

FILED

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ACUPUNCTURE BOARD

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

11 In the Matter of the Accusation Against:

Case No. 1A-2009-57

12 **KAM MAN LAM, L.AC.**
320 Yale Avenue
13 Claremont, California 91711

A C C U S A T I O N

14 Acupuncture License No. AC 329,

15 Respondent.
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17
18 Complainant alleges:

19 **PARTIES**

20 1. Janelle Wedge ("Complainant") brings this Accusation solely in her official capacity
21 as the Executive Officer of the California Acupuncture Board ("Board").

22 2. On or about February 15, 1977, the Board issued Acupuncture License number
23 AC 329 to Kam Man Lam, L.Ac. ("Respondent"). That license was in full force and effect at all
24 times relevant to the charges brought herein, and will expire on November 30, 2010, unless
25 renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board under the authority of the following
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.

1 4. Section 726 of the Code states:

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

6 "This section shall not apply to sexual contact between a physician and surgeon and his or
7 her spouse or person in an equivalent domestic relationship when that physician and surgeon
8 provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person
9 in an equivalent domestic relationship."

10 5. Section 4955 of the Code states:

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

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

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

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

22 "(c) False or misleading advertising.

23 "(d) Aiding or abetting in, or violating or conspiring in, directly or indirectly,
24 the violation of the terms of this chapter or any regulation adopted by the board
25 pursuant to this chapter.

26 "(e) Except for good cause, the knowing failure to protect patients by failing to
27 follow infection control guidelines of the board, thereby risking transmission of
28 blood-borne infectious diseases from licensee to patient, from patient to patient, and

1 from patient to licensee. In administering this subdivision, the board shall consider
2 referencing the standards, regulations, and guidelines of the State Department of
3 Health Services developed pursuant to Section 1250.11 of the Health and Safety Code
4 and the standards, regulations, and guidelines pursuant to the California Occupational
5 Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5
6 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other
7 blood-borne pathogens in health care settings. As necessary, the board shall consult
8 with the Medical Board of California, the California Board of Podiatric Medicine, the
9 Dental Board of California, the Board of Registered Nursing, and the Board of
10 Vocational Nursing and Psychiatric Technicians, to encourage appropriate
11 consistency in the implementation of this subdivision.

12 "The board shall seek to ensure that licensees are informed of the responsibility
13 of licensees and others to follow infection control guidelines, and of the most recent
14 scientifically recognized safeguards for minimizing the risk of transmission of
15 blood-borne infectious diseases.

16 "(f) The use of threats or harassment against any patient or licensee for
17 providing evidence in a disciplinary action, other legal action, or in an investigation
18 contemplating a disciplinary action or other legal action.

19 "(g) Discharging an employee primarily for attempting to comply with the
20 terms of this chapter.

21 "(h) Disciplinary action taken by any public agency for any act substantially
22 related to the qualifications, functions, or duties of an acupuncturist or any
23 professional health care licensee.

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

26 "(j) The violation of any law or local ordinance on an acupuncturist's business
27 premises by an acupuncturist's employee or a person who is working under the
28 acupuncturist's professional license or business permit, that is substantially related to

1 the qualifications, functions, or duties of an acupuncturist. These violations shall
2 subject the acupuncturist who employed the individuals, or under whose
3 acupuncturist license the employee is working, to disciplinary action.

4 "(k) The abandonment of a patient by the licentiate without written notice to the
5 patient that treatment is to be discontinued and before the patient has had a reasonable
6 opportunity to secure the services of another practitioner.

7 "(l) the failure to notify the board of the use of any false, assumed, or fictitious
8 name other than the name under which he or she is licensed as an individual to
9 practice acupuncture."

10 6. Section 4955.1 of the Code states:

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

14 "(a) Securing a license by fraud or deceit.

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

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

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

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

22 7. Section 4955.2 of the Code states:

23 "The board may deny, suspend, revoke, or impose probationary conditions upon the license
24 of any acupuncturist if he or she is guilty of committing any of the following:

25 (a) Gross negligence.

26 (b) Repeated negligent acts.

27 (c) Incompetence.

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1 8. Section 125.3 of the Code states, in pertinent part, that the Board may request the
2 administrative law judge to direct a licentiate found to have committed a violation or violations of
3 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
4 enforcement of the case.

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(Sexual Misconduct)**

7 **Patient S.G. ¹**

8 9. Respondent is subject to disciplinary action under section 726 of the Business and
9 Professions Code in that he committed acts of sexual misconduct with patient S.G. The
10 circumstances are as follows:

11 10. On or about October 2, 2008, S.G., a 54-year-old female, sought acupuncture
12 treatment from Respondent at his office in Hesperia, for pain to her left groin, left leg, buttocks,
13 neck and right arm. At the October 2, 2008 visit, Respondent provided acupuncture treatment
14 using needles, electro-acupuncture stimulation and infrared treatment, followed by massage.
15 Respondent also gave S.G. herbal medications.

16 11. S.G. returned to Respondent's office for a scheduled appointment for acupuncture
17 treatment on October 6, 2008, at approximately 9:30 a.m. At this visit, S.G. was given a patient
18 gown, which she put on. She removed her clothing, but kept her bra, panties and socks on.

19 12. Respondent placed acupuncture needles in S.G.'s back and attached the electro-
20 acupuncture stimulation. Similar to her initial session, Respondent gave S.G. herbal medicine
21 and left the room. S.G. then fell asleep.

