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FILED

JUL 15 2011

ACUPUNCTURE BOARD

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

In the Matter of the Accusation Against:

MARIA HO PITTMAN, L.AC
8011 Gold Pheasant Court,
Elverta, CA 95626

Acupuncturist License No. AC 9840

Respondent.

Case No. 1A-2009-204

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 September 8, 2004, the Board issued Acupuncturist License Number AC 9840 to Maria Ho Pittman, L.AC. (hereinafter "Respondent"). Respondent's license is presently active, and will expire July 31, 2012.

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JURISDICTION

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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
7 Board in exercising its licensing, regulatory, and disciplinary functions. Whenever
8 the protection of the public is inconsistent with other interests sought to be
9 promoted, the protection of the public shall be paramount. "

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

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

14 "... "

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

17 "...."

18 6. Section 4955.2 of the Code, in pertinent part, provides:

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

22 "(a) Gross negligence. "

23 "... "

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

26 "...."

27 7. Section 4959 of the Code states:

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

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

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

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

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

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1 **FIRST CAUSE FOR DISCIPLINE**

2 (Gross Negligence)

3 [Bus & Prof. Code § 4955.2]

4 8. Respondent is subject to disciplinary action under section 4955.2 in that her care and
5 treatment of patient B.R. constitutes gross negligence. The circumstances are set forth below:

6 9. Respondent works for Kaiser in the Occupational Medicine Department as a licensed
7 physical therapist and acupuncturist. She has performed acupuncture as part of physical therapy
8 treatment on almost a daily basis since she received her acupuncture license in 2004.

9 10. On or about September 30, 2009, B.R.¹ arrived at the physical therapy office in
10 Kaiser Roseville, for an acupuncture session with Respondent. B.R. had five to six acupuncture
11 treatments from Respondent before and felt that acupuncture was effective in relieving her pain.

12 11. At approximately 1715 hours, B.R. was placed on the exercise equipment to warm up
13 for ten minutes. She then met Respondent in the treatment room. Respondent placed twenty
14 needles in B.R.'s neck, shoulders, lower back, and both ankles. The process took five minutes.
15 Respondent planned to leave the needles in for approximately 20-30 minutes. Respondent placed
16 a heat lamp on B.R., and told her that she would return. Respondent then shut the door and left
17 B.R. alone in the treatment room.

18 12. After about forty five minutes, Respondent had not returned. B.R. was alarmed and
19 the needles started to hurt. During past acupuncture treatments with Respondent, B.R. was left
20 alone for only approximately 20-35 minutes. B.R. called out loudly for help, but no one came to
21 her aid. B.R. had difficulty moving since she had twenty needles placed all throughout her neck,
22 shoulders, lower back, and ankles. She tried to call "911" on her cell phone but her cell phone
23 had no reception. She then proceeded to reach over and push over a chair hoping it would make
24 some noise and alert staff to come to her aid, but she was unsuccessful. The needle insertions
25 were becoming extremely painful as she laid on the table during this entire time.

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27 ¹ Patient names are abbreviated herein to protect patient confidentiality. Patients' full
28 names will be provided upon receipt of a properly executed and served Request for Discovery.

1 13. At or about 1800 hours, B.R. managed to get herself off the table. She stood in front
2 of a long vertical mirror on the treatment room wall, saw where the needles were located, and
3 pulled all the needles out of her body on her own.

4 14. B.R. then walked out of the room and observed that the office lights were dimmed
5 and that nobody was in the office. B.R. went to an adjacent room where a yoga class was just
6 being conducted by Kaiser employee Y.M. Patient D.P., who was attending the yoga class
7 informed B.R. that Respondent had gone home. D.P. observed redness and swelling on B.R.'s
8 neck and shoulder area. B.R. went home and applied a heating pad to areas that were in pain
9 from the needles.

10 15. B.R. confronted Respondent the next day regarding the incident. Respondent stated
11 that she forgot about B.R. because she was busy and had two other patients that day.

12 16. On or about October 1, 2009, Respondent informed her supervisor M.B. of the
13 incident, and M.B. reported the matter to the Risk Management and Quality Control Department
14 for further investigation. M.B. informed Respondent to document the incident that occurred on
15 September 30, 2009 in her progress notes.

16 17. Respondent did not document the incident in her progress notes despite being told to
17 do so. She did not document fact that she forgot about B.R. and had left her patient and gone
18 home. Respondent signed her progress note on October 1, 2009.

19 18. Respondent's actions constitute gross negligence and subject him to discipline within
20 the meaning of Section 4955.2(a) of the Code in that:

21 A. Respondent left the patient in the room while undergoing treatment, without
22 removing the needles, discussing the aftercare with the patient, documenting the treatment, and
23 leaving for the day.

24 B. Respondent knowingly did not record the fact that she forgot about her patient and
25 left for the day in her charts.

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