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

In the Matter of the Accusation Against:

Case No. 1A-2017-188

DAVID LAU, AC 1098 Foster City Blvd Ste 301 Foster City, CA 94404-2375 OAH No. 2018120328

Acupuncture License No. AC 16170

Respondent.

# **DECISION AND ORDER**

The attached Stipulated Surrender of License and 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, 2019

It is so ORDERED March 19, 2019

FOR THE ACUPUNCTURE BOARD

DEPARTMENT OF CONSUMER AFFAIRS

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|------|---|--|--|
| 1    | XAVIER BECERRA  |  |  |
| 2    | Attorney General of California JANE ZACK SIMON  |  |  |
| 3    | Supervising Deputy Attorney General REBECCA D. WAGNER Deputy Attorney General State Bar No. 165468 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004 Telephone: (415) 510-3760 Facsimile: (415) 703-5480 |  |  |
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| 7    | E-mail: Rebecca.Wagner@doj.ca.gov  Attorneys for Complainant  |  |  |
| 8    |   | ,  |  |
| 9    | BEFORE THE ACUPUNCTURE BOARD  |  |  |
| 10   | DEPARTMENT OF CONSUMER AFFAIRS  |  |  |
| 11   | STATE OF C  | CALIFORNIA                                   |  |
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| 13   | In the Matter of the Accusation Against:  | Case No. 1A-2017-188                         |  |
| 14   | DAVID LAU, AC   | OAH No. 2018120328                           |  |
| 15   | 1098 Foster City Blvd Ste 301<br>Foster City, CA 94404-2375   | STIPULATED SURRENDER OF<br>LICENSE AND ORDER |  |
| 16   | Acupuncture License No. AC 16170  |  |  |
| 17   | Respondent  |  |  |
| 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   | <u>PARTIES</u>  |  |  |
| 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 Rebecca D. Wagner, Deputy   |  |  |
| 25   | Attorney General.   |  |  |
| 26   | 2. David Lau, AC (Respondent) is represented in this proceeding by attorney Ricardo A   |  |  |
| 27   | Martinez, Esq., whose address is: 3480 Buskirk Avenue, Suite 250, Pleasant Hill, CA 94523.  |  |  |
| 28   | *   |  |  |
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3. On or about September 25, 2014, the Board issued Acupuncture License No. AC 16170 to Respondent. The Acupuncture License was in full force and effect at all times relevant to the charges brought in Accusation No. 1A-2017-188 and will expire on August 31, 2020, unless renewed.

# **JURISDICTION**

4. Accusation No. 1A-2017-188 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on May 21, 2018. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 1A-2017-188 is attached as Exhibit A and incorporated by reference.

# **ADVISEMENT AND WAIVERS**

- 5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 1A-2017-188. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Order.
- 6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.
- 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

#### CULPABILITY

8. Respondent understands that the charges and allegations in Accusation No. 1A-2017-188, if proven at hearing, constitute cause for imposing discipline upon his Acupuncture License No. 1A-2017-188.

- 9. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation and that those charges constitute cause for discipline. Respondent hereby gives up his right to contest those charges and surrenders Acupuncture License No. 16170.
- 10. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Acupuncture License without further process.

# CONTINGENCY

- 11. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.
- 12. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Surrender of License and Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.
- 13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

# ORDER

IT IS HEREBY ORDERED that Acupuncture License No. AC 16170, issued to Respondent David Lau, AC, is surrendered and accepted by the Board.

1. The surrender of Respondent's Acupuncture License and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent.

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27 28 This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

- Respondent shall lose all rights and privileges as an Acupuncturist in California as of the effective date of the Board's Decision and Order.
- Respondent shall cause to be delivered to the Board his pocket license, and any wall 3. certificates issued to Respondent, on or before the effective date of the Decision and Order.
- 4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed. Information gathered in connection with Accusation No. 1A-2017-188 may be considered by the Board in determining whether or not to grant the petition for reinstatement, and all of the charges and allegations contained in Accusation No. 1A-2017-188 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the application or petition.
- 5. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation No. 1A-2017-188 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.
- 6. Respondent's Acupuncture License may not be renewed or reinstated, and no application by Respondent to the Board for any license shall be considered, unless Respondent has reimbursed the Board for its costs of investigation and enforcement of this matter in the amount of ten thousand eight hundred and sixty-five dollars and sixty-five cents (\$10,865.50).

#### ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, Ricardo A. Martinez, Esq. I understand the stipulation and the effect it will have on my Acupuncture License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and

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| 1    | Order of the Acupuncture Board. By signing this stipulation to surrender my license, I recognize      |  |
| 2    | that upon its formal acceptance by the Board, I will lose all rights and privileges to practice as an |  |
| 3    | acupuncturist in the State of California.   |  |
| 4    |   |  |
| 5    | DATED: 3/11/19 Bavid Lau  |  |
| 6    | DAVID LAU, AC<br>Respondent   |  |
| 7    | I have read and fully discussed with Respondent David Lau, AC the terms and conditions                |  |
| 8    | and other matters contained in this Stipulated Surrender of License and Order. I approve its form     |  |
| 9    | and content.  |  |
| 10   | DATED: 3/11/19 Clarlo A. Martinez, ESQ.   |  |
| 11   | RICARDO A. MARTINEZ, ESQ.  Attorney for Respondent  |  |
| 12   |   |  |
| 13   | ENDORSEMENT   |  |
| 14   | The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted              |  |
| 15   | for consideration by the Acupuncture Board of the Department of Consumer Affairs.                     |  |
| 16   | Dated: 3-12-2019 Respectfully submitted,  |  |
| 17   | XAVIER BECERRA Attorney General of California   |  |
| 18   | Mary Čain-Simon Supervising Deputy Attorney General   |  |
| 19   |   |  |
| 20   | Mul. Wagner   |  |
| 21   | Rebece D. Wagner<br>Deputy Attorney General   |  |
| 22   | Attorneys for Complainant   |  |
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Exhibit A

**Accusation No. 1A-2017-188**