

1 KAMALA D. HARRIS
Attorney General of California
2 JOSE R. GUERRERO
State Bar No. 97276
3 Supervising Deputy Attorney General
CATHERINE E. SANTILLAN
4 Senior Legal Analyst
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5579
6 Facsimile: (415) 703-5480
Attorneys for Complainant

FILED

AUG 23 2011

ACUPUNCTURE BOARD

7
8 **BEFORE THE**
ACUPUNCTURE BOARD
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the First Amended Accusation
11 Against:

Case No. 1A-2010-219

12 **ROBIN JACOBI**
13 **P.O. Box 68**
Felton, CA 95018

FIRST AMENDED
ACCUSATION

14 **Acupuncture License No. AC-7732**

15 Respondent.

16
17
18 Complainant alleges:

19 **PARTIES**

20 1. Janelle Wedge (Complainant) brings this First Amended Accusation solely in her
21 official capacity as the Executive Officer of the Acupuncture Board, Department of Consumer
22 Affairs.

23 2. On or about February 22, 2001, the Acupuncture Board issued License number AC
24 7732 to Robin Li Jacobi (Respondent). The License is current and valid and will expire on
25 February 29, 2012.

JURISDICTION

1
2 3. This First Amended Accusation is brought before the Acupuncture Board (Board),
3 Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code unless otherwise indicated.

5 4. Section 4955 of the Code states:

6 "The board may deny, suspend, or revoke, or impose probationary conditions upon, the
7 license of any acupuncturist if he or she is guilty of unprofessional conduct.

8 "Unprofessional conduct shall include, but not be limited to, the following:

9 "(a) Using or possessing any controlled substance as defined in Division 10
10 (commencing with Section 11000) of the Health and Safety Code, or dangerous drug
11 or alcoholic beverage to an extent or in a manner dangerous to himself or herself, or
12 to any other person, or to the public, and to an extent that the use impairs his or her
13 ability to engage in the practice of acupuncture with safety to the public.

14 "(b) Conviction of a crime substantially related to the qualifications, functions,
15 or duties of an acupuncturist, the record of conviction being conclusive evidence
16 thereof."

17 5. Section 4955.1 of the Code states:

18 "The board may deny, suspend, revoke or impose probationary conditions upon the license
19 of any acupuncturist if he or she is guilty of committing a fraudulent act, including but not limited
20 to, any of the following:

21 "..."

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

23 6. Section 4956 of the Code states:

24 "A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a
25 charge which is substantially related to the qualifications, functions, or duties of an acupuncturist
26 is deemed to be a conviction within the meaning of this chapter.

27 "The board may order a license suspended or revoked, or may deny a license, or may
28 impose probationary conditions upon a license, when the time for appeal has elapsed, or the

1 judgment of conviction has been affirmed on appeal, or when an order granting probation is made
2 suspending the imposition of sentence irrespective of a subsequent order under the provisions of
3 Section 1203.4 of the Penal Code allowing the person to withdraw his or her pleas of guilty and to
4 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation,
5 complaint, information, or indictment."

6 COST RECOVERY

7 7. Section 4959 of the Code states:

8 "(a) The board may request the administrative law judge, under his or her
9 proposed decision in resolution of a disciplinary proceeding before the board, to
10 direct any licensee found guilty of unprofessional conduct to pay to the board a sum
11 not to exceed actual and reasonable costs of the investigation and prosecution of the
12 case.

13 "(b) The costs to be assessed shall be fixed by the administrative law judge and
14 shall not in any event be increased by the board. When the board does not adopt a
15 proposed decision and remands the case to an administrative law judge, the
16 administrative law judge shall not increase the amount of any costs assessed in the
17 proposed decision.

18 "(c) When the payment directed in the board's order for payment of costs is not
19 made by the licensee, the board may enforce the order for payment in the superior
20 court in the county where the administrative hearing was held. This right of
21 enforcement shall be in addition to any other rights the board may have as to any
22 licensee directed to pay costs.

23 "(d) In any judicial action for the recovery of costs, proof of the board's
24 decision shall be conclusive proof of the validity of the order of payment and the
25 terms for payment.

