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

12 In the Matter of the Statement of Issues
13 Against:
14 **ROD KENNETH ANDERSON**
5470 Adams Avenue
15 **San Diego, CA 92115**
16 Respondent.

Case No. 1A-2010-222
**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 PARTIES

21 1. Janelle Wedge (Complainant) is the Executive Officer of the Acupuncture Board.
22 She brought this action solely in her official capacity and is represented in this matter by Kamala
23 D. Harris, Attorney General of the State of California, by Tessa L. Heunis, Deputy Attorney
24 General.

25 2. Respondent ROD KENNETH ANDERSON (Respondent) is represented in this
26 proceeding by attorney Daniel M. DiRe, Esq., whose address is: 5030 Camino de la Siesta, Suite
27 350, San Diego, California 92108.

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1 CULPABILITY

2 10. Respondent admits the complete truth of each and every charge and allegation,
3 separately and severally, in Statement of Issues No. 1A-2010-222.

4 11. Respondent agrees that his acupuncturist's license is subject to denial and he agrees
5 to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

6 CONTINGENCY

7 12. This Stipulated Settlement and Disciplinary Order shall be subject to approval by the
8 Acupuncture Board. The parties agree that this Stipulated Settlement and Disciplinary Order
9 shall be submitted to the Board for its consideration in the above-titled matter and, further, that
10 the Board shall have a reasonable period of time in which to consider and act on this stipulation
11 after receiving it. By signing this stipulation, Respondent fully understands and agrees that he
12 may not withdraw his agreement or seek to rescind this stipulation prior to the time the Board
13 considers and acts upon it.

14 13. The parties agree that this Stipulated Settlement and Disciplinary Order shall be null
15 and void and not binding upon the parties unless approved and adopted by the Board, except for
16 this paragraph, which shall remain in full force and effect. Respondent fully understands and
17 agrees that in deciding whether or not to approve and adopt this Stipulated Settlement and
18 Disciplinary Order, the Board may receive oral and written communications from its staff and/or
19 the Attorney general's office. Communications pursuant to this paragraph shall not disqualify the
20 Board, any member thereof, and/or any other person from future participation in this or any other
21 matter affecting or involving Respondent. In the event that the Board, in its discretion, does not
22 approve and adopt this Stipulated Settlement and Disciplinary Order, with the exception of this
23 paragraph, it shall not become effective, shall be of no evidentiary value whatsoever, and shall
24 not be relied upon or introduced in any disciplinary action by either party hereto. Respondent
25 further agrees that should the Board reject this Stipulated Settlement and Disciplinary Order for
26 any reason, Respondent will assert no claim that the Board, or any member thereof, was
27 prejudiced by its/his/her review, discussion and/or consideration of this Stipulated Settlement and
28 Disciplinary Order or of any matter or matters related hereto.

1 ADDITIONAL PROVISIONS

2 14. This Stipulated Settlement and Disciplinary Order is intended by the parties herein to
3 be an integrated writing representing the complete, final and exclusive embodiment of the
4 agreements of the parties in the above-entitled matter.

5 15. The parties understand and agree that facsimile copies of this Stipulated Settlement
6 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
7 effect as the originals.

8 16. In consideration of the foregoing admissions and stipulations, the parties agree that
9 the Board may, without further notice or formal proceeding, issue and enter the following
10 Disciplinary Order:

11 DISCIPLINARY ORDER

12 IT IS HEREBY ORDERED THAT the application of Respondent ROD KENNETH
13 ANDERSON for a license as a acupuncturist is granted; however, the acupuncturist license shall
14 be and hereby is immediately revoked, with the revocation stayed, and Respondent placed on
15 probation for a period of two (2) years from the effective date of this Decision and Order, on the
16 following terms and conditions:.

17 1. ALCOHOL AND DRUG ABUSE TREATMENT Effective 30 days from the date of
18 this decision, Respondent shall enter an inpatient or outpatient alcohol or other drug abuse
19 recovery program (a minimum of six (6) months duration) or an equivalent program as approved
20 by the Board.

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

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

4 An inpatient or outpatient drug or alcohol abuse recovery program taken after the facts
5 that gave rise to the charges in the Statement of Issues, but prior to the effective date of the
6 Decision may, in the sole discretion of the Board or its designee, be accepted towards the
7 fulfillment of this condition if the program would have been approved by the Board or its
8 designee had the program been taken after the effective date of the Decision.

9 2. ABSTAIN FROM DRUGS AND ALCOHOL AND SUBMIT TO TESTS AND
10 SAMPLES Respondent shall abstain completely from the personal use or possession of
11 controlled substances as defined in the California Uniform Controlled Substances Act (Division
12 10, commencing with section 11000, Health and Safety Code) and dangerous drugs as defined by
13 Section 4211 of the Business and Professions Code, or any drugs requiring a prescription. This
14 prohibition does not apply to medications lawfully prescribed to Respondent by another
15 practitioner for a bona fide illness or condition.

16 Within 15 calendar days of receiving any lawfully prescribed medications, Respondent
17 shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone
18 number; medication name, strength, and quantity; and issuing pharmacy name, address, and
19 telephone number.

