BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	Case No. 1A-2006-60
	OAH No. 2010100246
JOSEPH MULVENNA, L.AC. 1202 Loma Drive, #67 Ojai, CA 93023	
Acupuncture License No. AC 9573	
Respondent.	

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Acupuncture Board, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on MAY 21 2011.

It is so ORDERED APR 21 2011.

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

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BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **JOSEPH MULVENNA, L.Ac.** 1202 Loma Drive # 67 Ojai, California 93023 Acupuncturist License No. AC 9573, Respondent.	Case No. 1A-2006-60 OAH No. 2010100246 **STIPULATED SURRENDER OF LICENSE AND ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties in this proceeding that the following matters are true:

PARTIES

1. Janelle Wedge (Complainant) is the Executive Officer of the Acupuncture Board. She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Wendy Widlus, Deputy Attorney General.

2. Joseph Mulvenna, L.Ac. (Respondent) is represented in this proceeding by attorney Jehan N. Jayakumar, whose address is 2424 S.E. Bristol, Suite 300, Newport Beach, California 92660. On or about February 10, 2004, the Acupuncture Board issued Acupuncturist License No. AC 9573 to Joseph Mulvenna, L.Ac. (Respondent). Respondent's Acupuncturist License expires on March 31, 2011, and has not been renewed.

JURISDICTION

3. Accusation No. 1A-2006-60 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 September 15, 2010. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 1A-2006-60 is attached as Exhibit A and is incorporated by reference.

ADVISEMENT AND WAIVERS

4. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 1A-2006-60. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Order.

5. 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.

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

CULPABILITY

7. Respondent admits the truth of each and every charge and allegation in Accusation No. 1A-2006-60, agrees that cause exists for discipline, and hereby surrenders his Acupuncturist License No. AC 9573 for the Board's formal acceptance.

8. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Acupuncturist license without further process.

CONTINGENCY

9. This stipulation shall be subject to approval by the 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 surrender, 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 Surrender 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.

10. The parties understand and agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

11. The total costs of investigation and enforcement in this matter, prior to hearing, are $29,274.25. In consideration of the foregoing admissions and stipulations, the parties agree that the Board will reduce the total costs of investigation and enforcement in this matter to $9,500.00.

12. The parties agree that Respondent must pay the total costs of $9,500.00 no later than twenty-four months after the effective date of the decision in this matter.

13. If Respondent fails to pay total costs of $9,500.00 on or before twenty-four months after the effective date of the decision in this matter, the Board will institute legal proceedings against Respondent to collect the balance of the total costs of investigation and enforcement in this matter prior to hearing of $9,500.00.

14. The costs of $9,500.00 shall be paid in full prior to any application for reinstatement submitted by Respondent.

15. Respondent must send the above referenced costs payments to the Board at the following address: Acupuncture Board of California, c/o Enforcement Coordinator, 444 North 3rd Street, Suite 260, Sacramento, California 95811.

15. Respondent agrees to provide an accurate mailing address for himself to the Board throughout the twenty-four months following the effective date of decision in this matter.

16. 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 Order:

ORDER

IT IS HEREBY ORDERED that Acupuncturist License Number AC 9573, issued to Respondent Joseph Mulvenna, L.Ac., is surrendered and accepted by the Acupuncture Board.

1. The surrender of Respondent's Acupuncturist and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

2. Respondent shall lose all rights and privileges as an Acupuncturist in California as of the effective date of the Board's Decision and Order.

3. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 1A-2006-60 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

5. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation, No. 1A-2006-60 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

6. Respondent shall pay the Board its costs of investigation and enforcement in the amount of $9,500.00 prior to any application for a new or reinstated license.

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, Jehan N. Jayakumar. I understand the stipulation and the effect it will have on my Acupuncturist. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Acupuncture Board.

DATED: April 1st 2011 — Joseph Mulvenna

JOSEPH MULVENNA, L.AC.
Respondent

I have read and fully discussed with Respondent Joseph Mulvenna, 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: Apr. 1, 2011 — Jehan Jayakumar

JEHAN N. JAYAKUMAR
Attorney for Respondent

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ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Acupuncture Board of the Department of Consumer Affairs.

Dated: April 1, 2011

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
ROBERT MCKIM BELL
Supervising Deputy Attorney General

WENDY WIDLUS
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 1A-2006-60

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Attorneys for Complainant

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ACUPUNCTURE BOARD

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **JOSEPH MULVENNA, L.Ac.** 1202 Loma Drive #67 Ojai, CA 93023 License No. AC 9573 Respondent.	Case No. 1A-2006-60 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about August 10, 2004, the Acupuncture Board issued License Number AC 9573 to Joseph Mulvenna, L.Ac. (Respondent). Respondent's license is currently on inactive status,[1] and will expire March 31, 2011.