26 "(e) All costs recovered under this section shall be considered a reimbursement
27 for costs incurred and shall be deposited in the Acupuncture Fund."
28

1 FIRST CAUSE FOR DISCIPLINE

2 (Substantially-related Convictions)

3 8. Respondent is subject to disciplinary action under code section 4955(b) and/or code
4 section 4956 [substantially related conviction] in that he has substantially related convictions in
5 2011 and 2006. The circumstances are as follows:

6 2/7/11 conviction

7 9. On December 10, 2010, at about 12:13 a.m., Santa Cruz County Sheriff Dee Baldwin
8 observed a vehicle driven by a male individual (later identified as Respondent) traveling towards
9 him in the oncoming lane. The vehicle caught his attention because the driver activated the fog
10 lights while driving towards him. One fog light was not functioning and the other was directed
11 into oncoming traffic. The officer made a u-turn to pull Respondent's car to the side, and
12 observed the vehicle had an expired registration tag. He conducted a vehicle stop and contacted
13 the driver. He noticed that Respondent's pupils appeared extremely constricted for the lighting
14 conditions, his skin appeared pale and he had a lethargic demeanor. Based on his physical
15 appearance, the officer conducted a drug influence evaluation and concluded that Respondent was
16 under the influence of a controlled substance.

17 10. Respondent was subsequently arrested by Santa Cruz County Sheriff Baldwin for
18 violating Health and Safety code section 11550(a) [use or under the influence of controlled
19 substances, to wit, cocaine and opiates.] Respondent admitted that earlier in the evening, he had
20 taken four 500 milligram hydrocodone pills and one methadone pill. Respondent's urine sample
21 tested positive for benzodiazepines, marijuana, cocaine, and opiates.

22 11. On January 6, 2011, a criminal complaint titled *People of the State of California vs.*
23 *Robin Li Jacobi*, case no. M57672 was filed in Santa Cruz County Superior Court. Count 1
24 charged Respondent with a misdemeanor violation of Health and Safety Code section 11550(a)
25 [under influence of a controlled substance, to wit, cocaine and opiates.]

26 12. On February 7, 2011, Respondent was convicted on his plea of nolo contendere.
27 Sentencing was suspended for 36 months and he was placed on formal probation
28

7/22/2011 conviction

1
2 13. On or about May 23, 2011, Santa Cruz police officers searched Respondent's
3 residence pursuant to his criminal probation condition in case no. M57672 which allowed
4 searches of his person, residence, vehicle and areas under his dominion and control for drugs,
5 alcohol and paraphernalia with or without a warrant. J.F., an adult male, answered the door of
6 Respondent's residence and told the officers that Respondent was not home. The officers
7 searched the residence and discovered 273 marijuana plants in various stages of growth located
8 on the upstairs deck and lower level rooms. 96 marijuana plants were located in the backyard. In
9 the garage, the officers observed multiple lights suspended above 100 marijuana plants growing
10 in plastic pots with a water supply plumbed into the base of each. A large wall mounted air
11 conditioning unit was attached to the wall, and a CO2 generator was suspended from the center of
12 the room. Based on Officer Dee Baldwin's training and experience, he believed that Respondent
13 was cultivating marijuana for sale, and he estimated the potential yield of marijuana for the room
14 was between 6 - 9 pounds.

15 14. Inside the house, the officers observed a locked bedroom door, knocked and
16 announced their presence but received no answer. The door was forced open and the interior was
17 searched. The officers believed the room belonged to Respondent, and found four plastic tubs
18 (one 10 gallon, one 17 gallon, two 18 gallon size) containing marijuana in various forms. The
19 tubs contained a total of 5.187 pounds of processed marijuana. Other items found in
20 Respondent's bedroom included a triple beam scale, multiple bags throughout the room
21 containing marijuana, handwritten notes and receipts. Inside the closet, officers located a piece of
22 foil with burnt residue, which in the officers' training and experience, was consistent with heroin
23 ingestion. Officer Dee established that Respondent had conducted two harvests since December
24 2010, which indicated that he harvested about every four months. He determined that
25 Respondent could produce approximately 18 -24 pounds of processed marijuana each year for an
26 estimated value of the harvested plants of \$12,000.00 - \$16,000.00.

27 15. Detective Besk searched Respondent's bedroom and found handwritten notes which
28 listed several incoming and outgoing dollar amounts. Based on his training and experience,

1 Detective Besk recognized the numbers to be consistent with the value and sales of processed
2 marijuana.

3 16. A further search of the premises uncovered a second grow room on the lower level of
4 the house. This room contained 23 marijuana plants. Officer Dee determined that the plants
5 could produce approximately 1.9 pounds of marijuana bud for an estimated value between
6 \$3820.00 -\$5730.00 based upon the cost per pound.

