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

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In the Matter of the Accusation Against:

ERIK NIELSEN, L.AC. 1864 Orinda Ct. Thousand Oaks, CA 91362

Acupuncture License No. AC 3657

Respondent.

Case No. 1A-2013-118

OAH No. 2015050354

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the

California Acupuncture Board, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on _____ November 18, 2015

It is so ORDERED October 19, 2015 .

Lapla.

Michael Shi, L.Ac, Chair Acupuncture Board Department of Consumer Affairs State of California

1	Kamala D. Harris				
2	Attorney General of California E. A. JONES III				
3	Supervising Deputy Attorney General WENDY WIDLUS				
4	Deputy Attorney General State Bar No. 82958				
5	California Department of Justice 300 So. Spring Street, Suite 1702				
6	Los Angeles, CA 90013 Telephone: (213) 897-2867				
7	Facsimile: (213) 897-9395 E-mail: Wendy.Widlus@doj.ca.gov				
8	Attorneys for Complainant				
9	BEFORE THE ACUPUNCTURE BOARD				
10		CONSUMER AFFAIRS CALIFORNIA			
11					
12	In the Matter of the Accusation Against:	Case No. 1A-2013-118			
13	ERIK NIELSEN, L.Ac.	OAH No. 2015050354			
14	1864 Orinda Ct. Thousand Oaks, CA 91362 Acupuncturist License No. AC 3657,	STIPULATED SETTLEMENT AND			
15	Acupuncturist License No. AC 3657, DISCIPLINARY ORDER Respondent. Respondent.				
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18					
19	IT IS HEREBY STIPULATED AND A	GREED by and between the parties to the above-			
20	entitled proceedings that the following matters a	re true:			
21	PARTIES				
22	1. Terri Thorfinnson ("Complainant") is the Executive Officer of the Acupuncture				
23	Board. She brought this action solely in her official capacity and is represented in this matter by				
24	Kamala D. Harris, Attorney General of the State of California, by Wendy Widlus, Deputy				
25	Attorney General.				
26	2. Respondent ERIK NIELSEN, L.Ac. ("Respondent") is represented in this proceeding				
27	by attorney Robert F. Hahn, Esq., whose address is: 2550 Ninth Street, Suite 101,				
28	Berkeley, CA 94710.				
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3. On or about August 23, 1989, the Acupuncture Board issued Acupuncturist License No. AC 3657 to ERIK NIELSEN, L.Ac. (Respondent). The Acupuncturist License was in full force and effect at all times relevant to the charges brought in Accusation No. 1A-2013-118 and will expire on June 30, 2016, unless renewed.

JURISDICTION

4. Accusation No. 1A-2013-118 was filed before the Acupuncture Board (Board),
Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on April 14, 2015. Respondent timely filed his Notice of Defense contesting the Accusation.

10 5. A copy of Accusation No. 1A-2013-118 is attached as exhibit A and incorporated
11 herein by reference.

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ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the
charges and allegations in Accusation No. 1A-2013-118. Respondent has also carefully read,
fully discussed with counsel, and understands the effects of this Stipulated Settlement and
Disciplinary Order.

7. 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 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.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
every right set forth above.

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CULPABILITY

9. Respondent understands and agrees that the charges and allegations in the Fifth Cause for Discipline in Accusation No. 1A-2013-118, if proven at a hearing, constitute cause for imposing discipline upon his Acupuncturist License.

10. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent does not contest that, at an administrative hearing, Complainant could establish a *prima facie* case with respect to the charges in the Fifth Cause for Discipline in Accusation No. 1A-2013-118, and Respondent hereby gives up his right to contest those charges.

11. Respondent agrees that his Acupuncturist License is subject to discipline and heagrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Orderbelow.

CONTINGENCY

12. This stipulation shall be subject to approval by the Acupuncture Board. Respondent understands and agrees that counsel for Complainant and the staff of the Acupuncture Board may communicate directly with the Board regarding this stipulation and settlement, 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 Settlement 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.

13. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

14. 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
Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Respondent Erik Nielsen, L.Ac., as holder of Acupuncturist License No. AC 3657, shall be and is hereby publically reprimanded pursuant to California Business and Professions Code section 495. This Public Reprimand is issued in connection with Respondent's conduct as set forth in Accusation No. 1A-2013-118, and as summarized below:

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A. PUBLIC REPRIMAND

In May 2013 and June 2013, you performed acupuncture, ultrasound, deep heat, oriental massage, and prescribed herbal remedies for Ms. Z. to increase her fertility. Your records for your treatment do not fully, adequately, and accurately reflect the treatments you provided. You therefore committed unprofessional conduct by failing to maintain adequate and accurate records relating to the services you provided to the patient as more fully described in Accusation No. 1A-2013-118.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Robert F. Hahn, Esq. I understand the stipulation and the effect it will have on my Acupuncturist License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Acupuncture Board.