20 Respondent shall abstain completely from the use of alcoholic beverages. Respondent
21 shall undergo random, biological fluid testing as determined by the Board. Respondent shall bear
22 all costs of such testing. The length of time and frequency will be determined by the Board. Any
23 confirmed positive finding will be considered a violation of probation.

24 3. COURSEWORK Respondent shall enroll in a course in ethics, at Respondent's
25 expense, approved in advance by the Board or its designee. Failure to successfully complete the
26 course, which shall consist of not less than two (2) semester units or three (3) quarter units of
27 coursework in ethics, during the first year of probation, is a violation of probation. All
28 coursework shall be taken at the graduate level at a school approved by the Board. Classroom

1 attendance must be specifically required. The required coursework must be in addition to any
2 continuing education courses that may be required for license renewal. Respondent shall submit a
3 certification of successful completion to the Board or its designee not later than 15 calendar days
4 after successfully completing the course, or not later than 15 calendar days after the effective date
5 of the Decision, whichever is later.

6 4. OBEY ALL LAWS Respondent shall obey all federal, state and local laws and all
7 regulations governing the practice of acupuncture in California. A full and detailed account of
8 any and all violations of law shall be reported by the Respondent to the Board in writing within
9 seventy-two (72) hours of occurrence.

10 5. QUARTERLY REPORTS Respondent shall submit quarterly declarations under
11 penalty of perjury on forms provided by the Board, stating whether there has been compliance
12 with all the conditions of probation.

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

19 7. INTERVIEW WITH THE BOARD OR ITS DESIGNEE Respondent shall appear in
20 person for interviews with the Board or its designee upon request at various intervals and with
21 reasonable notice.

22 8. CHANGES OF EMPLOYMENT Respondent shall notify the Board in writing,
23 through the assigned probation surveillance compliance officer of any and all changes of
24 employment, location and address within 30 days of such change.

25 9. TOLLING FOR OUT-OF-STATE PRACTICE OR RESIDENCE In the event
26 Respondent should leave California to reside or to practice outside the State, Respondent must
27 notify the Board in writing of the dates of departure and return. Periods of residency or practice
28 outside California will not apply to the reduction of this probationary period.

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Order. I approve its form and content.

DATED: 3/20/12


DANIEL M. DIRE, Esq.
Attorney for 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: March 8, 2012

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

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Exhibit A

Statement of Issues No. 1A-2010-222

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Attorneys for Complainant

FILED

JUN 1 2011

ACUPUNCTURE BOARD

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

In the Matter of the Statement of Issues
Against:
ROD KENNETH ANDERSON
5470 Adams Avenue
San Diego, CA 92115

Case No. 1A-2010-222

STATEMENT OF ISSUES

Applicant.

Complainant alleges:

PARTIES

1. Janelle Wedge (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Acupuncture Board, Department of Consumer Affairs.
2. On or about October 6, 2010, the Acupuncture Board, Department of Consumer Affairs (the Board) received an application for examination and licensure as a California acupuncturist (the application) from ROD KENNETH ANDERSON (Applicant). On or about October 4, 2010, Applicant certified under penalty of perjury to the truthfulness of all statements, answers and representations in the application.
3. On or about December 10, 2010, the Board learned of a prior criminal conviction of Applicant which he had concealed in the application. On or about the same date, the Board sent a

1 letter to Applicant, advising him of this fact and requesting details of the prior criminal conviction
2 and a written explanation for its omission from the application.

3 4. On or about March 21, 2011, Applicant signed a supplementary application and again
4 certified under penalty of perjury to the truthfulness of all statements, answers and representations
5 in the application. The supplementary application was received by the Board on or about March
6 24, 2011.

7 5. The Board denied Applicant's application for licensure on April 25, 2011. On May 2,
8 2011, Applicant requested a hearing to contest said denial.

9 JURISDICTION

10 6. This Statement of Issues is brought before the Board under the authority of the
11 following laws. All section references are to the Business and Professions Code (Code) unless
12 otherwise indicated.

13 7. 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.

16 "Unprofessional conduct shall include, but not be limited to, the following:

17 "(a) Using or possessing any controlled substance as defined in Division 10
18 (commencing with Section 11000) of the Health and Safety Code, or dangerous drug or
19 alcoholic beverage to an extent or in a manner dangerous to himself or herself, or to any
20 other person, or to the public, and to an extent that the use impairs his or her ability to
21 engage in the practice of acupuncture with safety to the public.

22 "(b) Conviction of a crime substantially related to the qualifications, functions, or
23 duties of an acupuncturist, the record of conviction being conclusive evidence thereof.

24 "...

25 "(h) Disciplinary action taken by any public agency for any act substantially related
26 to the qualifications, functions, or duties of an acupuncturist or any professional health care
27 licensee.

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

3 “...”

4 8. Section 480 of the Code states:

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

7 “(1) Been convicted of a crime. A conviction within the meaning of this section
8 means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
9 Any action that a board is permitted to take following the establishment of a
10 conviction may be taken when the time for appeal has elapsed, or the judgment of
11 conviction has been affirmed on appeal, or when an order granting probation is made
12 suspending the imposition of sentence, irrespective of a subsequent order under the
13 provisions of Section 1203.4 of the Penal Code.