7 A. At approximately 1245 hours, Respondent returned to the residence. Respondent was
8 given his Miranda rights, and agreed to talk to the officers. Respondent informed them that he
9 had been renting the residence since November 2010 and several other people had been living
10 there prior to that time. He did not know anything about their activities but it had resulted in a
11 \$7,000.00 energy bill. He stated that the other people moved out but did not pay the outstanding
12 bill.

13 B. Respondent admitted that he was currently growing marijuana for medical patients,
14 and believed that he was "under the legal limit" for prosecution given the number of medical
15 marijuana recommendations of the people in the house. He stated that he did not deal with
16 money because he gave a lot of marijuana to medical marijuana dispensaries. He changed his
17 statements on several occasions and did not provide specific details about how he received
18 compensation for the marijuana he was growing. He recalled two harvests of the marijuana
19 plants in December 2010 and April 2011.

20 C. Respondent stated that he and six or seven other people grew marijuana in the house
21 and garage. He stated that he and the landlord were the primary source for money to fund the
22 operation, and the other people provided equipment and/or labor. Respondent stated that his
23 primary source of income was from his acupuncture business, but he was unable to provide any
24 documentation or receipts for acupuncture work that he had performed.

25 D. Respondent admitted that prior to February 2011, he smoked between six to seven
26 marijuana joints a day, but insisted that he had not used marijuana since the middle of February
27 2011. At one point in the interview, Respondent stated that growing marijuana was too much.
28

1 work not to use it himself. He stated that he struggled with drug addiction but he was willing to
2 seek help.

3 17. Based on the quantity of marijuana, Respondent's statements, handwritten notes in
4 Respondent's bedroom, and lack of apparent recent legitimate income for Respondent, he was
5 arrested for violating Health and Safety section 11358 [cultivation of marijuana] and section
6 11359 [possession of marijuana for sale.] Respondent was transported to county jail. Respondent
7 refused to provide a urine sample, and explained that he knew it would test positive for opiates
8 and speed.

9 18. On or about June 20, 2011, a criminal complaint titled *People of the State of*
10 *California vs. Robin Li Jacobi*, case no. F20998 was filed in Superior Court for Santa Cruz
11 County. Count 1 charged Respondent with a felony violation of Health and Safety code section
12 11359 [possession of marijuana for sale]. Count 2 charged Respondent with a felony violation of
13 Health and Safety code section 11358 [cultivation of marijuana.]

14 19. On or about July 22, 2011, a Minute Order was entered. Respondent pled nolo
15 contendere to Count 2, Health and Safety code section 11358 [cultivation of marijuana] and
16 Count 1 was dismissed in the interest of justice. The Court accepted the plea, and imposition of
17 sentence was suspended for 36 months. Probation was granted under the following terms and
18 conditions: he was ordered to report to the probation department within 5 days after sentencing
19 or release from custody, report to probation monthly or as directed, no change of address or
20 leaving the state of California without prior permission of the probation officer, notify probation
21 of any arrests or citations no more than 24 hours after occurrence, 90 days in jail, report to jail by
22 August 22, 2011, court recommended work release, he was ordered to pay fines, participate in an
23 educational/vocational/therapeutic program at the probation officer's direction, submit to searches
24 at any time by any probation or peace officer with less than probable cause, with or without a
25 search warrant, as to illegal controlled substances. Respondent was ordered to register with local
26 law enforcement pursuant to Health and Safety code section 11590.

1 20. On July 22, 2011, Respondent's probation in Santa Cruz County Superior Court case
2 no. M57672 was terminated unsuccessfully after he admitted to a violation of probation on May
3 23, 2011.

4 10/6/2006 conviction

5 21. On or about August 2, 2006, Santa Cruz Police Officer C. Jones was conducting a
6 follow-up investigation of a hit and run accident which had occurred approximately ten days
7 earlier. Respondent was identified as the driver of a rented truck that left the scene of an
8 accident.

