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

In the Matter of the Accusation Against:	Case No. 1A-2008-13
CHARLES FRANCIS MAYBERRY, L.AC. 228 South Cedros Ave., Suites A & B Solana Beach, CA 92075	
Acupuncture License No. AC 3641	
Respondent.	

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 OCT 14 2009.

It is so ORDERED SEP 14 2009.

Robert Brewer, Chair
Acupuncture Board
Department of Consumer Affairs
State of California

EDMUND G. BROWN JR., Attorney General
of the State of California
THOMAS S. LAZAR
Supervising Deputy Attorney General
MATTHEW M. DAVIS, State Bar No. 202766
Deputy Attorney General
California Department of Justice
110 West "A" Street, Suite 1100
San Diego, California 92101
P.O. Box 85266
San Diego, California 92186-5266
Telephone: (619) 645-2117
Facsimile: (619) 645-2061

Attorneys for Complainant

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

In the Matter of the Accusation Against: CHARLES FRANCIS MAYBERRY, L.Ac. 228 South Cedros Ave., Suites A & B Solana Beach, CA 92075 Acupuncturist License No. AC-3641, Respondent.	Case No. 1A-2008-13 OAH No. 2009030821 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

1. Complainant Janelle Wedge is the Executive Officer of the Acupuncture Board and is represented in the above-entitled matter by Edmund G. Brown, Jr., Attorney General of the State of California, by Matthew M. Davis, Deputy Attorney General.

2. CHARLES FRANCIS MAYBERRY, L.Ac., (hereinafter "respondent") is represented herein by Jehan Jayakumar, Esq., Carlson and Jayakumar, 2424 S.E. Bristol, Suite 300, Newport Beach, CA 92660, Telephone: (949) 222-2008.

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ORIGINAL

3. On or about August 18, 1989, the Acupuncture Board (Board) issued Acupuncturist License Number AC-3641 to respondent. The Acupuncturist License was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2010, unless renewed.

JURISDICTION

4. On or about February 5, 2009, Accusation No. 1A-2008-13 was filed against respondent and is currently pending before the Board. A true and correct copy of Accusation No. 1A-2008-13 is attached hereto as Attachment "A" and incorporated by reference as if fully set forth herein.

5. On or about February 5, 2009, respondent was served with a true and correct copy of Accusation No. 1A-2008-13, together with true and correct copies of all other statutorily required documents, at his address of record then on file with the Board: 228 South Cedros Ave., Suite D, Solana Beach, CA 92075. On or about February 19, 2009, a Notice of Defense was filed by respondent.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read and fully understands the charges and allegations contained in Accusation No. 1A-2008-13, and has fully reviewed and discussed same with his attorney of record, Jehan Jayakumar, Esq.

7. Respondent has carefully read and fully understands the contents, force, and effect of this Stipulated Settlement and Disciplinary Order, and has fully reviewed and discussed same with his attorney of record, Jehan Jayakumar, Esq.

8. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations contained in Accusation 1A-2008-13; the right to present witnesses and evidence and to testify on his own behalf; the right to confront and cross-examine all witnesses testifying against him; 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, the California Code of Civil Procedure, and all other applicable

laws, having been fully advised of same by his attorney of record, Jehan Jayakumar, Esq. Respondent, having the benefit of counsel, hereby knowingly, intelligently, freely and voluntarily waives and gives up each and every one of the rights set forth and/or referenced above.

CULPABILITY

9. Respondent admits the complete truth and accuracy of each and every charge and allegation, separately and severally, in Accusation No. 1A-2008-13, agrees that he has thereby subjected his Acupuncturist License No. AC-3641 to disciplinary action, and hereby agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below. Respondent further agrees that if he ever petitions for modification or early termination of the discipline imposed on Acupuncturist License Number AC-6314, all of the charges and allegations contained in Accusation No. 1A-2008-13, and each of them, separately and severally, shall be deemed true, correct and fully admitted by respondent for purposes of any proceeding involving respondent's petition for modification or early termination and any other licensing proceeding involving respondent in the State of California.

CONTINGENCY

10. This Stipulated Settlement and Disciplinary Order shall be subject to approval by the Board. The parties agree that this Stipulated Settlement and Disciplinary Order shall be submitted to the Board for its consideration in the above-entitled matter and, further, that the Board shall have a reasonable period of time in which to consider and act on this stipulation after receiving it. By signing this stipulation, respondent fully understands and agrees that he may not withdraw his agreement or seek to rescind this stipulation prior to the time the Board considers and acts upon it.

