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

12 In the Matter of the Accusation Against,

Case No. 1A-2009-156

13 **TUNG WEI PAN, L.A.C.**

14 **145 AA Duarte Road, #508**
Arcadia, CA 91006

DEFAULT DECISION
AND ORDER

[Gov. Code, §11520]

15 **Acupuncturist's License No. AC 12012**

16 **Respondent.**

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18 **FINDINGS OF FACT**

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20 1. On or about April 6, 2010, Complainant Janelle Wedge, in her official capacity as the
21 Executive Officer of the Acupuncture Board, Department of Consumer Affairs, filed Accusation
22 No. 1A-2009-156 against TUNG WEI PAN, L.Ac. (Respondent) before the Acupuncture Board.

23 2. On or about October 18, 2007, the Acupuncture Board (Board) issued Acupuncturist's
24 License No. AC 12012 to Respondent. Unless renewed, said license will expire on May 31,
25 2011.

26 3. On or about April 6, 2010, an employee of the Complainant Agency, served by
27 Certified Mail a copy of the Accusation No. 1A-2009-156, a Statement to Respondent, a Request
28 for Discovery, two unexecuted Notices of Defense, and a copy of Government Code sections

1 11507.5, 11507.6 and 11507.7 to Respondent's address of record with the Board, which was and
2 is 145 AA Duarte Road, #508, Arcadia, CA 91006. A copy of the Accusation, the related
3 documents, and Declaration of Service are attached as exhibit A, and are incorporated herein by
4 reference.

5 4. Service of the Accusation was effective as a matter of law under the provisions of
6 Government Code section 11505, subdivision (c).

7 On or about April 13, 2010, the certified mail receipt for the aforementioned documents
8 was returned to the Board with a signature and indication that the documents were received on
9 April 9, 2010. The proof of service and return receipt are attached to Exhibit A.

10 5. Government Code section 11506 states, in pertinent part:

11 "(c) The respondent shall be entitled to a hearing on the merits if the respondent files a
12 notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation
13 not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
14 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

15 Respondent failed to file a Notice of Defense within 15 days after service upon him of the
16 Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 1A-2009-
17 156.

18 6. California Government Code section 11520 states, in pertinent part:

19 "(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the
20 agency may take action based upon the respondent's express admissions or upon other evidence
21 and affidavits may be used as evidence without any notice to respondent."

22 7. On or about April 29, 2010, notice of default was sent to Respondent's address of
23 Record, 145 AA Duarte Rd., #508, Arcadia, CA 91006. On or about May 17, 2010, the notice of
24 default was also sent to 145 E. Duarte Rd., #508, Arcadia, CA 91006, 805 W. Duarte Rd., Ste.
25 106, Arcadia, CA 91007, and 410 S. Sierra Madre Blvd., Pasadena, CA 91107. A copy of the
26 notice of default is attached hereto as Exhibit B and incorporated herein by reference.

1 8. Attached hereto as Exhibit C and incorporated herein by reference is the Declaration
2 of Vivien H. Hara, Deputy Attorney General attaching certified court documents confirming
3 Respondent's conviction and a summary of costs of investigation and prosecution of the case.

4 8. Pursuant to its authority under Government Code section 11520, the Board finds
5 Respondent is in default. The Board will take action without further hearing and, based on
6 Respondent's express admissions by way of default and the evidence before it, contained in
7 exhibits A and B, finds that the allegations in Accusation No. 1A-2009-156 are true.

8 DETERMINATION OF ISSUES

9 1. Based on the foregoing findings of fact, Respondent TUNG WEI PAN, L.Ac. has
10 subjected his Acupuncturist's License No. AC 12012 to discipline.

11 2. A copy of the Accusation and the related documents and Declaration of Service are
12 attached.

13 3. The agency has jurisdiction to adjudicate this case by default.

14 4. The Acupuncture Board is authorized to revoke Respondent's Acupuncturist's
15 License based upon the following violations alleged in the Accusation:

16 a. Business and Professions Code section 4955(b): Conviction of a crime
17 substantially related to the qualifications, functions, or duties of an acupuncturist.

18 b. Business and Professions Code section 726: Sexual Misconduct.

19 ORDER

20 IT IS THEREFORE ORDERED that Acupuncturist's License No. AC 12012, heretofore
21 issued to Respondent TUNG WEI PAN, L.Ac., is revoked.

22 In any Petition for Reinstatement of License, should it be determined that Respondent's
23 license may be restored with or without conditions of probation, the license shall not be reinstated
24 before Respondent pays to the Acupuncture Board the costs of investigation and prosecution in
25 this matter which are set forth in Exhibit C.

26 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
27 written motion requesting that the Decision be vacated and stating the grounds relied on within
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1 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
2 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

3 This Decision shall become effective on JUL 02 2010.

4 It is so ORDERED this 2nd day of JUNE, 2010.

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7 ROBERT BREWER, CHAIR
8 ACUPUNCTURE BOARD
9 DEPARTMENT OF CONSUMER AFFAIRS

10 ATTACHMENTS:

- 11 Exhibit A: Accusation No.1A-2009-156, Related Documents, and Declaration of Service
12 Exhibit B: Notice of Default
13 Exhibit C: Declaration of Vivien H. Hara with Exhibits 1, 2, 3 (not public), and 4.
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