

**FILED**

**AUG 24 2009**

**ACUPUNCTURE BOARD**

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8

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

12 In the Matter of the Accusation Against:

Case No. 1A-2009-30

13 **RAUL L. CAOILI, L.AC.**  
14 **5129 Surfbreaker Point**  
**San Diego, CA 92154**

**A C C U S A T I O N**

15 **Acupuncturist License No. AC 8111**

16 Respondent.  
17

18  
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about September 19, 2001, the Acupuncture Board issued Acupuncturist  
24 License No. AC 8111 to RAUL L. CAOILI, L.Ac. (Respondent). The Acupuncturist License was  
25 in full force and effect at all times relevant to the charges brought herein and will expire on  
26 October 31, 2010, unless renewed.  
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28

JURISDICTION

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

4. Section 726 of the code states in pertinent part:

"The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division, under any initiate act referred to in this division and under Chapter 17 (commencing with Section 9000) of Division 3."

"..."

5. Section 820 of the Code states:

"Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to Section 822."

6. Section 822 of the Code states:

"If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

"(a) Revoking the licentiate's certificate or license.

"(b) Suspending the licentiate's right to practice.

"(c) Placing the licentiate on probation.

"(d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper.

1 "The licensing agency shall not reinstate a revoked or suspended certificate or license until  
2 it has received competent evidence of the absence or control of the condition which caused its  
3 action and until it is satisfied that with due regard for the public health and safety the person's  
4 right to practice his or her profession may be safely reinstated."

5 7. 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 "..."

10 "(i) Any action or conduct that would have warranted the denial of the acupuncture license.

11 "..."

12 8. Unprofessional conduct under Code section 2234 is conduct which breaches the rules  
13 or ethical code of the medical profession, or conduct which is unbecoming to a member in good  
14 standing of the medical profession, and which demonstrates an unfitness to practice medicine.  
15 (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575).

16 9. California Code of Regulations, title 19, section 1399.453, states:

17 "An acupuncturist shall keep complete and accurate records on each patient who is given  
18 acupuncture treatment, including but not limited to, treatments given and progress made as a  
19 result of the acupuncture treatments."

20 10. Section 4959 of the Code states:

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

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

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

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

7 "e) All costs recovered under this section shall be considered a reimbursement for costs  
8 incurred and shall be deposited in the Acupuncture Fund."

9 11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
10 administrative law judge to direct a licensee found to have committed a violation or violations of  
11 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
12 enforcement of the case.

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct/Sexual Misconduct)**

15 12. Respondent is subject to disciplinary action under sections 726 and 4955 of the Code  
16 in that he has committed acts of sexual misconduct and engaged in conduct which breaches the  
17 rules or ethical code of the acupuncture profession, or conduct which is unbecoming to a member  
18 in good standing of the acupuncture profession, and which demonstrates an unfitness to practice  
19 acupuncture. The circumstances are as follows:

20 (a) At all times relevant, victim A.B. was employed by respondent at his acupuncture  
21 clinic.

22 (b) On or about November 21, 2008, respondent approached victim A.B. and commented  
23 that there was something wrong with her shoulders and they were uneven. Respondent told  
24 victim A.B. that he wanted to examine her shoulders.

25 (c) Respondent told victim A.B. to go into an examination room and remove her shirt and  
26 bra. Victim A.B. agreed and walked into the examination room where she removed her shirt and  
27 bra as directed by respondent. Victim A.B. covered her breasts with a towel.  
28

1 (d) Respondent entered the room and told victim A.B. to remove the towel covering her  
2 breasts. When victim A.B. told respondent that she would prefer to lie on her stomach during the  
3 examination, respondent said that she needed her to remain sitting. Respondent also told victim  
4 A.B. to remove the towel so he could properly perform the examination.

5 (e) Victim A.B. removed the towel. Respondent began rubbing both of victim A.B.'s  
6 breasts with his hands. Respondent squeezed victim A.B.'s breast and told her she had a lump on  
7 the side of her left breast. Victim A.B. grabbed the towel and covered her breasts.

8 (f) Respondent looked at victim A.B.'s stomach and said, "You're hairy aren't you?"  
9 Respondent began unbuttoning the top button of victim A.B.'s jeans. Victim A.B. pushed  
10 respondent's hands away. Respondent was able to unfasten one of victim A.B.'s buttons and stuck  
11 his hand down her pants.

12 (g) Eventually, victim A.B. was able to get respondent to remove his hand from her  
13 jeans. Respondent kissed victim A.B. on the cheek and said, "You're a pretty girl. Take care of  
14 yourself." No examination was ever conducted on victim A.B.'s shoulders by respondent.

## 15 SECOND CAUSE FOR DISCIPLINE

### 16 (Mental and/or Physical Illness Affecting Competency)

17 13. Respondent is subject to disciplinary action under sections 820 and 822 of the Code  
18 in that his ability to practice Acupuncture safely is impaired because of mental and/or physical  
19 illness. The circumstances are as follows:

20 (a) Paragraph 12, above, is hereby incorporated by reference and realleged as if set forth  
21 hereinafter;

22 (b) On or about January 30, 2009, the San Diego County District Attorney's Office in  
23 Case No. CS226051, before the Superior Court of California, County of San Diego, South County  
24 Division, charged respondent with three (3) felonies: Sexual Battery - Fraudulent Professional  
25 Purpose [Pen. Code § 243.4, subd. (c); count 1]; Rape By Foreign Object - Unconscious Victim  
26 [Pen. Code § 289, subd. (d); count 2]; and, Sexual Battery - Fraudulent Professional Purpose  
27 [Pen. Code § 243.4, subd. (c); count 3].  
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1 (c) Counts 1 and 2, above related to second victim, victim F., whose name is being kept  
2 confidential pending resolution of the criminal charges. Specifically, in June of 2007, respondent,  
3 during a patient visit, inserted his finger into victim F.'s vagina and attempted to kiss her during a  
4 massage therapy session.

5 (d) On or about July 2, 2009, respondent's criminal defense attorney referred him to  
6 K.R.D., a licensed psychologist, for a psychological evaluation to determine the nature and extent  
7 of psychological and psycho-sexual problems, treatment needs and amenability to treatment.

8 (e) On or about July 13, 2009, K.R.D., prepared a written psychological evaluation in  
9 which was provided to the San Diego County District Attorney's Office. In that written  
10 evaluation, K.R.D. made the following conclusions regarding respondent:

11 (1) Respondent is confused and conflicted about his sexual needs as well as his  
12 needs for emotional intimacy;

13 (2) It is very likely that working closely with women in an intimate setting is very  
14 stimulating to respondent and respondent does not always know how to handle this erotic  
15 stimulation; and,

16 (3) Respondent should not treat women in his acupuncture practice and any woman  
17 who works for him should be told of the allegations against him.

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1 **PRAYER**

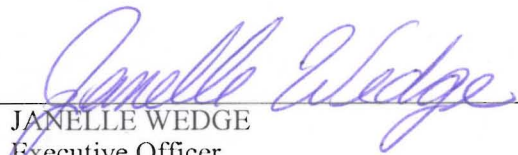
2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
3 and that following the hearing, the Acupuncture Board issue a decision:

4 1. Revoking or suspending Acupuncturist License No. AC 8111, issued to respondent,  
5 Raul L. Caoili, L.Ac..

6 2. Ordering Raul L. Caoili, L.Ac. to pay the Acupuncture Board the reasonable costs of  
7 the investigation and enforcement of this case, pursuant to Business and Professions Code section  
8 4959; and,

9 3. Taking such other and further action as deemed necessary and proper.

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11  
12 DATED: AUG 24 2009



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