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ACUPUNCTURE BOARD

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	Case No. 1A-1998-111
	)	
MARK STEPHEN FIELDS	)	
87 Scripps Drive, Suite 306	)	
Sacramento, CA 995825	)	
	)	
	)	
Acupuncture License No. AC-2480	)	
Respondent.	)	

STIPULATED SETTLEMENT AND DISCIPLINARY ORDER

The attached **Stipulated Settlement and Disciplinary Order** is hereby adopted by the Acupuncture Board, Department of Consumer Affairs, State of California, as its Decision in the above-entitled matter.

This Decision shall become effective January 9, 2004.

IT IS SO ORDERED December 9, 2003.

PEI LI ZHONG-FONG
Chair
Acupuncture Board
Department of Consumer Affairs
State of California

BILL LOCKYER, Attorney General
of the State of California
ROBERT C. MILLER, State Bar No. 125422
Deputy Attorney General
California Department of Justice
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 324-5161
Facsimile: (916) 327-2247

Attorneys for Complainant

ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **MARK STEPHEN FIELD, L.Ac.** 87 Scripps Drive, Suite 212 Sacramento, CA 95825 License No. AC-2480 Respondent.	Case No. 1A-1998-111 OAH No. N2003050487 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Complainant Marilyn Nielsen is the Executive Officer of the Accupuncture Board of California who brought this action solely in her official capacity and is represented in this matter by Bill Lockyer, Attorney General of the State of California, by Robert C. Miller, Deputy Attorney General.

2. Respondent Mark Stephen Fields ("Respondent") is represented in this matter by attorneys Steven G. Churchwell and Joel Baiocchi of Livingston & Mattesich, whose address is 1201 K Street, Suite 1100, Sacramento, California 95814-3938.

3. On or about July 23, 1985, the Acupuncture Board issued Acupuncture License number AC-2480 to Mark Stephen Fields. At all times relevant to these proceedings the

said license has been in full force and effect.

JURISDICTION

4. Accusation No. 1A-1998-111, was filed before the Acupuncture Board ("Board"), and is currently pending against Respondent. The Accusation, together with all other statutorily required documents, was duly served on Respondent on March 11, 2003, and Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 1A-1998-111 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read and discussed with his counsel the nature of the charges and allegations.

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 be represented by counsel, at his own expense, the right to confront and cross-examine witnesses against him, the right to present evidence and to testify on his own behalf and 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 the Accusation, if proven at hearing, constitute cause for imposing discipline upon his Acupuncture License number AC-2480.

9. Respondent admits the truth of each and every allegation in the Accusation No. 1A-1998-111.

10. Respondent agrees that his Acupuncture License number AC-2480 is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the order below.

CONTINGENCY

11. This stipulation shall be subject to the approval of the Board. Respondent understands and agrees that Acupuncture Board's staff and counsel for complainant may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. If the Board fails to adopt this stipulation as its order, the stipulation shall be of no force or effect, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action in this matter by virtue of its consideration of this stipulation. After Respondent has executed this stipulation, he shall not be permitted to withdraw from it.

12. The parties agree that facsimile signatures to this Stipulated Settlement and Disciplinary Order shall have the same force and effect as original signatures.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board shall, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED THAT Acupuncture License number AC-2480 issued to Mark Stephen Fields is revoked. However, the revocation is stayed and Respondent is placed on probation for a period of five (5) years under the following terms and conditions:

1. ACTUAL SUSPENSION: As part of the probation, Respondent is suspended from the practice of acupuncture for 30 days beginning with the effective date of this decision.

2. COURSEWORK: Respondent shall take and successfully complete 15 hours of coursework in the following area: ethics and other related topics. All coursework shall be taken at the graduate level at a school approved by the Acupuncture Board. Classroom attendance must be specifically required. Course content shall be pertinent to the violation and all coursework must be completed within the first 3 years of probation. The required coursework must be in addition to any continuing education courses that may be required for license renewal.

Within 90 days of the effective date of this decision, Respondent shall

submit a plan for the Acupuncture Board's prior approval for meeting the educational requirements. All costs of the coursework shall be borne by the Respondent.