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[1] Licensees on inactive status cannot practice. Licensees on inactive status are required to pay the full renewal fee but are exempt from complying with continuing education requirements.

JURISDICTION

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

4. Section 4928.1 of the Code states:

"Protection of the public shall be the highest priority for the Acupuncture Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount."

5. 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.

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

. . . "

6. Section 4955.1 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 a fraudulent act including, but not be limited to, any of the following:

". . .

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

. . .

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

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.

"(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."

8. Section 4927, subdivision (d), of the Code states:

"'Acupuncture' means the stimulation of a certain point or points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control, treatment of certain diseases or dysfunctions of the body and includes the techniques of electroacupuncture,

cupping, and moxibustion."[2]

9. Section 4935 of the Code states:

"(a)(1) It is a misdemeanor, punishable by a fine of not less than one hundred dollars ($100) and not more than two thousand five hundred dollars ($2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, for any person who does not hold a current and valid license to practice acupuncture under this chapter or to hold himself or herself out as practicing or engaging in the practice of acupuncture.

"(2) It is a misdemeanor, punishable by a fine of not less than one hundred dollars ($100) and not more than two thousand five hundred dollars ($2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, for any person to fraudulently buy, sell, or obtain a license to practice acupuncture, or to violate the provisions of this chapter.

"(b) Notwithstanding any other provision of law, any person, other than a physician and surgeon, a dentist, or a podiatrist, who is not licensed under this article but is licensed under Division 2 (commencing with Section 500), who practices acupuncture involving the application of a needle to the human body, performs any acupuncture technique or method involving the application of a needle to the human body, or directs, manages, or supervises another person in performing acupuncture involving the application of a needle to the human body is guilty of a misdemeanor.

"(c) A person holds himself or herself out as engaging in the practice of acupuncture by the use of any title or description of services incorporating the words "acupuncture," "acupuncturist," "certified acupuncturist," "licensed acupuncturist," "oriental medicine," or any combination of those words, phrases, or abbreviations of those words or phrases, or by representing that he or she is trained, experienced, or an expert in the field of acupuncture, oriental medicine, or Chinese medicine.

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[2] Moxibustion is defined in Eastern medicine as the practice of burning a cone or cylinder of downy or woolly material derived from various plants on the skin for its counterirritant effect.

..."

10. Section 4937 of the Code states:

AAn acupuncturist=s license authorizes the holder thereof:

A(a) To engage in the practice of acupuncture.

A(b) To perform or prescribe the use of oriental massage, acupressure, breathing techniques, exercises, or nutrition, including the incorporation of drugless substances and herbs as dietary supplements to promote health. Nothing in this section prohibits any person who does not possess an acupuncturist=s license or another license as a healing arts practitioner from performing, or prescribing the use of, oriental massage, breathing techniques, exercises, or nutrition, to promote health, so long as those activities are not performed or prescribed in connection with the practice of acupuncture.@

11. 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 one of the following:

"(a) Gross negligence.

"(b) Repeated negligent acts.

"(c) Incompetence."

12. Section 2052, subdivision (a), of the Code states:

"Notwithstanding Section 146, any person who practices or attempts to practice, or who advertises or holds himself or herself out as practicing, any system or mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person, without having at the time of so doing a valid, unrevoked, or unsuspended certificate as provided in this chapter or without being authorized to perform the act pursuant to a certificate obtained in accordance with some other provision of law is guilty of a public offense, punishable by a fine not exceeding ten thousand dollars ($10,000), by imprisonment

in the state prison, by imprisonment in a county jail not exceeding one year, or by both the fine and either imprisonment."

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

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

14. Section 118, subdivision (b), of the Code states that:

"The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground."

15. Section 726 of the Code states:

"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 initiative act referred to in this division and under Chapter 17 (commencing with Section 9000) of Division 3.

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

FIRST CAUSE FOR DISCIPLINE

(Sexual Misconduct)

16. Respondent is subject to disciplinary action under section 726 of the Code in that he committed acts of sexual abuse and/or misconduct while treating patient CP. The circumstances are as follows:

17. In 1994, patient CP and her husband, NV, met Respondent. Sometime in 1994 Respondent began to perform what he described as "bodyworks' treatments" on patient CP to relieve stress. Patient CP told Respondent she was interested in being treated with bodywork to relieve stress as a result of a trauma she had endured as a minor. Patient CP explained that while a minor she was the victim of sexual abuse by a priest. Respondent said undergoing "bodyworks treatments" would be beneficial in releasing both physical and psychological stress and trauma. Respondent's "bodyworks treatments" consisted of acupressure and massage, and were performed out of Respondent's 2211 Oak Street, Santa Monica, California residence. Respondent told patient CP that he was not a licensed acupuncturist.

