

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 RICHARD D. MARINO,
Deputy Attorney General
3 California Department of Justice
300 S. Spring St., 10th Flr.
4 Los Angeles, CA 90013-1204
TEL.: (213) 897 - 2541

5 Attorneys for Complainant
6

7 BEFORE THE
ACUPUNCTURE COMMITTEE
8 MEDICAL BOARD OF CALIFORNIA
9 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA
10

11 In the Matter of the Accusation)	NO. D-4925
12 Against:)	
13 DUONG HUY HA)	ACCUSATION
14 1326 5th St., Ste. A)	
15 Santa Monica, CA 90401)	
16 Acupuncture Certificate)	
17 No. AC-1500)	
18 Respondent.)	

19 Complainant Sherry Mehl alleges that:

20 PARTIES

21 1. Complainant is Sherry Mehl, the Executive Officer
22 of the Acupuncture Committee [hereafter "the Committee"] of the
23 Division of Allied Health Professions of the Medical Board of
24 California [hereafter "the Board"] and brings this accusation
solely in his official capacity.

25 2. On or about August 30, 1983, the Committee issued
26 Acupuncture Certificate No. AC-1500 to DUONG HUY HA (hereafter
27 "respondent"); and, at all times relevant to the charges herein

1 brought, said license was in full force and effect.

2

3

JURISDICTION

4

5

6

3. This accusation is being brought under the authority of the following sections of the California Business and Professions Code (hereafter "the Code"):

7

8

9

A. Section 4937, subdivision (a), of the Code which authorizes duly licensed acupuncturists "[t]o engage in the practice of acupuncture."

10

11

12

B. Section 4937, subdivision (b), of the Code which, in relevant part, authorizes duly licensed acupuncturists:

13

14

15

16

17

"[t]o perform or prescribe the use of oriental massage, acupressure, breathing techniques, exercise, or nutrition, including the incorporation of drugless substances and herbs as dietary supplements to promote health."

18

19

C. Section 4955 of the Code which, in relevant part, provides:

20

21

22

23

24

"The committee may deny, suspend, or revoke, or impose probationary conditions upon, the certificate of any acupuncturist if he or she is guilty of unprofessional conduct which has endangered or is likely to endanger the health, safety, or welfare of the public.

25

26

"Such unprofessional conduct shall include the following:

27

". . . .

1 "(b) Committing a fraudulent or dishonest act
2 as an acupuncturist resulting in substantial injury to
3 another.

4 ". . . .

5 "(g) Gross negligence.

6 "(h) Repeated negligent acts.

7 "(i) Incompetence."

8 D. Section 2052 of the Code which provides:

9 "Any person who practices or attempts to
10 practice, or who advertises or holds himself or herself
11 out as practicing, any system or mode of treating the
12 sick or afflicted in this state, or who diagnoses,
13 treats, operates for, or prescribes for any ailment,
14 blemish, deformity, disease, disfigurement, disorder,
15 injury, or other physical or mental condition of any
16 person, without having at the time of so doing a valid,
17 unrevoked, or unsuspended certificate as provided in this
18 chapter, or without being authorized to perform such act
19 pursuant to a certificate obtained in accordance with
20 some other provision of law, is guilty of a misdemeanor."

21 E. Section 2053 of the Code which provides:

22 "Any person who willfully, under circumstances
23 of conditions which cause or create risk of great bodily
24 harm, serious physical or mental illness, or death,
25 practices or attempts to practice, or advertises or holds
26 himself or herself out as practicing, any system or mode
27 of treating the sick or afflicted in this state, or

1 diagnoses, treats, operates for, or prescribes for any
2 ailment, blemish, deformity, disease, disfigurement,
3 disorder, injury, or other physical or mental condition
4 of any person, without having at the time of so doing a
5 valid, unrevoked and unsuspended certificate as provided
6 in this chapter, or without being authorized to perform
7 that act pursuant to a certificate obtained in accordance
8 with some other provisions of law, is punishable by
9 imprisonment in the county jail for not exceeding one
10 year or in the state prison.