3. COMMUNITY SERVICE Within 60 calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval a community service plan in which respondent shall provide 120 hours per year of free services to a community or non-profit organization during the first two years of probation.

4. OBEY ALL LAWS: Respondent shall obey all federal, state and local laws and all regulations governing the practice of acupuncture in California. A full and detailed account of any and all violations of law shall be reported by the Respondent to the Acupuncture Board in writing within seventy-two (72) hours of occurrence.

5. QUARTERLY REPORTS: Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Acupuncture Board , stating whether there has been compliance with all the conditions of probation.

6. SURVEILLANCE PROGRAM: Respondent shall comply with the Acupuncture Board's probation surveillance program and shall, upon reasonable notice, report to the assigned investigative district office. Respondent shall contact the assigned probation surveillance monitor regarding any questions specific to the probation order. Respondent shall not have any unsolicited or unapproved contact with 1) victims or complainants associated with the case; 2) Acupuncture Board members or its staff; or 3) persons serving the Acupuncture Board as expert examiners.

7. INTERVIEW WITH THE ACUPUNCTURE BOARD OR ITS DESIGNEE: Respondent shall appear in person for interviews with the Acupuncture Board or its designee upon request at various intervals and with reasonable notice.

8. CHANGES OF EMPLOYMENT: Respondent shall notify the Acupuncture Board in writing, through the assigned probation surveillance compliance officer, of any and all changes of employment, location and address within 30 days of such change.

9. TOLLING FOR OUT OF STATE PRACTICE OR RESIDENCE: In the event Respondent should leave California to reside or to practice outside the state, Respondent

must notify the Acupuncture Board in writing of the dates of departure and return. Periods of residency or practice outside California will not apply to the reduction of this probationary period.

10. EMPLOYMENT AND SUPERVISION OF TRAINEES: Respondent shall not employ or supervise or apply to employ or supervise acupuncture trainees during the course of this probation. Respondent shall terminate any such supervisorial relationship in existence on the effective date of this probation.

11. COST RECOVERY: Respondent shall pay to the Acupuncture Board its costs of investigation and enforcement in the amount of $5,000.

12. VIOLATION OF PROBATION: If Respondent violates probation in any respect, the Acupuncture Board may, after giving Respondent notice and the opportunity to be heard, revoke probation and carry out the disciplinary order that was stated. If an accusation or petition to revoke probation is filed against Respondent during pronation, the Acupuncture Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final. No petition for modification or termination of probation shall be considered while there is an accusation or petition to revoke probation pending against Respondent.

13. COMPLETION OF PROBATION: Upon successful completion of probation, 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 the terms and conditions and other matters contained therein with my attorney Steven G. Churchwell. I understand the effect this stipulation will have on my Acupuncture License number AC-2480. I enter into this Stipulated Settlement voluntarily, knowingly and intelligently and agreed to be bound by the Disciplinary Order and Decision of the Acupuncture Board.

DATED: 8/28/03.

MARK STEPHEN FIELDS
Respondent

I have read and fully discussed with Respondent Mark Stephen Fields the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order and approve its form and content.

DATED: 8/29/03.

for JOEL C. BAIOCCHI, ESQ.
Attorney for Respondent

DATED: 8-29-03.

STEVEN G. CHURCHWELL, ESQ.
Attorney for Respondent

ENDORSEMENT

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

DATED: 9/15/03.

BILL LOCKYER, Attorney General
of the State of California

ROBERT C. MILLER
Deputy Attorney General

Attorneys for Complainant

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ACUPUNCTURE BOARD

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BILL LOCKYER, Attorney General
of the State of California
GAIL M. HEPPELL, Supervising
Deputy Attorney General
ROBERT C. MILLER
Deputy Attorney General
1300 I Street, Suite 125
P. O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 324-5161

Attorneys for Complainant

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

In the Matter of the Accusation Against: **MARK STEPHEN FIELDS** 87 Scripps Drive, #212 Sacramento, CA 95825 Acupuncture License No. AC-2480, Respondent.	Case No. 1A-1998-111 **ACCUSATION**

The Complainant alleges:

PARTIES

1. Complainant, Marilyn Nielsen, is the Executive Officer of the Acupuncture Board of California (hereinafter the "Board") and brings this accusation solely in her official capacity.

