

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

In the Matter of the Accusation Against:

MATTHEW SCOTT SCHWARTZ, L.Ac.
4949 Cartwright Avenue
North Hollywood, CA 91601

Acupuncturist License No. AC 11109,

Respondent.

Case No. 1A-2017-240

OAH No. 22222

DECISION AND ORDER

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

This Decision shall become effective on April 3, 2020.

It is so ORDERED March 4, 2020.

Original Signed by
AMY MATECKI, MD, L.A.C.
FOR THE ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

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16 **Acupuncturist License No. AC 11109**

17 Respondent.

Case No. 1A-2017-240

OAH No. 2019090109

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

18
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. Benjamin Bodea (Complainant) is the Executive Officer of the Acupuncture Board
23 (Board). He brought this action solely in his official capacity and is represented in this matter by
24 Xavier Becerra, Attorney General of the State of California, by Wendy Widlus, Deputy Attorney
25 General.

26 2. Matthew Scott Schwartz, L.Ac. (Respondent) is represented in this proceeding by
27 attorney Gary Wittenberg, whose address is: Baranov & Wittenberg, LLP, 1901 Avenue of the
28 Stars, Suite 1750, Los Angeles, CA 90067.

1 Respondent Matthew Scott Schwartz, L.Ac. is revoked. However, the revocation is stayed and
2 Respondent is placed on probation for two years on the following terms and conditions.

3 1. OBEY ALL LAWS Respondent shall obey all federal, state and local laws, remain
4 in full compliance with any court ordered criminal probation terms, payments, and/or other
5 orders, and all regulations governing the practice of acupuncture in California. A full and detailed
6 account of any and all violations of law shall be reported by the Respondent to the Board or its
7 designee in writing within seventy-two (72) hours of occurrence. This condition applies to any
8 jurisdiction with authority over the Respondent, whether inside or outside California.

9 2. QUARTERLY REPORTS Respondent shall submit quarterly reports under penalty
10 of perjury on forms provided by the Board or its designee, stating whether there has been
11 compliance with all the conditions of probation. If the final probation report is not submitted as
12 directed, probation shall be extended automatically until such time as the final report is submitted
13 and accepted by the Board or its designee.

14 3. COURSEWORK Respondent, at his/her own expense, shall enroll and successfully
15 complete not less than a four [4] hour course in Record Keeping no later than the end of the first
16 year of probation. The coursework shall be in addition to that required for license renewal. The
17 Board or its designee shall notify Respondent of the course content and number of hours required.
18 Within thirty (30) days of the Board's written notification of assigned coursework, Respondent
19 shall submit a written plan to comply with this requirement to the Board or its designee. The
20 Board or its designee shall approve such a plan prior to enrollment in any course of study. Upon
21 successful completion of the coursework, Respondent shall submit original completion
22 certificates to the Board within thirty (30) days of course completion.

23 4. MONITORING PROGRAM Respondent shall comply with the Board's probation
24 monitoring program and shall, upon reasonable notice, report to the assigned probation monitor.
25 Respondent shall contact the assigned probation monitor regarding any questions specific to the
26 probation order. Unless the Respondent obtains prior approval from his or her assigned Board
27 probation monitor to allow for contact, Respondent shall not have any contact with (1) victims,
28 witnesses, and/or complainants associated with the case; (2) Board members and/or members of

1 its staff; (3) persons serving the Board as subject matter experts; and/or (4) persons who
2 previously rendered expert opinions on behalf of the Board in Respondent's disciplinary
3 proceeding.

4 5. INTERVIEW WITH THE BOARD OR ITS DESIGNEE Respondent shall appear in
5 person for interviews with the Board or its designee upon request at various intervals and with or
6 without prior notice throughout the term of probation.

7 6. CHANGES OF EMPLOYMENT Respondent shall notify the Board in writing,
8 through the assigned probation monitor of any and all changes of employment, location and
9 employment address within thirty (30) days of such change.