11. The parties agree that this Stipulated Settlement and Disciplinary Order shall be null and void and not binding upon the parties unless approved and adopted by the Board, except for this paragraph, which shall remain in full force and effect. Respondent fully understands and agrees that in deciding whether or not to approve and adopt this Stipulated Settlement and Disciplinary Order, the Board may receive oral and written communications from its staff and/or the Attorney General's office. Communications pursuant to this paragraph shall

not disqualify the Board, any member thereof, and/or any other person from future participation in this or any other matter affecting or involving respondent. In the event that the Board, in its discretion, does not approve and adopt this Stipulated Settlement and Disciplinary Order, with the exception of this paragraph, it shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party hereto. Respondent further agrees that should the Board reject this Stipulated Settlement and Disciplinary Order for any reason, respondent will assert no claim that the Board, or any member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this Stipulated Settlement and Disciplinary Order or of any matter or matters related hereto.

ADDITIONAL PROVISIONS

12. This Stipulated Settlement and Disciplinary Order is intended by the parties herein to be an integrated writing representing the complete, final and exclusive embodiment of the agreements of the parties in the above-entitled matter.

13. The parties agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto shall have the same force and effect as originals.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice to or opportunity to be heard by respondent, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Acupuncturist License Number AC-3641 heretofore issued to respondent CHARLES FRANCIS MAYBERRY, L.Ac., shall be and hereby is immediately revoked, with the revocation stayed, and respondent placed on probation for a period of three (3) years from the effective date of this Decision and Order, on the following terms and conditions:

1. Course work Respondent shall take and successfully complete not less than twenty (20) semester units or thirty (30) quarter units of coursework in the following areas: acupuncture points, needle techniques, and advanced needle techniques. All coursework shall be

taken at the graduate level at a school approved by the Board. Classroom attendance must be specifically required. Course content shall be pertinent to the violation and all course work must be completed within the first 3 years of probation. The required course work 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 Board's prior approval for meeting the educational requirements. All costs of the course work shall be borne by the respondent.

2. 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 Board in writing within seventy-two (72) hours of occurrence.

3. Quarterly Reports Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

4. Surveillance Program Respondent shall comply with the 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) Board members or members of its staff; or 3) persons serving the Board as expert examiners.

5. Interview with the Board or Its Designee Respondent shall appear in person for interviews with the Board or its designee upon request at various intervals and with reasonable notice.

6. Changes of Employment Respondent shall notify the 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.

7. 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 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.

8. 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.

9. Cost Recovery Respondent shall pay to the Board its costs of investigation and enforcement in the amount of $3,199.50.

10. Violation of Probation If respondent violates probation in any respect, the 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 probation, the 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.

11. Completion of Probation Upon successful completion of probation, respondent's license will be fully restored.

ACCEPTANCE

I, CHARLES FRANCIS MAYBERRY, L.Ac., have carefully read this Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Acupuncturist License Number AC-3641. I enter into this Stipulated Settlement and Disciplinary Order freely, voluntarily, intelligently, and agree to be bound by the Decision and Order of the Acupuncture Board of California, Department of Consumer Affairs.

DATED: 6/9/04

CHARLES FRANCIS MAYBERRY, L.Ac.,
Respondent

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I have read and fully discussed with respondent Charles Francis Mayberry, L.Ac., the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: ~~May~~ June 15, 2009.

JEHAN JAYAKUMAR, ESQ.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Acupuncture Board of California, Department of Consumer Affairs.

DATED: June 19, 2009.

EDMUND G. BROWN JR., Attorney General
of the State of California

By _____
MATTHEW M. DAVIS
Deputy Attorney General

Attorneys for Complainant

Attachment "A"
Accusation filed in Case Nos.
1A-2008-13

COPY

FILED

FEB 5 2009

ACUPUNCTURE BOARD

EDMUND G. BROWN JR.,
Attorney General of the State of California
THOMAS S. LAZAR
Supervising Deputy Attorney General
MATTHEW M. DAVIS State Bar No. 202766
Deputy Attorney General
110 West "A" Street, Suite 1100
San Diego, CA 92101

P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2074
Facsimile: (619) 645-2061

Attorneys for Complainant

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: CHARLES FRANCIS MAYBERRY, L.Ac. 228 South Cedros Ave., Suites D Solana Beach, CA 92075 Acupuncturist License No. AC-3641 Respondent.	Case No. 1A-2008-13 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about August 18, 1989, the Acupuncture Board (Board) issued Acupuncturist License Number AC-3641 to Charles Francis Mayberry, L.Ac (Respondent). The Acupuncturist License was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2010, unless renewed.