11 "The remedy provided in this section shall not
12 preclude any other remedy provided by law."
13

14 FIRST CAUSE OF ACTION

15 4. Respondent is subject to disciplinary action by the
16 Committee, pursuant to section 4955, severally and in conjunction
17 with sections 2052 and 2053 of the Code, in that respondent
18 willfully and unlawfully administered injections and otherwise
19 engaged in injection therapy without authorization or certification
20 to engage in or practice injection therapy. The facts and
21 circumstances are as follows:

22 A. On or about and between July 28, 1986, and
23 October 8, 1986, Patricia Kalustian, who suffered from
24 allergies and asthma, sought treatment from respondent,
25 a certified acupuncturist. As part of his treatment for
26 Ms. Kalustian's condition, respondent administered
27 injections of vitamin B-12. Ms. Kalustian sought and

1 received treatment from respondent on approximately 25
2 different dates. On each separate date, the treatment
3 administered was rendered at the Santa Monica Acupuncture
4 Medical Center, located at 1536 5th St., Santa Monica,
5 California.

6 B. According to Ms. Kalustian, the liquid
7 which respondent injected into her on each of dates of
8 treatment and which respondent told her was vitamin B-
9 12 was milky pink in color. Liquid vitamin B-12,
10 however, is translucent and dark red in color; liquid
11 cortisone is a suspension liquid and white in color.
12 Liquid vitamin B-12 and cortisone, mixed together, would
13 be milky pink in color.

14 C. After receiving injection therapy from
15 respondent, Ms. Kalustian experienced the following
16 reactions symptomatic of an allergic reaction to
17 cortisone: 1) irregular menstrual cycle; 2) rashes about
18 her forehead; 3) excessive hair growth; and, 4)
19 personality change.

20 D. As a result of the injection therapy
21 administered by respondent, Ms. Kalustian suffered
22 physical and emotional trauma and injury.

24 SECOND CAUSE OF ACTION

25 5. Respondent is subject to disciplinary action by the
26 Committee, pursuant to section 4955, subdivision (b), in that
27 respondent has engaged in unprofessional conduct by committing

1 fraudulent and dishonest acts as an acupuncturist which resulted
2 in substantial injury to another. The facts and circumstances are
3 as follows:

4 A. Complainant refers to, and by this
5 reference, incorporates herein, each and every allegation
6 set forth in paragraph 3, subparagraphs A through D,
7 inclusive, above, as though fully set forth.

8

9

THIRD CAUSE OF ACTION

10 6. Respondent is subject to disciplinary action by the
11 Committee, pursuant to section 4955, subdivisions (g), (h), and
12 (i), in that respondent has engaged in unprofessional conduct by
13 reason of his gross negligence, repeated negligent acts, and
14 incompetence. The facts and circumstances are as follows:

15 A. Complainant refers to, and by this
16 reference, incorporates herein, each and every allegation
17 set forth in paragraph 3, subparagraphs A through D,
18 inclusive, above, as though fully set forth.

19

20

RECOVERY OF COSTS

21 7. Section of 4959 of the Code provides:

22 "(a) The committee may request the
23 administrative law judge under his or her proposed
24 decision in resolution of disciplinary proceeding before
25 the committee, to direct any licensee found guilty of
26 unprofessional conduct to pay to the committee a sum not
27 to exceed actual and reasonable costs of the

1 investigation and prosecution of the case.

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

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

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

21 "(e) All costs recovered under this section
22 shall be considered a reimbursement of costs incurred and
23 shall be deposited in the Acupuncture Fund."
24
25
26
27

1 PRAYER

2 WHEREFORE, complainant requests that a hearing be held
3 on the matters herein alleged and that following said hearing, the
4 Board issue a decision:

5 1. Revoking or suspending Acupuncture Certificate
6 Number AC-1500 heretofore issued to respondent Duong Huy Ha;

7 2. Ordering respondent to pay the costs of investigation
8 and prosecution of this matter in accordance with section 4959 of
9 the Code; and,

10 3. Taking such other and further action as the Board
11 deems necessary and proper.

12
13 DATED: September 3, 1992.

14
15
16 Sherry Mehl
17 SHERRY MEHL
18 EXECUTIVE OFFICER
19 Acupuncture Committee
20 Division of Allied Health Professions
21 Medical Board of California
22 Department of Consumer Affairs
23 State of California

24
25
26 Complainant
27