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ACUPUNCTURE BOARD

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

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|---|---|
| In the Matter of the Accusation Against:<br><br>**JEREMY ADAM SPEISER, L.Ac.**<br>**17068 Dearborn Street**<br>**Northridge, CA 91325**<br>**Acupuncturist License No. AC8693**<br><br>Respondent. | Case No. 1A-2015-197<br><br>**A C C U S A T I O N** |

Complainant alleges:

## PARTIES

1. Benjamin Bodea (Complainant) brings this Accusation solely in his official capacity as the Acting Executive Officer of the Acupuncture Board, Department of Consumer Affairs.

2. On or about October 2, 2002, the Acupuncture Board issued Acupuncturist License Number AC8693 to Jeremy Adam Speiser, L.Ac. (Respondent). The Acupuncturist License was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2018, unless renewed.

## JURISDICTION

3. This Accusation is brought before the Acupuncture Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 4928.1 of the Code states:

"Protection of the public shall be the highest priority for the Acupuncture Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount."

5. Section 4955 of the Code states in pertinent part:

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

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

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

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

". . ."

6. 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."

7. Section 490 of the Code states:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

"(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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.

"(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in Petropoulos v. Department of Real Estate (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not constitute a change to, but rather are declaratory of, existing law."

8. Section 493 of the Code states:

"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.

"As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'"

9. California Vehicle Code Section 23152 states in pertinent part:

"(a) It is unlawful for any person who is under the influence of any alcoholic beverage or drug, or under the combined influence of any alcoholic beverage and drug, to drive the vehicle.

"(b) It is unlawful for any person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive the vehicle …"

10. California Vehicle Code Section 2002 states:

"(a) The driver of any vehicle involved in an accident resulting only in damage to any property, including vehicles, shall immediately stop the vehicle at the nearest location that will not impede traffic or otherwise jeopardize the safety of other motorists. Moving the vehicle in accordance with this subdivision does not affect the question of fault. The driver shall also immediately do either of the following:

"(1) Locate and notify the owner or person in charge of that property of the name and address of the driver and owner of the vehicle involved and, upon locating the driver of any other vehicle involved or the owner or person in charge of any damaged property, upon being requested, present his or her driver's license, and vehicle registration, to the other driver, property owner, or person in charge of that property. The information presented shall include the current residence address of the driver and of the registered owner. If the registered owner of an involved vehicle is present at the scene, he or she shall also, upon request, present his or her driver's license information, if available, or other valid identification to the other involved parties.

"(2) Leave in a conspicuous place on the vehicle or other property damaged a written notice giving the name and address of the driver and of the owner of the vehicle involved and a

statement of the circumstances thereof and shall without unnecessary delay notify the police department of the city wherein the collision occurred or, if the collision occurred in unincorporated territory, the local headquarters of the Department of the California Highway Patrol.

"(b) Any person who parks a vehicle which, prior to the vehicle again being driven, becomes a runaway vehicle and is involved in an accident resulting in damage to any property, attended or unattended, shall comply with the requirements of this section relating to notification and reporting and shall, upon conviction thereof, be liable to the penalties of this section for failure to comply with the requirements.

"(c) Any person failing to comply with all the requirements of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine."

**COSTS**

11. Section 4959 of the Code states:

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

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

"(c) When the payment directed in the board's order for payment of costs is not made by the licensee, the board may enforce the order for payment in the superior court in the county where the administrative hearing was held. This right of enforcement shall be in addition to any other rights the board may have as to any licensee directed to pay costs.

"(d) In any judicial action for the recovery of costs, proof of the board's decision shall be

conclusive proof of the validity of the order of payment and the terms for payment.

"(e) All costs recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the Acupuncture Fund."

**FIRST CAUSE FOR DISCIPLINE**

(Conviction of a Crime)

12. Respondent is subject to disciplinary action for unprofessional conduct under Code section 4955, subdivision (b), in that he was convicted of violating California Vehicle Code section 23152, subdivision (b), commonly known as driving while having a 0.08% or higher blood alcohol, a crime which is substantially related to the qualifications, functions, and duties of an acupuncturist. The circumstances are as follows:

13. On or about October 1, 2015, in Superior Court of California proceedings entitled *People of the State of California vs. Jeremy Adam Speise*r, then pending in the Superior Court of California, case number 5VY03858, after a plea of nolo contendere, Respondent was convicted of Count 2, a violation of Vehicle Code section 23152, subdivision (b). The remaining counts were dismissed by the Court in the interests of justice based on the plea and sentence agreement.

14. Following Respondent's plea of nolo contendere, the Court placed Respondent on three (3) years informal probation, and ordered him, inter alia, to obey all laws, enroll in and complete the three (3) month First Offender Drinking Driver Program, pay total fines and penalty assessments in the amount of $1,884.00 plus penalty assessments, and not drive a motor vehicle with any measurable amount of alcohol in his blood.

15. The facts underlying Respondent's plea of nolo contendere to Count 2 in the above conviction are as follows:

16. On or about September 4, 2015, at approximately 2:33 a.m., an officer employed by the California Highway Patrol (CHP), who was driving his marked patrol vehicle while in full uniform, observed a white SUV speeding on the freeway. The officer noted major damage to the SUV's front end, which was smoking heavily, and an unknown object lodged underneath the front end, a shattered windshield, and deployed airbags.

17. Respondent was the driver of the white SUV.

18. After Respondent exited the white SUV he stated, " I hit a barrier. I panicked and I didn't know what to do."

19. The CHP officer observed that Respondent displayed objective signs of alcohol intoxication. The CHP officer demonstrated a series of standardized physical field sobriety tests to Respondent, and then asked Respondent to perform them as directed. Respondent was unable to perform the tests in a satisfactory manner.

20. Respondent was arrested for being under the influence of alcohol. After being read the chemical test admonition by the CHP officer Respondent chose to provide a sample of his breath to be tested for the presence and amount of alcohol in his body, if any.

21. Respondent's breath alcohol test results were .15 or almost two times the presumed blood alcohol content level used to define intoxication.

**SECOND CAUSE FOR DISCIPLINE**

22. Respondent is subject to disciplinary action under Code section 4955, for unprofessional conduct pursuant to Code section 4955, subdivision (a), in that he used alcoholic beverages or a dangerous drug to an extent or in a manner dangerous to himself, or to any other person, or to the public. The circumstances are as follows:

23. The facts and circumstances in paragraphs 16 through 21 are incorporated by reference as if set forth in full 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. Revoking or suspending Acupuncturist License Number AC8693, issued to Jeremy Adam Speiser, L.Ac.;

2. Ordering Jeremy Adam Speiser, L.Ac. to pay the Acupuncture Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 4959;

3. If placed on probation, ordering him to pay to the Acupuncture Board the costs of probation monitoring; and

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

DATED: JUN 17 2016

BENJAMIN BODEA
Acting Executive Officer
Acupuncture Board
Department of Consumer Affairs
State of California
*Complainant*

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