10 7. TOLLING of PROBATION If Respondent leaves California to reside or practice
11 outside this state, or for any reason, unless by Board order, should Respondent stop practicing
12 acupuncture in California, Respondent must notify the Board in writing of the dates of departure
13 and return or the dates of non-practice within 10 days of departure or return. Non-practice is
14 defined as any period of time exceeding 30 days in which Respondent is not engaging in the
15 practice of acupuncture or any time the license is inactive or in cancelled status. Periods of
16 temporary residency or practice outside the state or of non-practice within the state shall not apply
17 to reduction of the probationary period. It shall be a violation of probation for respondent's
18 probation to remain tolled pursuant to the provisions of this condition for a period exceeding a
19 total, consecutive period of two years. For purposes of this condition, a Board ordered
20 suspension or non-practice in compliance with any other condition of probation shall not be
21 tolled. Any order for payment of cost recovery shall remain in effect whether or not probation is
22 tolled. All provisions of probation shall recommence on the effective date of resumption of
23 practice in California, and the term of probation shall be extended for the period of time
24 respondent was out of state or in state and not practicing.

25 8. RESTRICTION ON EMPLOYING and SUPERVISION OF TRAINEES
26 Respondent shall not employ or supervise or apply to employ or supervise acupuncture trainees
27 during the course of this probation. Respondent shall terminate any such supervisory
28 relationship in existence on the effective date of this probation. Respondent shall not teach at any

1 Board approved training program or continuing education courses during the course of this
2 probation.

3 9. COST RECOVERY Respondent shall pay to the Board its costs of investigation and
4 enforcement in the amount of \$3,000.00. Respondent shall be permitted to pay these costs in a
5 payment plan approved by the Board or its designee, with payments to be completed no later than
6 three months prior to the end of the probation term. Cost recovery will not be tolled. At
7 Respondent's request, if Respondent has not complied with this condition during the probationary
8 term, and Respondent has presented sufficient documentation of his good faith efforts to comply
9 with this condition, and if no other conditions have been violated, the Board or its designee, in its
10 discretion, may grant an extension of Respondent's probation period up to two (2) years without
11 further hearing in order to comply with this condition. During the two (2) years extension, all
12 original conditions of probation will apply. The filing of bankruptcy by Respondent shall not
13 relieve Respondent of his/her responsibility to reimburse the Board for its investigation and
14 prosecution costs.

15 10. VIOLATION OF PROBATION If Respondent violates probation in any respect, the
16 Board may, after giving Respondent notice and the opportunity to be heard, revoke probation and
17 carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is
18 filed against Respondent during probation, the Board shall have continuing jurisdiction until the
19 matter is final, and the period of probation shall be extended until the matter is final. No petition
20 for modification or termination of probation shall be considered while there is an accusation or
21 petition to revoke probation pending against Respondent. If Respondent has not complied with
22 any term or condition of probation, the Board shall have continuing jurisdiction over Respondent,
23 and probation shall automatically be extended until all terms and conditions have been satisfied or
24 the Board has taken other action as deemed appropriate to treat the failure to comply as a
25 violation of probation, to terminate probation, and to impose the penalty which was stayed.

26 11. LICENSE SURRENDER Following the effective date of this Decision, if
27 Respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy
28 the terms and conditions of probation, Respondent may request the voluntary surrender of his or

1 her license or registration. The Board or its designee reserves the right to evaluate Respondent's
2 request and to exercise its discretion whether or not to grant the request, or to take any other
3 action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of
4 the surrender, Respondent shall, within fifteen (15) days, deliver Respondent's pocket and/or wall
5 certificate to the Board or its designee and Respondent shall no longer practice acupuncture.
6 Upon formal acceptance of the tendered license, Respondent will no longer be subject to the
7 terms and conditions of probation. Voluntary surrender of Respondent's license shall be
8 considered disciplinary action and shall become a part of Respondent's license history with the
9 Board. If Respondent reapplies for an acupuncture license, the application shall be treated as a
10 petition for reinstatement of a revoked or surrendered license.