18. Over the next several years patient CP and her husband saw Respondent at social gatherings, and learned they had mutual friends. During this time Respondent revealed that his former wife had threatened to report him to the "Acupuncture Board" for unlicensed acupuncture practice. Respondent told patient CP that as a result of the threats to report him to the Board he began to attend an acupuncture school to obtain his license in 2003. When Respondent entered acupuncture school he began to perform acupuncture treatments on Patient CP. When Respondent obtained his acupuncture license in 2004 he continued to perform acupuncture treatments on patient CP out of his residence.

19. In July 2004, patient CP and her husband NV decided to undergo In Vitro Fertilization[3] (IVF) to conceive a child. Prior to beginning the IVF treatment Patient CP went to Respondent at his residence for both acupuncture and bodywork treatments to prepare her body for the IVF treatments. The first IVF treatment was unsuccessful. Patient CP continued to go to Respondent at his residence for regular acupuncture treatments.

20. In January 2005, patient CP and her husband NV decided again that they wished to conceive a child. They decided to undergo another round of IVF. Again, prior to beginning this

[3] In vitro fertilization is a procedure in which eggs (ova) from a woman's ovary are removed. They are fertilized with sperm in a laboratory procedure, and then the fertilized egg (embryo) is returned to the woman's uterus.

IVF treatment Patient CP went to Respondent at his residence for both acupuncture and bodywork treatments to prepare her body for the IVF treatments. The second IVF treatment was unsuccessful.

21. In July 2005, patient CP and her husband NV decided to try again to conceive a child. To do this they decided to undergo yet another round of IVF. Once more, prior to beginning this IVF treatment Patient CP again went to Respondent at his Santa Monica, California, residence for both acupuncture and bodywork treatments to prepare her body for the IVF treatments. However, when patient CP presented to Respondent for the acupuncture and bodywork treatments Respondent suggested an additional treatment he called "moxy treatment" (moxibustion) to assist her prior to undergoing IVF. Patient CP did not know what the moxibustion consisted of and asked Respondent for an explanation.

22. Respondent explained that patient CP had a "damp uterus" and these treatments would warm the uterus which might help her to conceive. Patient CP agreed to undergo several of the moxibustion treatments. The treatments consisted of patient CP lying completely nude on the treatment table under a sheet. Respondent approached her with several burning "moxy sticks," spread her legs open, placed the burning sticks near her genital area, and then blew the smoke toward her vagina.

23. Patient CP felt extremely uncomfortable throughout the treatment. However, she trusted Respondent and believed he was performing the moxibustion treatments to help her conceive. Thus, patient CP allowed Respondent to perform these moxibustion treatments in addition to the acupuncture treatments prior to undergoing the IVF treatment.

24. Both patient CP and her husband NV were desperate to conceive a child, and trusted that Respondent's treatments would contribute to the eventual success of the IVF treatments. However, by January 2006, patient CP had undergone five unsuccessful IVF treatments. After the last IVF treatment patient CP was suffering severe ovarian pain. Patient CP decided to return to Respondent for acupuncture treatments to reduce the ovarian pain and reduce the trauma her body had endured as a result of the IVF treatments.

25. On or about May 24, 2006, patient CP went to Respondent's Santa Monica,

California, residence for another acupuncture treatment. Patient CP completely undressed and lay down on the treatment table covered by a sheet as she had for the prior treatments. Patient CP explained to Respondent she was experiencing pain in her ovaries and her bladder area as a result of the IVF treatments. Respondent performed acupressure on the areas where she told him she was experiencing pain. Respondent then said he was "going to check for infections," but he did not explain how he was going to do so.

26. Patient watched as Respondent put on rubber gloves and approached her as she lay on the treatment table. Respondent then opened patient CP's legs and inserted his hand into her vagina.

27. Patient CP was completely shocked by Respondent's behavior and simply froze. Patient CP did not know what to do. Respondent eventually removed his hand from her vagina.

28. After Respondent withdrew his hand from patient CP's vagina he performed acupuncture on the patient. Patient CP was still in a state of shock. When Respondent completed the acupuncture treatment patient CP immediately dressed and left Respondent's treatment room and went to her vehicle. Patient CP began to cry hysterically, and called her husband, NV, and told him what happened during the acupuncture session.