14 “...”

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

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

20 “...”

21 “(c) A board may deny a license regulated by this code on the ground that the
22 applicant knowingly made a false statement of fact required to be revealed in the
23 application for the license.”

24 9. Section 4955.1 of the Code states:

25 “The board may deny, suspend, revoke, or impose probationary conditions upon the
26 license of any acupuncturist if he or she is guilty of committing a fraudulent act including,
27 but not be limited to, any of the following:

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“(c) Committing any act involving dishonesty or corruption with respect to the qualifications, functions, or duties of an acupuncturist.

“...”

10. 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 elapsed, 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.”

11. Section 493 of the Code provides:

“Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

“...”

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///

1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(Conviction of a Crime Substantially Related to the Practice of an Acupuncturist)**

3 12. Applicant's application is subject to denial under Code sections 4955, subdivision (b),
4 and 480, subdivisions (a)(1) and (a)(3)(B), in that he was convicted of a crime substantially
5 related to the qualifications, functions, and duties of an acupuncturist. The circumstances are as
6 follows:

7 a. On or about March 17, 1997, in a criminal proceeding entitled *The People of*
8 *the State of California v. Rod Kenneth Anderson*, Case Number SCD127792 in San Diego County
9 Superior Court, Applicant was charged with one count each of a violation of Health and Safety
10 Code sections 11378 (possession for sale of a controlled substance, to wit, methamphetamine¹),
11 11377, subdivision (a) (possession of a controlled substance, to wit, methamphetamine), and
12 11364 (possession of paraphernalia used for narcotics). On March 26, 1997, Applicant was
13 convicted by plea of guilty to Health and Safety Code section 11378, a felony. The remaining
14 charges were dismissed.

15 b. On or about May 1, 1997, Applicant was sentenced to three (3) years' formal
16 probation with terms and conditions, including the requirement that he complete a six-month
17 substance abuse residential rehabilitation program and aftercare program and spend 180 days in
18 custody (stayed pending successful completion of the substance abuse rehabilitation program),
19 and payment of \$550.00 in fines.

20 c. On September 8, 2003, Applicant's plea of guilty was set aside, a plea of Not
21 Guilty was entered, and the accusatory pleading was dismissed pursuant to Penal Code section
22 1203.4 and 1203.4a.

23 **SECOND CAUSE FOR DENIAL OF APPLICATION**

24 **(Unlawful Use or Possession of a Controlled Substance)**

25 13. Applicant's application is further subject to denial under section 4955, as defined by
26 section 4955, subdivision (a), of the Code, in that he unlawfully possessed methamphetamine, as

27 ¹ Methamphetamine is a Schedule II controlled substance under Health and Safety Code
28 section 11055, subdivision (d)(2) and a dangerous drug under Code section 4022.

1 more particularly alleged in paragraph 11(a), above, which is hereby incorporated by reference as
2 if fully set forth herein.

3 **THIRD CAUSE FOR DENIAL OF APPLICATION**

4 **(Dishonesty)**

5 14. Applicant's application is further subject to denial under Code sections 4955.1,
6 subdivision (c), and 480, subdivision (c), in that he knowingly made a false statement of fact
7 required to be revealed in his application for examination and licensure. The circumstances are as
8 follows:

9 a. On or about October 4, 2010, Applicant submitted his Application for
10 Examination to the Board. The following notice appeared as a preamble to the application:

11 "All items of information are mandatory. ... The information will be used to
12 determine qualification for examination and licensure."

13 b. Question 17 on the application asked:

14 "Have you ever been convicted of, or pled nolo contendere to any offense,
15 misdemeanor or felony in any state, the United States, or a foreign country? **NOTE: You**
16 **are required** to list any conviction that has been set aside and dismissed under Section
17 1203.4 Penal Code or under any other provision of law." (bolding in original)

18 c. At the conclusion of the application was a statement by Applicant, certifying
19 "under penalty of perjury under the laws of the State of California that all statements made herein
20 are true in every respect, and that misstatements, or omissions of material facts may be cause for
21 denial of this application ..."

22 d. Despite knowing that he had been convicted of a felony as set forth in
23 paragraph 11(a), above, and despite the explicit written admonition that he was "**required**² to list
24 any conviction that has been set aside and dismissed under Section 1203.4 Penal Code or under
25 any other provision of law," and despite his certification that all statements contained in the
26 application were "true in every respect," Applicant answered "No" to question 17.

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28 ² Bolding in original.

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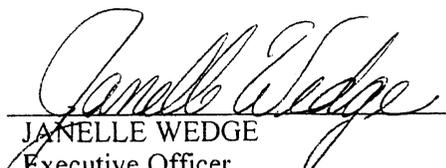
e. Paragraph 11(a) through (c), above, is hereby incorporated by reference as if fully set forth herein.

PRAYER

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

1. Denying the application of ROD KENNETH ANDERSON for an Acupuncturist License; and
2. Taking such other and further action as deemed necessary and proper.

DATED: **JUN 01 2011**



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

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