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

In the Matter of the First Amended Accusation Against:
TIMOTHY WALSH L.AC.
605 Edwards Avenue
West Dundee, Illinois 60118
Acupuncturist License Number AC 7904,
Respondent.

PARTIES

1. Janelle Wedge ("Complainant") brings this Accusation solely in her official capacity as the Executive Director of the Acupuncture Board of California ("Board"), Department of Consumer Affairs. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

2. On or about June 5, 2001, the Board issued Acupuncture License Number AC 7904 to Timothy Walsh ("Respondent"). The license is current, valid and on inactive status.
JURISDICTION

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

4. 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.

5. Section 480(c) of the Code states:

"(c) A board may deny a license regulated by this code on the ground that the application knowingly made a false statement of fact required to be revealed in the application for such license."

6. Section 498 of the Code states:

"A board may revoke, suspend, or otherwise restrict a license on the ground that the licensee secured the license by fraud, deceit, or knowing misrepresentation of a material fact or by knowingly omitting to state a material fact."

7. Section 4937 of the Code states:

"An acupuncturist's license authorizes the holder thereof:

(a) To engage in the practice of acupuncture.

(b) To perform or prescribe the use of Asian massage, acupressure, breathing techniques, exercise, heat, cold, magnets, nutrition, diet, herbs, plant, animal, and mineral products, and dietary supplements to promote, maintain, and restore 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 any modality listed in this subdivision.

(c) For purposes of this section, a "magnet" means a mineral or metal that produces a magnetic field without the application of an electric current.

(d) For purposes of this section, "plant, animal, and mineral products" means naturally occurring substances of plant, animal, or mineral origin, except that it does not include synthetic compounds, controlled substances or dangerous drugs as defined in Sections 4021 and 4022, or a
controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

“(e) For purposes of this section, "dietary supplement" has the same meaning as defined in subsection (ff) of Section 321 of Title 21 of the United States Code, except that dietary supplement does not include controlled substances or dangerous drugs as defined in Section 4021 or 4022, or a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.”

8. Section 4955 of the Code states, inter alia:

"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:

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

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

“(c) False or misleading advertising.

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

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

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

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

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

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

"(j) The violation of any law or local ordinance on an acupuncturist's business premises by an acupuncturist's employee or a person who is working under the acupuncturist's professional license or business permit, that is substantially related to the qualifications, functions, or duties of an acupuncturist. These violations shall subject the acupuncturist who employed the individuals, or under whose acupuncturist license the employee is working, to disciplinary action.

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

"(l) the failure to notify the board of the use of any false, assumed, or fictitious name other than the name under which he or she is licensed as an individual to practice acupuncture."
9. Section 4955.2 reads as follows:

"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."

10. Section 4961 reads as follows:

"(a) Every person who is now or hereafter licensed to practice acupuncture in this state shall register, on forms prescribed by the Acupuncture Board, his or her place of practice, or, if he or she has more than one place of practice, all of the places of practice. If the licensee has no place of practice, he or she shall notify the board of that fact. A person licensed by the board shall register within 30 days after the date of his or her licensure.

(b) An acupuncturist licensee shall post his or her license in a conspicuous location in his or her place of practice at all times. If an acupuncturist has more than one place of practice, he or she shall obtain from the board a duplicate license for each additional location and post the duplicate license at each location.

(c) Any licensee that changes the location of his or her place of practice shall register each change within 30 days of making that change. In the event a licensee fails to notify the board of any change in the address of a place of practice within the time prescribed by this section, the board may deny renewal of licensure. An applicant for renewal of licensure shall specify in his or her application whether or not there has been a change in the location of his or her place of practice and, if so, the date of that change. The board may accept that statement as evidence of the change of address."

11. Section 125.3 of the Code provides,

"(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board upon request of the entity bringing the proceedings, the administrative law judge may direct a licentiate
found to have-committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

"(b) In the case of a disciplined licentiate that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

"(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

"(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge if the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

"(e) If an order for recovery of costs is made and timely payment is not made as directed in the board's decision, the board may enforce the order for repayment in any appropriate county. This right of enforcement shall be in addition to any other rights the board may have as to any licentiate to pay costs.

"(f) In any action for 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.

"(g)(l) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any licentiate who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a 'maximum of one year the license of any licentiate who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one-year period for the unpaid costs.
"(h) All costs recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the fund of the board recovering the costs to be available upon appropriation by the Legislature.