9 A. On August 2, 2006, Officer Jones went to Respondent's residence to obtain vehicle
10 insurance information from Respondent. Officer Jones observed a Ford pick-up truck, and
11 determined via the license plate number, that Respondent was the owner and that his driver's
12 license was suspended. Officer Jones called for a tow truck to tow the vehicle. While conducting
13 an inventory of the truck, the officer found a clear plastic baggie filled with several hard, white,
14 rock like chunks. The small rocks tested presumptively positive for cocaine and weighed
15 approximately 15.1 grams. The officer also found a pipe with a burnt residue which in the
16 officer's training and experience, was consistent with the type of pipe commonly used to smoke
17 crack cocaine. He also found other paraphernalia for use with controlled substances.

18 B. Respondent's vehicle was taken to North County Towing Company. On August 3,
19 2006, the tow company informed Santa Cruz Police Department that Respondent had telephoned
20 to inform them that he would pick up his vehicle. Officer Jones arrived at the tow yard. He
21 observed Respondent arrive in a car driven by an adult female. Officer Jones approached
22 Respondent and asked him to step out of the vehicle. Respondent tried to flee as he was being
23 handcuffed. The officer subdued Respondent, handcuffed him and searched him incident to the
24 arrest. In Respondent's left pocket, the officer found a small blue piece of paper containing white
25 powder, which tested presumptively positive for cocaine and weighed approximately 3 grams.

26 22. On August 7, 2006, a criminal complaint titled *People of the State of California vs.*
27 *Robin Jacobi*, case no. F13787 was filed in Santa Cruz County Superior Court. Count 1 charged
28 Respondent with a misdemeanor violation of Vehicle Code section 14601(a) [driving on a

1 suspended license. Count 2 charged Respondent with a felony violation of Health and Safety
2 Code section 11350(a) [possession of a controlled substance, to wit, cocaine.]

3 23. On October 6, 2006, Respondent was convicted on his plea of guilty to Vehicle Code
4 section 14601(a) [driving on a suspended license.] Imposition of sentence was suspended for 36
5 months and a conditional sentence was granted for 36 months under terms and conditions,
6 including payment of fines, and he was ordered to enroll in residential treatment.

7 24. On October 10, 2006, Respondent's guilty plea was vacated and the case dismissed
8 based on his plea of guilty to violating Health and Safety code section 11350(a) [possession of
9 cocaine] and Vehicle Code section 14601(a) [driving on a suspended license], in Santa Cruz
10 County Superior Court case no. F14033.

11 10/10/2006 conviction

12 25. On September 8, 2006, Santa Cruz Police Officer A. Martin observed an adult male
13 (later identified as Respondent) nearly sideswipe a parked car. The officer conducted an
14 enforcement stop and contacted Respondent, who was in the driver's seat. The officer was aware
15 that Respondent's driver's license was suspended, and he arrested Respondent for violating
16 Vehicle Code section 14601(a) [driving on a suspended license.] The officer searched the car
17 incident to the arrest and found a piece of brown paper containing a white substance which tested
18 presumptively positive for cocaine, and weighed about .2 grams. Respondent admitted that the
19 cocaine was his, that he had a substance abuse problem, and that he was attempting to get
20 counseling and treatment.

21 26. On September 19, 2006, a criminal complaint titled *People of the State of California*
22 *vs. Robin Jacobi*, case no. F14033 was filed in Santa Cruz County Superior Court. Count 1
23 charged Respondent with a felony violation of Health and Safety Code section 11350(a)
24 [possession of a controlled substance, to wit, cocaine,] Count 2 charged Respondent with, a
25 misdemeanor violation of Vehicle Code section 14601(a) [driving on a suspended license, with
26 prior violations.]

27 27. On October 10, 2006, Respondent entered a plea of guilty to both counts and admitted
28 the prior violation as to Count 2. He was convicted of a felony violation of Health and Safety

1 Code section 11350(a) [possession of a controlled substance, to wit, cocaine,] Sentencing was
2 suspended for 36 months and he was placed on 36 months formal probation with terms and
3 conditions, including that he serve 120 days jail time or serve 120 days in a live-in
4 therapeutic/alcohol treatment program approved by the probation officer, complete 199 hours of
5 volunteer service, and enter and complete the New Life drug treatment program.