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JURISDICTION

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

4. Section 4955 of the Code states:

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

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

"... .

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

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

"...".

5. Section 4955.2 of the Code states:

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

"(a) Gross negligence.

"(b) Repeated negligent acts.

"(c) Incompetence."

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6. California Code of Regulations, title 16, section 1399.451, states:

"... .

"(c) Acupuncture points, where needles are to be inserted, shall be cleaned with an appropriate antiseptic before insertion of the needle.

"... .

"(e) Any complication, including but not limited to, hematoma, peritonitis or pneumothorax arising out of acupuncture treatment shall be referred immediately to a physician or dentist or podiatrist, if appropriate, if immediate medical treatment is required.

"...".

RECOVERY OF COSTS

7. Section 4959 of the Code states:

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

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

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

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

8. Respondent is subject to disciplinary action under section 4955.2, subdivision (a) of the Code, in that he has committed acts of gross negligence in the practice of acupuncture. The circumstances are as follows:

Patient T.D..

(a) Beginning on or about November 18, 2007, Respondent provided acupuncture treatment to patient T.D. Respondent continued to provide acupuncture treatment to patient T.D. until December 1, 2007.

(b) On or about December 1, 2007, patient T.D. sought acupuncture treatment from respondent for chronic right shoulder pain.

(c) On or about December 1, 2007, respondent treated patient T.D. for shoulder pain. Respondent inserted an acupuncture needle into an area anterior and just below patient T.D.'s right shoulder. The needle was inserted through a sweatshirt and a tee shirt. The area of insertion was not cleaned prior to insertion.

(d) Shortly after insertion of the needle Patient T.D. began to cry and reported pain to respondent.

(e) On or about December 1, 2007, Patient T.D. discovered bruising and swelling at the insertion point below her right shoulder. Patient T.D. called respondent and reported her injury and level of pain.

(f) On or about December 2, 2007, respondent called patient T.D. and told

her that bruising sometimes happens and it should clear up in about one week.

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(g) Patient T.D. suffered with pain for about two weeks and sought treatment from Kaiser for her injuries.

(h) Patient T.D.'s bruise dissipated after about four (4) weeks. During this time respondent never followed up with patient T.D. despite receiving a letter describing patient T.D.'s ongoing pain and bruising.

SECOND CAUSE FOR DISCIPLINE

(Incompetence)

9. Respondent is further subject to disciplinary action under section 4955.2, subdivision (c) of the Code, and section 1399.451, subdivision (c) of Title 16 of the California Code of Regulations, in that he has demonstrated incompetence by failing to clean the area of needle insertion with an appropriate antiseptic before insertion of the needle treatment. The circumstances are as follows:

10. Paragraphs 8(a), 8(b), 8(c), 8(d), 8(e), 8(f), 8(g) and 8(h), above, are hereby incorporated by reference and realleged as if fully set forth herein.

THIRD CAUSE FOR DISCIPLINE

(Incompetence)

11. Respondent is further subject to disciplinary action under section 4955.2, subdivision (c) of the Code, and section 1399.451, subdivision (e) of Title 16 of the California Code of Regulations, in that he has demonstrated incompetence by failing to immediately refer patient T.D. to a physician when complications arose during the provision of acupuncture treatment. The circumstances are as follows:

12. Paragraphs 8(a), 8(b), 8(c), 8(d), 8(e), 8(f), 8(g) and 8(h), above, are hereby incorporated by reference and realleged as if fully set forth herein.

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FOURTH CAUSE FOR DISCIPLINE

(Violation of Acupuncture Licensure Act or Regulation)

13. Respondent is further subject to disciplinary action under section 4955, as defined by section 4955, subdivision (d), of the Code, in that he has violated the terms of the Acupuncture Licensure Act, or a regulation adopted by the Board pursuant to the Acupuncture Licensure Act. The circumstances are as follows:

14. Paragraphs 8(a), 8(b), 8(c), 8(d), 8(e), 8(f), 8(g) and 8(h), above, are hereby incorporated by reference and realleged as if fully set forth herein.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

15. Respondent is further subject to disciplinary action under section 4955 of the Code, in that he has engaged in unprofessional conduct by breaching the rules or ethical code of conduct of the profession of acupuncture, or by engaging in conduct unbecoming to an acupuncturist in good standing in the profession and which demonstrates an unfitness to practice acupuncture.[1] The circumstances are as follows:

16. Paragraphs 8(a), 8(b), 8(c), 8(d), 8(e), 8(f), 8(g) and 8(h), above, are hereby incorporated by reference and realleged as if fully set forth herein.