"(i) Nothing in this section shall preclude a board from including the recovery of the costs of investigation and enforcement of a case in any stipulated settlement."

**FACTUAL SUMMARY**

12. Complainant summarizes the facts and circumstances as follows:

13. Patient M.N. initially presented to Hall Center, Inc on or about March 24, 2007 and March 27, 2007 where Respondent was employed. Hall Center is a wellness facility that "helps their clients rejuvenate to regain and maintain their vitality, energy and well-being. Our approach to health is guided by the principles of Functional Medicine - a revolutionary science-based practice of medicine. Our practitioners identify and alter hormone imbalances, inflammation, adrenal stress, metabolic problems and detoxification problems. As we alter these processes, we actually rejuvenate and increase energy, leaving the body balanced and healthy."

http://www.thehallcenter.com/about/.

14. Respondent worked at Hall Center from November 2005 to June 2009.

15. On March 24, 2007 and March 27, 2007 employees at this facility took M.N.'s health history. Though acupuncture was not specifically recommended, the employee practitioner stated in M.N.'s records that the patient should follow-up with Respondent with for a six (6) week "detox treatment," the practitioner further commented, "patient is toxic" under a chart section captioned "Other Concerns." Patient was further reported to have "toxic exposure" to arsenic and poisonous sprays. She reported several past surgeries including cosmetic eye surgeries, nose surgeries, Lasik eye surgery. The intake form also reported that M.N. suffered from dry eyes.

17. On or about August 17, 2007 M.N. initially treated with Respondent. She complained of lost fat from chest, breast, Reynaud's, hair loss, breathing problems, bladder infection, thin skin, pain in back of tongue, as documented in chart notes written by Respondent.
18. Respondent recommended that laser treatment be applied to her legs, body and eyes in conjunction with her acupuncture treatment. Respondent told M.N. that this laser treatment stimulates the growth of healthy cells and assured her regarding the safety of this procedure. Specifically, Respondent employed an LLLT/Class I laser, manufactured by 2035, Inc. The specific device he used was a wand which he would waive over the patient’s body parts.

19. In M.N.’s chart note dated October 12, 2007 Respondent recorded a message from M.N. to remind Respondent to bring his “Laser” for her appointment on October 13, 2007. In his note Respondent stated, “ok.” In his October 13, 2007 medical chart, Respondent recorded her subjective complaints as “a.a. powder – Irritated stomach and mouth; Biopsy for Sjogrems (negative); fat tissue is disappearing.” He noted her “pulse” as “thin on lt., very weak on rt.” He circled various areas of a tongue diagram on the chart. Under the caption “Protocol” Respondent checked off a box for “Laser” and wrote “breast, eyes, nose, mouth.” Under the caption “Follow-up Schedule” Respondent checked off “other” and wrote “going to see a toxicologist.”

20. Respondent administered laser treatments to M.N.’s legs, body, and eyes. On or about October 17, 2007 M.N. reported inflammation to her internal medicine doctor in your eyes and blurred vision.

21. Respondent saw M.N. on November 19, 2007. He charted, for this date, that M.N. reported left eye “blurriness after (laser treatment) of eyes.” He noted, “(eyes) inflamed immediately after laser” and (M.N.) thinks it is the surface of the eye. Respondent finally noted that “(M.N.) improved over the past month but not 100% resolved.” No other notes or comments were made.

22. In a note dated December 14, 2007 M.N. reported that she had a “partially detached retina.” Further, Respondent reported that M.N. was bothered by bright light and “plans

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1 A laser is a light amplification by stimulated emission of radiation (LASER or laser) and is a mechanism for emitting electromagnetic radiation, typically light or visible light, via the process of stimulated emission. The emitted laser light is (usually) a spatially coherent, narrow low-divergence beam, that can be manipulated with lenses. In laser technology, "coherent light" denotes a light source that produces (emits) light of in-step waves of identical frequency and phase. Conceptual physics, Paul Hewitt, 2002.
to submit the bill to 2035, Inc., the Laser Manufacturer. Respondent wrote “use w/ eyes? Ophthalmologist?” Respondent added, “called my rep [ ] regarding speaking to M.N. or putting her in contact with manufacturer.”

23. Lasers are not a modality listed for use by acupuncturists pursuant to Code section 4937. Moreover, laser therapy is not taught in accredited schools of Chinese medicine.