6 28. Respondent's convictions for violating Health and Safety code section 11350(a)
7 [possession of controlled substance, to wit, cocaine] on October 10, 2006; his conviction on
8 February 7, 2011 for violating Health and Safety code section 11550(a) [use or under the
9 influence of cocaine and opiates], and his July 22, 2011 conviction of a felony violation of Health
10 and Safety code section 11358 [cultivation of marijuana] constitute substantially related
11 convictions and are cause to discipline his license pursuant to Business and Professions code
12 section 4955(b) and/or code section 4956.

13 SECOND CAUSE FOR DISCIPLINE

14 (Using or Possessing Controlled Substance)

15 29. Paragraphs 9 through 27 are incorporated herein.

16 30. On or about September 8, 2006, Respondent admitted that he had cocaine in his car.
17 On or about December 10, 2010, Respondent admitted that he had ingested four 500 milligram
18 hydrocodone pills and one methadone pill, and his urine sample tested positive for
19 benzodiazepines, marijuana, cocaine, and opiates. On or about May 23, 2011, Respondent
20 refused to provide a urine sample, and explained that he knew it would test positive for opiates
21 and speed.¹

22 31. Respondent is subject to disciplinary action under code section 4955(a) [using or
23 possessing any controlled substance to an extent or in a manner dangerous to himself or to the
24 public] in that between 2006 and 2011, he used and/or possessed various controlled substances in
25 a manner dangerous or injurious to himself or others.

26
27
28 ¹ "Speed" is street slang for amphetamine, a controlled substance.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THIRD CAUSE FOR DISCIPLINE

(Dishonest Act)

32. Paragraphs 9 through 27 are incorporated herein.

33. On or about June 9, 2010, Respondent completed an Acupuncture Network Application for American Specialty Health (ASH) Plans to become a contracted and credentialed provider with ASH. Respondent attested that the answers he provided were true and accurate to the best of his knowledge.

34. The application at page 10, question 4 asked:

“Have you ever been convicted of, or pled nolo contendere (no contest), or are you under investigation for a misdemeanor, felony, or moral or ethical crime?” Respondent checked the box “no.” However, at the time Respondent completed this application, he was aware that on October 10, 2006, he had been convicted on his plea of guilty to a felony violation of Health and Safety code section 11350(a) [possession of a controlled substance; to wit, cocaine.]

35. ASH accepted Respondent as a provider of acupuncture services pursuant to a Provider Services Agreement. Under the terms of the Agreement, Respondent was required to notify ASH within 48 hours of any criminal conviction.

36. On or about April 6, 2011, ASH received information indicating that Respondent was convicted on October 10, 2006 on his plea of guilty to a felony violation of Health and Safety code section 11350(a) [possession of a controlled substance; to wit, cocaine] and that he was convicted on February 7, 2011 of a misdemeanor violation of Health and Safety Code section 11550(a) [under influence of a controlled substance, to wit, cocaine and opiates.] Respondent failed to disclose his October 10, 2006 conviction when he completed the application on June 9, 2010, and he failed to notify ASH of his conviction on February 7, 2011 within 48 hours as required by the Provider Services Agreement. ASH immediately terminated Respondent, and reported the adverse action to the National Practitioner Data Bank.

37. Respondent’s failure to disclose his 2006 conviction in his application and failure to notify ASH of his February 7, 2011 conviction within 48 hours are dishonest acts which subject

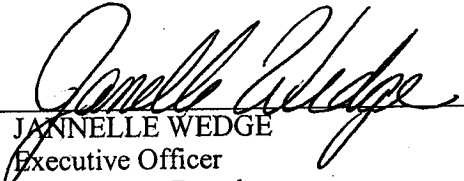
1 his license to disciplinary action under code section 4955.1 (b) [commission of a fraudulent or
2 dishonest act as an acupuncturist.]

3 PRAYER

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Acupuncture Board issue a decision:

- 6 1. Revoking or suspending Acupuncture License AC 7732, issued to Robin Li Jacobi;
7 2. Ordering Robin Li Jacobi to pay the Acupuncture Board the reasonable costs of the
8 investigation and enforcement of this case, pursuant to Business and Professions Code section
9 4959;
10 3. Taking such other and further action as deemed necessary and proper.

11
12 DATED: **AUG 23 2011**


13 JANNELLE WEDGE
14 Executive Officer
15 Acupuncture Board
16 Department of Consumer Affairs
17 State of California
18 Complainant

16 SF2011200682
17 20456432.doc

18
19
20
21
22
23
24
25
26
27
28