22 13. Some time later, Respondent returned to the treatment room, removed the needles
23 from S.G.'s back and provided massage. Following the massage, Respondent told S.G. that she
24 could remain in the room for a few minutes if she was tired. Despite the fact that she felt dazed,
25 S.G. got off the treatment table and attempted to dress.

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27 ¹ In this Accusation the patient is referred to by initial. The patient's full name will be disclosed to
28 Respondent when discovery is provided pursuant to Government Code section 11507.6.

1 14. While S.G. was dressing, Respondent re-entered the treatment room and embraced
2 her. He grabbed S.G.'s panties and pushed her down on the treatment table. As soon as S.G. lay
3 back on the table, she fell asleep. S.G. floated in and out of consciousness and believes that she
4 was under the influence of a sedative or hypnotic medication².

5 15. As S.G. came in and out of consciousness, she heard Respondent repeatedly asking
6 her if she was on her period. S.G. awakened to find Respondent holding her right leg over her
7 head with Respondent's head between her thighs.

8 16. Respondent licked S.G.'s neck and suckled her breast. Respondent also gave S.G. a
9 sponge bath using wet paper towels.

10 17. S.G. slipped back into unconsciousness and awaked to Respondent's shouts of "wake
11 up." As S.G. got up from the examination table she noticed that the table was wet from end to
12 end.

13 18. S.G. walked over to the chair where she laid her clothing and noticed that her panties
14 were on top of her clothes. S.G. also noted that her bra was unfastened. Respondent returned to
15 the treatment room and yelled at S.G. to get dressed.

16 19. S.G. dressed and exited the treatment room. Respondent handed S.G. a bag
17 containing herbal medication and instructed her to telephone for her next appointment.

18 20. S.G. left Respondent's office and shortly thereafter drove to the Apple Valley Police
19 Department to report the assault. The Apple Valley Police Department did not have a female
20 officer on duty to take S.G.'s report, so S.G. left and went home.

21 21. When S.G. got home, she went to the bathroom and noticed that her panties had blood
22 on them. S.G. then told her husband that she had been sexually assaulted by Respondent. S.G.'s
23 husband called the Hesperia police and reported the sexual assault.

24 22. Officer Vasquez arrived at S.G.'s home at approximately 3:00 p.m., and obtained a
25 statement from S.G. and her husband. Officer Vasquez also collected the clothing S.G. wore to
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28 ² Drugs that produces a calming effect, easing agitation and promoting sleep.

1 Respondent's office. Officer Vasquez obtained S.G.'s consent to a blood draw and a sexual
2 battery kit.

3 23. S.G. and her husband followed Officer Vasquez to the Hesperia Sheriff's Station.
4 There, S.G. was interviewed by Detective Ramos. Detective Ramos prepared a photographic
5 lineup which contained Respondent's DMV photograph. S.G. immediately identified Respondent
6 from the photographic lineup.

7 24. At 8:20 p.m. Detective Ramos requested a Sexual Assault Response Team nurse to
8 respond to Kaiser Hospital to perform a sexual assault examination and blood draw on S.G.

9 25. Nurse Matiko performed the sexual assault examination on S.G. Nurse Matiko found
10 multiple abrasions, erythema and swelling to S.G.'s vagina (vestibule, hymen and vaginal walls).

11 26. S.G. submitted a blood and urine sample. The results of the urine toxicology screen
12 were positive for vicodin³, hydromorphone⁴, codeine⁵ and morphine⁶.

13 SECOND CAUSE FOR DISCIPLINE

14 (Unprofessional Conduct)

15 27. Respondent is subject to disciplinary action under section 4955, subdivision (d) in
16 that he has committed acts which constitute unprofessional conduct. The circumstances are as
17 follows:

18 28. Paragraphs 9 through 26 are incorporated here by reference.

19 THIRD CAUSE FOR DISCIPLINE

20 (Dishonest and Corrupt Acts)

21 29. Respondent is subject to disciplinary action under section 4955.1, subdivision (c) in
22 that he has committed acts involving dishonesty and corruption. The circumstances are as
23 follows:

24 30. Paragraphs 9 through 26 are incorporated here by reference.

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26 ³ Vicodin is a narcotic analgesic which contains hydrocodone and acetaminophen.

27 ⁴ Hydromorphone is a narcotic opioid analgesic.

28 ⁵ Codeine is a narcotic opioid analgesic.

⁶ Morphine is a breakdown product of codeine.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 (Gross Negligence)

3 31. Respondent is subject to disciplinary action under section 4955.2, subdivision (a) in
4 that he has committed acts which constitute extreme departures from the standard of practice.
5 The circumstances are as follows:

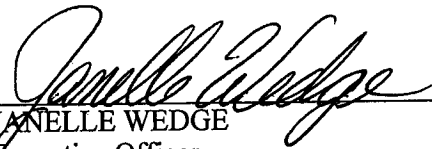
6 32. Paragraphs 9 through 26 are incorporated here by reference.

7 **PRAYER**

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

- 10 1. Revoking or suspending Acupuncture License Number AC 329, issued to Kam Man
11 Lam, L.Ac.
12 2. Ordering Kam Man Lam to pay the Acupuncture Board the reasonable costs of the
13 investigation and enforcement of this case and, if placed on probation, the costs of probation
14 monitoring, pursuant to Business and Professions Code sections 125.3 and 4959;
15 3. Taking such other and further action as deemed necessary and proper.

16
17 DATED: **AUG 18 2010**

18 
19 JANELLE WEDGE
20 Executive Officer
21 Acupuncture Board
22 Department of Consumer Affairs
23 State of California
24 Complainant