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1. *See Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.

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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 Acupuncturist License Number AC- 3641, issued to Charles Francis Mayberry, L.Ac.;

2. Ordering Charles Francis Mayberry, L.Ac to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 4959; and

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

DATED: FEB 5 2009

JANELLE WEDGE
Executive Officer
Acupuncture Board
State of California
Complainant

SD2008802965

EDMUND G. BROWN JR., Attorney General
of the State of California
THOMAS S. LAZAR
Supervising Deputy Attorney General
MATTHEW M. DAVIS, State Bar No. 202766
Deputy Attorney General
110 West "A" Street, Suite 1100
San Diego, CA 92101

P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2093
Facsimile: (619) 645-2061

Attorneys for Complainant

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	Case No. 1A-2008-13
CHARLES FRANCIS MAYBERRY, L.AC.	**STATEMENT TO RESPONDENT**
Respondent.	[Gov. Code §§ 11504, 11505(b)]

TO RESPONDENT:

Enclosed is a copy of the Accusation that has been filed with the Acupuncture Board of the Department of Consumer Affairs (Board), and which is hereby served on you.

Unless a written request for a hearing signed by you or on your behalf is delivered or mailed to the Board, represented by Deputy Attorney General Matthew M. Davis, within fifteen (15) days after a copy of the Accusation was personally served on you or mailed to you, you will be deemed to have waived your right to a hearing in this matter and the Board may proceed upon the Accusation without a hearing and may take action thereon as provided by law.

The request for hearing may be made by delivering or mailing one of the enclosed forms entitled "Notice of Defense," or by delivering or mailing a Notice of Defense as provided in section 11506 of the Government Code, to

/ / /

Matthew M. Davis
Deputy Attorney General
110 West "A" Street, Suite 1100
San Diego, California 92101

P.O. Box 85266
San Diego, California 92186-5266.

You may, but need not, be represented by counsel at any or all stages of these proceedings.

The enclosed Notice of Defense, if signed and filed with the Board, shall be deemed a specific denial of all parts of the Accusation, but you will not be permitted to raise any objection to the form of the Accusation unless you file a further Notice of Defense as provided in section 11506 of the Government Code within fifteen (15) days after service of the Accusation on you.

If you file any Notice of Defense within the time permitted, a hearing will be held on the charges made in the Accusation.

The hearing may be postponed for good cause. If you have good cause, you are obliged to notify the Office of Administrative Hearings, 1350 Front Street, Suite 6022, San Diego, CA 92101, within ten (10) working days after you discover the good cause. Failure to notify the Office of Administrative Hearings within ten (10) days will deprive you of a postponement.

Copies of sections 11507.5, 11507.6, and 11507.7 of the Government Code are enclosed.

If you desire the names and addresses of witnesses or an opportunity to inspect and copy the items mentioned in section 11507.6 of the Government Code in the possession, custody or control of the Board you may send a Request for Discovery to the above designated Deputy Attorney General.

NOTICE REGARDING STIPULATED SETTLEMENTS

It may be possible to avoid the time, expense and uncertainties involved in an administrative hearing by disposing of this matter through a stipulated settlement. A stipulated settlement is a binding written agreement between you and the government regarding the matters

charged and the discipline to be imposed. Such a stipulation would have to be approved by the Acupuncture Board but, once approved, it would be incorporated into a final order.

Any stipulation must be consistent with the Board's established disciplinary guidelines; however, all matters in mitigation or aggravation will be considered. A copy of the Board's Disciplinary Guidelines will be provided to you on your written request to the state agency bringing this action.

If you are interested in pursuing this alternative to a formal administrative hearing, or if you have any questions, you or your attorney should contact Deputy Attorney General Matthew M. Davis at the earliest opportunity.

DATED: 1/8/09

EDMUND G. BROWN JR., Attorney General
of the State of California

THOMAS S. LAZAR
Supervising Deputy Attorney General

MATTHEW M. DAVIS
Deputy Attorney General

Attorneys for Complainant

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