11 12. SEVERABILITY CLAUSE Each condition of probation is a separate and distinct
12 condition. If any condition of this Decision and Order, or any application thereof, is declared
13 unenforceable in whole, in part, or to any extent, the remainder of this Decision and Order, and all
14 other applications thereof, shall not be affected. Each condition of this Decision and Order shall
15 separately be valid and enforceable to the fullest extent permitted by law.

16 13. NOTIFICATION OF NAME, ADDRESS, TELEPHONE NUMBER OR E-MAIL
17 ADDRESS CHANGES Respondent shall notify the assigned probation monitor, in writing
18 within ten (10) days, of any and all name, address, telephone and/or e-mail address changes.

19 14. DISCLOSURE of PROBATION STATUS Within ten (10) days of the effective date
20 of this Decision, Respondent shall submit a proposed written disclosure to provide to all patients
21 or a patient's guardian or health care surrogate to the Board for prior approval. The written
22 disclosure shall include the following:

- 23 (1) Respondent's probation status;
- 24 (2) Length of probation;
- 25 (3) Probation end date;
- 26 (4) All practice restrictions imposed by the probation order;
- 27 (5) The Board's telephone number;
- 28 (6) Explanation of how the patient can find further information on Respondent's probation

1 by running a license verification on the Board's web site. Once the Board approves Respondent's
2 written disclosure, Respondent shall obtain from the patient, or the patient's guardian or health
3 care surrogate, a separate, signed copy of the written disclosure. Before or at a patient's first visit
4 following the effective date of the Board's Decision, Respondent shall provide the written
5 disclosure to all patients or a patient's guardian or health care surrogate except when any of the
6 following applies:

7 (1) The patient is unconscious or otherwise unable to comprehend the disclosure and
8 sign the copy of the disclosure pursuant to subdivision (b) and a guardian or health care surrogate
9 is unavailable to comprehend the disclosure and sign the copy.

10 (2) The visit occurs in an emergency room or an urgent care facility or the visit is
11 unscheduled, including consultations in inpatient facilities.

12 (3) The licensee who will be treating the patient during the visit is not known to the
13 patient until immediately prior to the start of the visit.

14 (4) The licensee does not have a direct treatment relationship with the patient.

15 Respondent shall make all records available for immediate inspection and copying on the
16 premises by the Board or its designee at all times during business hours and shall retain the
17 records for the entire term of probation.

18 15. MAINTENANCE OF CLEAR AND ACTIVE LICENSE Respondent shall, at all
19 times, maintain a clear and active current license with the Board, including any period of
20 suspension or tolled probation. If an initial license must be issued (Statement of Issues) or a
21 license is reinstated, probation shall not commence until a license is issued by the Board.
22 Respondent must complete the licensure process within two (2) years from the effective date of
23 the Board's Decision. Should Respondent's license expire, by operation of law or otherwise,
24 upon renewal or reinstatement, Respondent's license shall be subject to any and all conditions of
25 this probation not previously satisfied.

26 16. COMPLETION OF PROBATION Upon successful completion of probation,
27 respondent's license will be fully restored.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Gary Wittenberg. I understand the stipulation and the effect it will have on my Acupuncturist License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Acupuncture Board.

DATED: 1/20/2020 Original signed by
MATTHEW SCOTT SCHWARTZ, L.Ac.
Respondent

I have read and fully discussed with Respondent Matthew Scott Schwartz, L.Ac. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 1/20/2020 Original signed by
GARY WITTENBERG *Attorney for Respondent*

ENDORSEMENT

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

DATED: January 21, 2020

Respectfully submitted,
XAVIER BECERRA
Attorney General of California
E. A. JONES III
Supervising Deputy Attorney General

Original signed by
WENDY WIDLUS
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 1A-2017-240