In the Matter of the Accusation Against:

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

Acupuncturist License
No. AC 11640

Respondent.

Complainant alleges:

PARTIES

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

2. On or about February 23, 2007, the Acupuncture Board issued Acupuncturist License Number AC 11640 to Robert Paul Simmons, 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 October 31, 2014, unless renewed.
PRIOR DISCIPLINARY HISTORY

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

JURISDICTION

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

5. Section 4955 of the Code states:

“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.”

6. 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

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1 (Cf. Shea v. Board of Medical Examiners (1978) 81 Cal.App.3d 564, 575 [unprofessional conduct under California Business and Professions Code section 2234 is conduct which breaches the rules 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].)
administrative law judge shall not increase the amount of any costs assessed in the proposed decision.

"..."

FIRST CAUSE TO REVOKE PROBATION
( Failure to Get Psychological Evaluation)

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

A. "1. PSYCHOLOGICAL EVALUATION"

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

"..."

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

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

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

SECOND CAUSE TO REVOKE PROBATION

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

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

A.  “2. ALCOHOL AND DRUG ABUSE TREATMENT

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

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

The psychologist shall confirm that respondent has complied with the
requirements of this decision and shall notify the Board immediately if he or she
believes the respondent cannot safely render acupuncture services. Respondent
shall execute a release authorizing the psychologist to divulge the aforementioned
information to the Board.”

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

10. Respondent’s probation is further subject to revocation because he failed to comply
with Probation Condition No. 2, referenced above, in that he failed to enter an inpatient or
outpatient recovery program within thirty (30) days of the effective date of the Board’s Decision
and Order and, further, he failed to provide the Board with documentation showing proof of his
attendance at Twelve Step meetings or the equivalent as approved by the Board, as more
particularly alleged in paragraph 9, which is hereby incorporated by reference and realleged as if
fully set forth herein.
THIRD CAUSE TO REVOKE PROBATION
(Failure to Provide Biological Fluid Sample and Failure to Submit to Biological Fluid Testing)

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

   A. "4. BIOLOGICAL FLUID TESTING

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

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

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

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


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

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12. Respondent’s probation is further subject to revocation because he
failed to comply with Probation Condition No. 4, referenced above, in that he failed to
log-in or report by phone for his biological fluid testing on multiple occasions and,
further, failed to appear at an approved collection site and provide a biological fluid
sample on multiple occasions, as more particularly alleged in paragraph 11, which is
hereby incorporated by reference and realleged as if fully set forth herein.

CAUSE FOR DISCIPLINE
(Unprofessional Conduct)

13. Respondent has subjected his Acupuncturist License to disciplinary action under
section 4955 of the Code, in that he has engaged in conduct which breaches the rules or ethical
code of the acupuncture profession, or conduct which is unbecoming to a member in good
standing of the acupuncture profession, and which demonstrates an unfitness to practice
acupuncture, as more particularly alleged in paragraphs 7 through 12, above, which are hereby
incorporated by reference and realleged as if fully set forth herein.\footnote{2}

\footnote{2 See footnote 2, above.}
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 the probation that was granted by the Board in Case No. 1A-2011-21 and imposing the disciplinary order that was stayed thereby revoking Acupuncturist License No. AC 11640 issued to respondent Robert Paul Simmons, L.Ac.;

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

3. Ordering respondent Robert Paul Simmons, 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; and

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

DATED: DEC 24 2013

TERRI THORFINNISON
Executive Officer
Acupuncture Board
Department of Consumer Affairs
State of California
Complainant