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8-12-15 DATED: 21 22

I have read and fully discussed with Respondent ERIK NIELSEN, L.Ac. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content. DATED: $\underline{\mathcal{B}}-\underline{\mathcal{B}}-\underline{\mathcal{B}}$ Robert F. Hähn, Esq. Attorney for Respondent

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Respondent

920 C. 1914

STIPULATED SETTLEMENT (1A-2013-118)

1	ENDORSEMENT		
2	The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully		
3	submitted for consideration by the Acupuncture Board.		
4	Dated: $5/7/15$ Respectfully submitted,		
5	KAMALA D, HARRIS Attorney General of California		
6	Attorney General of California E. A. JONES III Supervising Deputy Attorney General		
7			
8	WENDY WIDLUS		
9	Deputy Attorney General Attorneys for Complainant		
10	Autorneys for Complainant		
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	STIPULATED SETTLEMENT (1A-2013-118)		

Exhibit A

Accusation No. 1A-2013-118

1	KAMALA D. HARRIS Attorney General of California	
2	JUDITH T. ALVARADO Supervising Deputy Attorney General	
3	WENDY WIDLUS Deputy Attorney General State Bar No. 82958	
5	Deputy Attorncy General State Bar No. 82958 California Department of Justice 300 So. Spring Street, Suite 1702	
6	Los Angeles, CA 90013 Telephone: (213) 897-2867	
7	Facsimile: (213) 897-9395 E-mail: Wendy.Widlus@doj.ca.gov	
8	Attorneys for Complainant	
9	BEFORE THE ACUPUNCTURE BOARD	
10	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA	
11	In the Matter of the Accusation Against: Case No. 1A-2013-118	
12		
13	ERIK NIELSEN, L.Ac.1864 Orinda Ct.Thousand Oaks, CA 91362A C C U S A T I O N	
14	Acupuncturist License No. AC 3657,	
15	Respondent.	
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18	Complainant alleges:	
19	PARTIES	
20	1. Terri Thorfinnson (Complainant) brings this Accusation solely in her official capacity	
21	as the Executive Officer of the Acupuncture Board.	
22	2. On or about August 23, 1989, the Acupuncture Board issued Acupuncturist License	
23	No. AC 3657 to Erik Nielsen, L.Ac. (Respondent). The Acupuncturist License was in full force	
24	and effect at all times relevant to the charges brought herein and will expire on June 30, 2016,	
25	unless renewed.	
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	Accusation	

1	JURISDICTION		
2	3. This Accusation is brought before the Acupuncture Board (Board), Department of		
3	Consumer Affairs, under the authority of the following laws. All section references are to the		
4	Business and Professions Code unless otherwise indicated.		
5	4. Section 4928.1 of the Code states:		
6	"Protection of the public shall be the highest priority for the acupuncture board in		
7	exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the		
8	public is inconsistent with other interests sought to be promoted, the protection of the public shall		
9	be paramount."		
10	5. Section 4927, subdivision (d), of the Code states:		
******	"Acupuncture' means the stimulation of a certain point or points on or near the surface of		
12	the body by the insertion of needles to prevent or modify the perception of pain or to normalize		
13	physiological functions, including pain control, for the treatment of certain diseases or		
14	dysfunctions of the body and includes the techniques of electroacupuncture, cupping, and		
15	moxibustion."		
16	6. Section 4937 of the Code states, in pertinent part:		
17	"An acupuncturist's license authorizes the holder thereof:		
18	"(a) To engage in the practice of acupuncture.		
19	"(b) To perform or prescribe the use of Asian massage, acupressure, breathing techniques,		
20	exercise, heat, cold, magnets, nutrition, diet, herbs, plant, animal, and mineral products, and		
21	dietary supplements to promote, maintain, and restore health. Nothing in this section prohibits		
22	any person who does not possess an acupuncturist's license or another license as a healing arts		
23	practitioner from performing, or prescribing the use of any modality listed in this subdivision.		
24	"···"		
25	7. Section 4955 of the Code states:		
26	"The board may deny, suspend, or revoke, or impose probationary conditions upon, the		
27	license of any acupuncturist if he or she is guilty of unprofessional conduct.		
28	"Unprofessional conduct shall include, but not be limited to, the following:		
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	Accusation		