29. Patient CP ultimately stopped crying, and was able to compose herself enough to drive home. When she arrived home that day she contacted two other acupuncturists to ask each of them if an acupuncturist was legally permitted to perform a vaginal examination. Patient CP was told a vaginal examination was not part of an appropriate acupuncture treatment session, and was urged to report Respondent's conduct to the police. Patient CP also contacted an employee at the American Acupuncture Council[4] to explain what Respondent did during the acupuncture treatment session which occurred that day. Patient CP was encouraged to report Respondent's actions to the Board as being outside of the permissible scope of his license.

30. Due to her outrage at Respondent's actions during the May 24, 2006, examination,

[4] The American Acupuncture Council is the largest and oldest provider of acupuncture insurance in the country. The company has three decades of experience defending acupuncturists from wrongful malpractice claims.

patient CP then telephoned Respondent from her residence while NV listened to the conversation on their phone extension. During that phone conversation patient CP expressed her indignation about what happened during the May 24, 2006, treatment session to Respondent, and told him he had no right to perform a vaginal exam on her.

31. Respondent first responded to patient CP's anger by repeatedly justifying his actions as a normal part of an exam. Respondent then apologized, and said he wanted to make it up to patient CP. Patient CP then terminated the phone call.

32. Respondent phoned patient CP at her home the following day. Respondent repeatedly claimed he had done nothing wrong, nor was he trying to hurt her. Respondent also said he was surprised patient CP was questioning his actions especially because he was only trying to help her during all of the years he had treated her.

33. Patient CP decided not to go to the police to report what occurred. Patient CP believed that, based on what occurred when she was a minor and she reported her abuse by a priest, that she would once again have to relive Respondent's abuse through a criminal investigation and subsequent trial.

34. On or about May 26, 2006, patient CP reported Respondent's conduct during the May 24, 2006, treatment session to the Board.

35. On or about July 11, 2006, Division of Investigation (DOI) Investigator Cristina Vasquez (Vasquez) was assigned to investigate patient CP's complaint to the Board about Respondent. On or about September 20, 2007, Vasquez requested patient CP's acupuncture records from Respondent at his address of record, per the Board's records, of 2211 Oak Street, Santa Monica, California. Respondent did not reply to this request, nor to Vasquez's second request for records, which was sent to the Oak Street address in Santa Monica, California, and returned as undeliverable.

36. On or about November 14, 2007, Vasquez requested Respondent's current address of record from the Board. According to Board records Respondent's address was still 2211 Oak Street, Santa Monica, California. On or about November 27, 2007, Vazquez contacted Respondent by phone, and asked him to provide a current address so she could mail him a request

for patient records. Respondent provided the address of 2211 Oak Street, Santa Monica, California. When told this address was returning mail Respondent refused to provide a current address. Respondent stated he was no longer in California. He provided Vasquez with a mailing address in Los Angeles, California. Respondent stated he had stopped practicing acupuncture approximately one month prior to this call (i.e., on or about October 27, 2007).

37. Respondent told Vasquez that when he had been in practice, he was in a private acupuncture practice located at 1513 6th Street, Santa Monica, California. Respondent stated he had a Santa Monica, California business license to practice acupuncture at the 6th Street address. Respondent denied ever practicing out of his residence at the Oak Street address. At no time during this discussion did Vasquez provide any details with regard to the complaint she was investigating.

38. On or about November 27, 2007, Vasquez mailed Respondent another request for patient CP's records to the address Respondent provided. On or about December 13, 2007, Vazquez phoned Respondent to follow up on the third request for records she had sent. Respondent now stated that as of August 31, 2007, he closed his acupuncture practice, subsequently destroyed all of his treatment records, and was no longer living in the country. Vasquez attempted to obtain additional information from Respondent about where he was now residing, but Respondent was very reluctant to cooperate, accusing Vasquez of being too aggressive and asking him too many questions. He refused to answer any further questions. Vasquez requested that Respondent provide a written statement with regard to the destruction of patient CP's records, and Respondent agreed to do so. Other than providing Respondent with patient CP's full name Vasquez provided no further details with regard to the complaint she was investigating.

39. On or about January 8, 2008, Vasquez received a written letter from Respondent containing another document entitled "Statement" with regard to patient CP's record and treatment provided to Patient CP. One of the documents was signed by "Joseph Mulvenna" and the typewritten portion stated Respondent could not find the requested records

and SOAP[5] notes. In summary, the document entitled "Statement" acknowledged meeting patient CP in 1996, and providing her with bodywork treatment, and providing her with treatment while she was attempting to conceive.