24. Further, eye treatments are not common modalities for acupuncturists.

25. Respondent did not receive his training on the use of lasers through a Board approved continuing education course and, further, the manufacturer who provided Respondent with his training in the use of lasers is not an approved continuing education provider with the Board.


27. In acupuncture practice the standard of care for a practitioner is a Chinese medical diagnosis in accordance with the five elements, zang-fu, etc. Particularly in a case where a patient such as M.N. has a large number of complaints any treatment plan should include different modalities, acupuncture needling, heat application, moxibustion, herbal supplementation, nutritional counseling, and other treatments. There is no evidence that Respondent had such a treatment plan for M.N.

28. A licensed acupuncturist has both an ethical and legal obligation to protect his patient from unapproved treatment methods by his exercise of judgment. Acupuncturists have the obligation to assess the risks versus benefits of any untested treatment modality and further consult their peers of the same or similar professional interests if they believe that new methods may help their patients as an adjunctive therapy to standards of acupuncture practice: acupuncturists, the Acupuncture Board, medical practitioners among others. Further, there must be a level of mastery and competence a practitioner needs to have in order to perform any new techniques: One class typically does not constitute proficiency. Continued workshop training, certification, and/or working with a mentor are ways to develop a better understanding of the
risks and benefits of the new modalities. Respondent failed to demonstrate such proficiency in his use of laser therapy.

29. In addition, Respondent’s diagnosis does not support the use of laser therapy on patient M.N. His notes lack proper and thorough documentation concerning why laser therapy was necessary.

CAUSES FOR DISCIPLINE

FIRST CAUSE FOR DISCIPLINE
(Unprofessional Conduct)

30. Complainant repeats paragraphs 12 through 29 and incorporates same as if fully included herein.


32. Respondent is subject to discipline accordingly.

SECOND CAUSE FOR DISCIPLINE
(Failure to Register Place of Business with Board)

33. Complainant repeats paragraphs 12 through 29 and incorporates same as if fully included herein. Respondent violated section 4961, subsection (a), when he failed to register his place of business, Hall Center, with the Board.

34. Although Respondent worked at the Hall Center from November 2005 to June 2009 Respondent failed to list Hall Center as his place of practice with the Board.

35. Respondent is subject to discipline accordingly.

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PRAYER

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

1. Revoking or suspending Acupuncture License Number 7904, issued to Timothy Walsh, L.Ac.;

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

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

DATED: DEC 2 1 2010

JANELLE WEDGE
Executive Director
Acupuncture Board of California
Department of Consumer Affairs
State of California
Complainant
DECLARATION OF SERVICE BY MAIL

In the Matter of the First Amended Accusation filed Against:

TIMOTHY WALSH Case No. 1A-2009-35

I, the undersigned, declare that I am over 18 years of age and not a party to the within cause; my business address is 444 N. 3rd Street, Suite 260, Sacramento, CA 95811. I served a true copy of the attached:

FIRST AMENDED ACCUSATION & SUPPLEMENTAL STATEMENT TO RESPONDENT

by certified/regular mail on each of the following, by placing same in an envelope(s) addressed (respectively) as follows:

<table>
<thead>
<tr>
<th>NAME and ADDRESS</th>
<th>CERTIFIED MAIL NO.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Timothy Walsh</td>
<td>7009 3410 0000 0533 1325</td>
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<tr>
<td>605 Edwards Ave.</td>
<td></td>
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<tr>
<td>West Dundee, IL 60118</td>
<td></td>
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<tr>
<td>Abraham Levy, Deputy Attorney General</td>
<td>regular mail</td>
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<tr>
<td>California Department of Justice</td>
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<tr>
<td>Office of the Attorney General/HQE</td>
<td></td>
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<tr>
<td>300 S. Spring St., Ste. 1702</td>
<td></td>
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<tr>
<td>Los Angeles, CA 90013</td>
<td></td>
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<tr>
<td>John C. Mulvava, Esq.</td>
<td>regular mail</td>
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<tr>
<td>Law Offices of John C. Mulvana</td>
<td></td>
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<tr>
<td>8001 Irvine Center Drive, Ste. 735</td>
<td></td>
</tr>
<tr>
<td>Irvine, CA 92618</td>
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</tbody>
</table>

Each said envelope was, on December 21, 2010, sealed and deposited in the U.S. mail box at Sacramento, California, the county in which I am employed, with the postage thereon fully prepaid for attempt at service on Respondent.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on December 21, 2010, at Sacramento, California.

Kristina [Signature]
DECLARANT