.Ac.;

9 3. Ordering respondent Robert Paul Simmons, L.Ac., to pay the Acupuncture Board the
10 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
11 Professions Code section 4959; and

12 4. Taking such other and further action as deemed necessary and proper.

13 DATED: DEC 24 2013

14 
15 TERRI THORFINNSON
16 Executive Officer
17 Acupuncture Board
18 Department of Consumer Affairs
19 State of California
20 Complainant