40. Respondent also said, inter alia, that patient CP had no concept of boundaries. As evidence of this assessment, Respondent cited an alleged request from patient CP and her husband for Respondent to donate his sperm via personal intercourse with patient CP. Respondent also stated that patient CP married her husband to obtain a "green" card.

41. On or about January 8, 2008, Vasquez spoke to patient CP about some of the statements made by Respondent in the correspondence he provided to Vasquez. Patient CP unconditionally denied all of Respondent's statements, stating they were complete lies. Patient CP told Vasquez she believed Respondent made the false statements to remove the focus from Respondent's own wrongdoing.

42. On or about January 23, 2008, Vasquez contacted the City of Santa Monica to determine if Respondent ever had a business license to practice acupuncture out of his home at 2211 Oak Street, Santa Monica, California. Investigation revealed that the city had no record of Respondent having an acupuncture business at his home address.

43. On or about May 24, 2006, Respondent engaged in an act of sexual abuse and/or misconduct when he put on rubber gloves, approached patient CP as she lay on the treatment table, spread patient CP's legs and inserted his gloved hand into the vagina of patient CP.

SECOND CAUSE FOR DISCIPLINE

(Gross Negligence)

44. Respondent committed acts of gross negligence under section 4955.2 of the Code. Respondent's care and treatment of patient CP represents an extreme departure from the standard of care in each of the following respects:

45. The facts and allegations set forth in paragraphs 17 through 42 above are incorporated here as if fully set forth.

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[5] SOAP is an acronym for a standardized note format for entries made in clinical records. The letters S-O-A-P stand for Subjective, Objective, Assessment and Plan.

46. On or about May 24, 2006, Respondent was grossly negligent when he put on rubber gloves, approached patient CP as she lay on the treatment table, spread patient CP's legs and inserted his gloved hand into the vagina of patient CP.

47. On or about May 24, 2006, Respondent was grossly negligent when he inserted his gloved hand into patient CP's vagina without first explaining the procedure to patient CP and obtaining patient CP's consent to the procedure.

48. On or about May 24, 2006, Respondent was grossly negligent when he failed to refer patient CP for a genital and/or gynecological examination by an appropriately licensed professional (e.g., a medical doctor, nurse practitioner etc.).

49. On or about May 24, 2006, Respondent was grossly negligent when he practiced outside the scope of his acupuncture license by performing a genital examination as more fully described in paragraph 26 above.

THIRD CAUSE FOR DISCIPLINE

(Unlicensed Practice of Acupuncture)

50. Respondent is subject to disciplinary action under section 4935, subdivision (a), of the Code in that he, while not holding a current and valid license to practice acupuncture, held himself out as practicing acupuncture and/or engaged in the practice of acupuncture from in or around 1997 through 1999. The circumstances are as follows:

51. The facts and allegations set forth in paragraphs 17 through 42 above are incorporated here as if fully set forth.

52. From in or around 1997 through 1999, on a twice a month basis, Respondent provided patient AH "bodywork" treatments at his residence in Santa Monica, California. During that timeframe, on at least five occasions, Respondent performed acupuncture treatments on patient AH utilizing acupuncture needles. Patient AH paid Respondent for the treatments by personal checks.

FOURTH CAUSE FOR DISCIPLINE

(Unlicensed Practice of Medicine)

53. Respondent is subject to disciplinary action under section 2052, subdivision (a), of

the Code in that he engaged in the practice medicine as defined in section 2052, subdivision (a), of the Code without having at the time of so doing a valid medical certificate. The circumstances are as follows:

54. The facts and allegations set forth in paragraph 26 above are incorporated here as if fully set forth.

FIFTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

55. Respondent is subject to disciplinary action under section 4955.1 (e) of the Code in that he failed to maintain adequate and accurate records of the acupuncture services he provided to patient CP. The circumstances are as follows:

56. The facts and allegations set forth in paragraphs 17 through 42 above are incorporated here as if fully set forth.

PRAYER

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

1. Revoking or suspending License Number AC 9573, issued to Respondent Joseph Mulvenna, L.Ac.

2. Ordering Respondent Joseph Mulvenna, L.Ac., to pay the Acupuncture Board the actual and reasonable costs of the investigation and prosecution of the case pursuant to Business and Professions Code section 4959;

3. Ordering Respondent Joseph Mulvenna, L.Ac., if placed on probation, to pay the Acupuncture Board the costs of probation monitoring; and

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

DATED: SEP 0 1 2010

JANELLE WEDGE
Executive Officer
Acupuncture Board
Department of Consumer Affairs
State of California
Complainant

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