2. On or about July 23, 1985, Acupuncture License No. AC-2480 was issued by the Board to Mark Stephen Fields (hereinafter "respondent"), and at all times relevant to the charges brought herein, this license has been in full force and effect.

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JURISDICTION

3. This accusation is brought before the Acupuncture Board of California, Department of Consumer Affairs (hereinafter the "Board"), under the authority of the following sections of the California Business and Professions Code (hereinafter "Code") and/or other relevant statutory enactment:

A. Section 4955 of the Code provides that the Board may deny, suspend or revoke or impose probationary conditions upon the license of any acupuncturist who has been found guilty of unprofessional conduct.

B. Section 4955(b) of the Code provides that conviction of a crime substantially related to the qualifications and duties of an acupuncturist constitutes unprofessional conduct, and that the record of conviction is conclusive evidence of that conviction.

C. Section 4955.1 of the Code provides that the Board may deny, suspend, revoke, or impose probationary conditions upon the license of any acupuncturist if he is guilty of committing a fraudulent act including, but not limited to, any of the following:

. . . .

(b) Committing a fraudulent or dishonest act as an acupuncturist.

(c) Committing any act involving dishonesty or corruption with respect to the qualifications, functions or duties of an acupuncturist.

(d) Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record.

. . . .

D. Section 4956 of the Code provides that 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.

E. Section 4959 of the Code provides in pertinent part that the Board may request the administrative law judge to direct any licentiate found to have committed a violation or violations of the licensing act to pay the Board a sum not to exceed actual and reasonable costs of the investigation and prosecution of the case.

4. Respondent is guilty of unprofessional conduct within the meaning of Code sections 4955(b) and 4955.1 as more particularly set forth hereinbelow.

FIRST CAUSE FOR DISCIPLINE
(Conviction of a Crime)
[Bus. & Prof. Code § 4955(b)]

5. On May 22, 2000, in Sacramento County Superior Court, respondent Mark Stephen Fields was convicted by plea of nolo contendere to one count of a 41 count criminal complaint of violating Penal Code section 550(A)(7), knowingly submitting a false health insurance claim, a felony. On June 26, 2000, respondent was placed on three years formal probation with one day in jail, credit for time served.

6. Respondent's conduct as set forth above constitutes unprofessional conduct in violation of section 4955(b) of the Code and constitutes grounds for disciplinary action.

SECOND CAUSE FOR DISCIPLINE
(Fraudulent or Dishonest Act)
[Bus. & Prof. Code § 4955.1]

7. Complainant realleges paragraph 5 above as if fully set forth herein.

8.. Respondent's submission of fraudulent health insurance claims constitutes unprofessional conduct pursuant to section 4955.1 of the Code and is grounds for disciplinary

action.

THIRD CAUSE FOR DISCIPLINE
(Fraudulent or Dishonest Act)
[Bus. & Prof. Code § 4955.1]

9. Complainant realleges paragraph 5 above as if fully set forth herein.

10. On April 23, 2002, respondent submitted a license renewal application to the Acupuncture Board. On the renewal application, respondent checked "no" on the section which asked if he had been convicted of any violation of any law since the date of his last license renewal. As respondent had been convicted in May, 2000, of a violation of a law of the State of California, his answer on his license renewal application was an act of dishonesty and unprofessional conduct in violation of section 4955.1 of the Code and is grounds for disciplinary action.

PRAYER

WHEREFORE complainant requests that a hearing be held on the matters herein alleged and that, following the hearing, the Board issue a decision:

1. Revoking or suspending Acupuncture License Number AC-2480 heretofore issued to respondent Mark Stephen Fields;

2. Ordering respondent to pay the Division the actual and reasonable costs of the investigation and enforcement of this case and the costs of probation monitoring if probation is imposed; and

3. Taking such other and further action as the Division may deem necessary of proper.

DATED: 3/4/03.

Marilyn Nielsen

Marilyn Nielsen
Executive Officer
Acupuncture Board
Department of Consumer Affairs
State of California
Complainant