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2	"(i) Any action or conduct that would have warranted the denial of the		
3	acupuncture license.		
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5	8. Section 4955.2 of the Code states, in pertinent part:		
6	"The board may deny, suspend, revoke, or impose probationary conditions upon the license		
7	of any acupuncturist if he or she is guilty of committing any one of the following:		
8	····		
9	"(c) Incompetence."		
10	9. Section 2052 of the Code states:		
11	"(a) Notwithstanding Section 146, any person who practices or attempts to practice, or who		
12	advertises or holds himself or herself out as practicing, any system or mode of treating the sick or		
13	afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment,		
14	blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition		
15	of any person, without having at the time of so doing a valid, unrevoked, or unsuspended		
16	certificate as provided in this chapter or with or without being authorized to perform the act		
17	pursuant to a certificate obtained in accordance with some other provision of law is guilty of a		
18	public offense, punishable by a fine not exceeding ten thousand dollars (\$10,000), by		
19	imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, by imprisonment in		
20	a County jail not exceeding one year, or by both the fine and either imprisonment.		
21	(4 3) 		
22	"(c) The remedy provided in this section shall not preclude any other remedy provided by		
23	law."		
24	9. Section 726 of the Code states, in pertinent part:		
25	"The commission of any act of sexual abuse, misconduct, or relations with a patient, client,		
26	or customer constitutes unprofessional conduct and grounds for disciplinary action for any person		
27	licensed under this division, under any initiative act referred to in this division and under Chapter		
28	17 (commencing with Section 9000) of Division 3."		
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	Accusation		

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10. Section 4955.1 of the Code states, in pertinent part:

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

6 "(e) Failing to maintain adequate and accurate records relating to the provision of services
7 to their patients."

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11. California Code of Regulations, Title 19, section 1399.453, states:

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

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COST RECOVERY

12. Section 4959 of the Code states:

14 "(a) The board may request the administrative law judge, under his or her proposed 15 decision in resolution of a disciplinary proceeding before the board, to direct any licensee 16 found guilty of unprofessional conduct to pay to the board a sum not to exceed actual and 17 reasonable costs of the investigation and prosecution of the case.

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

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

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

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

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FACTUAL SUMMARY

Respondent has been an acupuncturist licensed in California since 1989, whose 13. 4 practice is located in his residence. Patient Ms. Z.¹ had been to Respondent's practice previously 5 for herbs and acupuncture treatment. In May, 2013, Ms. Z. was told by her physician she was 6 unable to conceive. Ms. Z. and her husband then consulted with Respondent, who stated he 7 would treat her with both herbs and acupuncture to increase her fertility. After the consultation 8 Respondent treated Ms. Z. with acupuncture for 30 to 40 minutes, provided her and her husband 9 with herbs, and told Ms. Z. to return for additional treatment. At the conclusion of this visit Ms. 10 Z. paid Respondent for both the acupuncture treatment and the herbs. 11

14. On or about June 8, 2013, Ms. Z. went to Respondent's practice for another 12 treatment. Ms. Z.'s husband did not accompany her on this visit. Respondent told Ms. Z. He 13 needed to examine her stomach. Respondent showed her to a bedroom which was set up as a 14 treatment room, gave her a gown, and left the room while she changed into the gown. Ms. Z. 15 kept her underwear on under the gown. Respondent returned to the treatment room and Ms. Z. 16 lay on her back on the exam table while Respondent examined her abdomen by pressing it with 17 both hands. After Respondent finished examining her abdomen he asked Ms. Z. if he could 18 examine her breasts for lumps and Ms. Z. allowed him to do so, although she did not remove her 19 bra. 20

15. Following his examination of Ms. Z.'s breasts, Respondent asked if he could conduct
an internal examination for fibroids. Ms. Z. told Respondent she wanted to have her husband
present for that examination. Respondent asked again if he could examine her internally for
fibroids and Ms. Z. said nothing. Respondent asked a third time to examine her internally and
Ms. Z. reluctantly agreed.

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¹ Patient and certain other witness's names are abbreviated to protect their privacy rights. The names will be provided to Respondent upon a written request for discovery.

Respondent told Ms. Z. to remove her underwear, but did not leave the room while she
 removed her underwear. Ms. Z. laid on her back on the examination table with her legs extended
 in front of her during Respondent's internal examination which took approximately 2 minutes.

- Respondent placed the gloved fingers of his hand into Ms. Z.'s vagina while he placed his
 other hand on her stomach. While Respondent had his hand in Ms. Z.'s vagina he told her to
 tighten her buttocks and suck in her stomach. Ms. Z. was surprised and humiliated by
 Respondent's instructions to tighten her buttocks and suck in her stomach, as she had never been
 instructed to do this during any other vaginal examination.
- 9 16. After Respondent removed his hand from Ms. Z.'s vagina he asked how her neck felt.
 10 Ms. Z. told Respondent her neck was fine but Respondent repeatedly asked if he could check her
 11 neck, so Ms Z. permitted him to do so. Respondent had Ms. Z. lay on her back and grasp the side
 12 of the examination table which caused her gown to open and expose her body to Respondent.
 13 Respondent stretched Ms. Z.'s neck and told her to stand up and face away from him. After Ms.

14 Z. stood up Respondent picked her up and cracked her back.

Ms. Z. got dressed, and Respondent provided her with various herbs. When Ms. Z. paid
Respondent he said he would only accept payment for the herbs and would not charge her for the
other services he had performed during this visit. Ms. Z. filed a formal complaint with the Board
about Respondent's actions during this visit.

- 17. Respondent's records for Ms. Z.'s June 8, 2013, visit document only the types of 19 herbs he dispensed to her, and does not mention the breast or vaginal examination, nor the spinal 20 manipulation he performed. The Board's investigator questioned Respondent about Ms. Z.'s 21 treatment which included her June 8, 2013, visit. Respondent denied performing a breast or a 22 23 vaginal examination. Respondent stated there was no reason for him to conduct a pelvic examination because he knew her fibroids were smaller after he palpated her stomach. During his 24 25 interview with the Board's investigator Respondent stated he had performed acupuncture, 26 ultrasound, deep heat, and oriental massage during Ms. Z.'s visit. However, Respondent's records for Ms. Z.'s June 8, 2013, visit do not reflect those treatments. 27
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1	FIRST CAUSE FOR DISCIPLINE		
2	(Sexual Misconduct)		
3	18. Respondent is subject to disciplinary action under section 726 of the Code in that he		
4	committed acts of sexual misconduct with Patient Ms. Z. during acupuncture treatment. The		
5	circumstances are as follows:		
6	19. Complainant refers to, and by reference incorporates herein paragraphs 14 through		
7	18, inclusive, above.		
8	SECOND CAUSE FOR DISCIPLINE		
9	(Unlicensed Practice of Medicine)		
10	20. Respondent is further subject to disciplinary action under section 2052, subdivision		
11	(a) of the Code in that his acts of sexual misconduct with Patient Ms. Z. constitute the unlicensed		
12	practice of medicine.		
13	21. Complainant refers to, and by reference incorporates herein paragraphs 14 through		
14	18, inclusive, above.		
15	THIRD CAUSE FOR DISCIPLINE		
16	(Unprofessional Conduct)		
17	22. Respondent is further subject to disciplinary action under section 4955, subdivision		
18	(i) of the Code in that he engaged in unprofessional conduct by breaching the rules or ethical code		
19	of conduct of the profession of acupuncture, and by engaging in conduct unbecoming to an		
20	acupuncturist in good standing in the profession and which demonstrates an unfitness to practice		
21	acupuncture. ² The circumstances are as follows:		
22	23. Complainant refers to, and by reference incorporates herein paragraphs 14 through		
23	18, inclusive, above.		
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28	² See Shea v. Board of Medical Examiners (1978) 81 Cal.App.3d 564, 575.		
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	Accusation		

1	FOURTH CAUSE FOR DISCIPLINE		
2	(Incompetence)		
3	24. Respondent is further subject to disciplinary action under section 4955, subdivision		
4	(c), of the Code in that the Respondent's care and treatment of Patient Ms. Z demonstrated		
5	incompetence.		
6	25. Complainant refers to, and by reference incorporates herein paragraphs 14 through		
7	18, inclusive, above.		
8	FIFTH CAUSE FOR DISCIPLINE		
9	(Inadequate and Inaccurate Records)		
10	26. Respondent is further subject to disciplinary action under section 4955.1, subdivision		
11	(e), of the Code and section 1399.453 of title 16 of the California Code of Regulations in that he		
12	failed to keep complete and accurate records regarding the Respondent's care and treatment of		
13	Patient Ms. Z.		
14	27. Complainant refers to, and by reference incorporates herein paragraphs 14 through	Concernation of the second second	
15	18, inclusive, above.		
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1	PRAYER		
2	WH	EREFORE, Complainar	nt requests that a hearing be held on the matters herein alleged,
3	and that fo	ollowing the hearing, the	Acupuncture Board issue a decision:
4	1.	Revoking or suspendin	g Acupuncturist License Number AC 3657, issued to Erik
5	Nielsen;	ielsen;	
6	2.	2. Ordering him to pay the Acupuncture Board the reasonable costs of the investigation	
7	and enford	cement of this case, pursu	ant to Business and Professions Code section 4959;
8	3.	If placed on probation,	ordering him to pay the Acupuncture Board the costs of
9	probation	monitoring; and;	
10	4.	Taking such other and	further action as deemed necessary and proper.
11			Pilor -
12	DATED:	APR 1 4 2015	TERRI THORFINNSON
13			Executive Officer Acupuncture Board
14		,	Department of Consumer Affairs State of California
15			Complainant
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