Complainant alleges:

PARTIES

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

2. On or about February 15, 1977, the Board issued Acupuncture License number AC 329 to Kam Man Lam, L.Ac. ("Respondent"). That license was in full force and effect at all times relevant to the charges brought herein, and will expire on November 30, 2010, unless renewed.

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 unless otherwise indicated.

Accusation
4. 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."

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:

"(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."

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:

"(a) Securing a license by fraud or deceit.

"(b) Committing a fraudulent or dishonest act as an acupuncturist.

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

"(d) Altering or modifying the medical record of any person, with fraudulent
intent, or creating any false medical record.

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

7. 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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Section 125.3 of the Code states, in pertinent part, that the Board may request the
administrative law judge to 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.

FIRST CAUSE FOR DISCIPLINE

(Sexual Misconduct)

Patient S.G. ¹

1. Respondent is subject to disciplinary action under section 726 of the Business and
Professions Code in that he committed acts of sexual misconduct with patient S.G. The
circumstances are as follows:

10. On or about October 2, 2008, S.G., a 54-year-old female, sought acupuncture
treatment from Respondent at his office in Hesperia, for pain to her left groin, left leg, buttocks,
neck and right arm. At the October 2, 2008 visit, Respondent provided acupuncture treatment
using needles, electro-acupuncture stimulation and infrared treatment, followed by massage.
Respondent also gave S.G. herbal medications.

11. S.G. returned to Respondent’s office for a scheduled appointment for acupuncture
treatment on October 6, 2008, at approximately 9:30 a.m. At this visit, S.G. was given a patient
gown, which she put on. She removed her clothing, but kept her bra, panties and socks on.

12. Respondent placed acupuncture needles in S.G.’s back and attached the electro-
acupuncture stimulation. Similar to her initial session, Respondent gave S.G. herbal medicine
and left the room. S.G. then fell asleep.

13. Some time later, Respondent returned to the treatment room, removed the needles
from S.G.’s back and provided massage. Following the massage, Respondent told S.G. that she
could remain in the room for a few minutes if she was tired. Despite the fact that she felt dazed,
S.G. got off the treatment table and attempted to dress.

1 In this Accusation the patient is referred to by initial. The patient’s full name will be disclosed to
Respondent when discovery is provided pursuant to Government Code section 11507.6.
14. While S.G. was dressing, Respondent re-entered the treatment room and embraced her. He grabbed S.G.'s panties and pushed her down on the treatment table. As soon as S.G. lay back on the table, she fell asleep. S.G. floated in and out of consciousness and believes that she was under the influence of a sedative or hypnotic medication.2

15. As S.G. came in and out of consciousness, she heard Respondent repeatedly asking her if she was on her period. S.G. awakened to find Respondent holding her right leg over her head with Respondent's head between her thighs.


17. S.G. slipped back into unconsciousness and awaked to Respondent's shouts of "wake up." As S.G. got up from the examination table she noticed that the table was wet from end to end.

18. S.G. walked over to the chair where she laid her clothing and noticed that her panties were on top of her clothes. S.G. also noted that her bra was unfastened. Respondent returned to the treatment room and yelled at S.G. to get dressed.

19. S.G. dressed and exited the treatment room. Respondent handed S.G. a bag containing herbal medication and instructed her to telephone for her next appointment.

20. S.G. left Respondent's office and shortly thereafter drove to the Apple Valley Police Department to report the assault. The Apple Valley Police Department did not have a female officer on duty to take S.G.'s report, so S.G. left and went home.

21. When S.G. got home, she went to the bathroom and noticed that her panties had blood on them. S.G. then told her husband that she had been sexually assaulted by Respondent. S.G.'s husband called the Hesperia police and reported the sexual assault.

22. Officer Vasquez arrived at S.G.'s home at approximately 3:00 p.m., and obtained a statement from S.G. and her husband. Officer Vasquez also collected the clothing S.G. wore to

2 Drugs that produces a calming effect, easing agitation and promoting sleep.
Respondent’s office. Officer Vasquez obtained S.G.’s consent to a blood draw and a sexual battery kit.

23. S.G. and her husband followed Officer Vasquez to the Hesperia Sheriff’s Station. There, S.G. was interviewed by Detective Ramos. Detective Ramos prepared a photographic lineup which contained Respondent’s DMV photograph. S.G. immediately identified Respondent from the photographic lineup.

24. At 8:20 p.m. Detective Ramos requested a Sexual Assault Response Team nurse to respond to Kaiser Hospital to perform a sexual assault examination and blood draw on S.G.

25. Nurse Matiko performed the sexual assault examination on S.G. Nurse Matiko found multiple abrasions, erythemia and swelling to S.G.’s vagina (vestibule, hymen and vaginal walls).

26. S.G. submitted a blood and urine sample. The results of the urine toxicology screen were positive for vicodin³, hydromorphone⁴, codeine⁵ and morphine⁶.

SECOND CAUSE FOR DISCIPLINE
(Unprofessional Conduct)

27. Respondent is subject to disciplinary action under section 4955, subdivision (d) in that he has committed acts which constitute unprofessional conduct. The circumstances are as follows:

28. Paragraphs 9 through 26 are incorporated here by reference.

THIRD CAUSE FOR DISCIPLINE
(Dishonest and Corrupt Acts)

29. Respondent is subject to disciplinary action under section 4955.1, subdivision (c) in that he has committed acts involving dishonesty and corruption. The circumstances are as follows:

30. Paragraphs 9 through 26 are incorporated here by reference.

³ Vicodin is a narcotic analgesic which contains hydrocodone and acetaminophen.
⁴ Hydromorphone is a narcotic opioid analgesic.
⁵ Codeine is a narcotic opioid analgesic.
⁶ Morphine is a breakdown product of codeine.
FOURTH CAUSE FOR DISCIPLINE

(Gross Negligence)

31. Respondent is subject to disciplinary action under section 4955.2, subdivision (a) in that he has committed acts which constitute extreme departures from the standard of practice. The circumstances are as follows:

32. Paragraphs 9 through 26 are incorporated here by reference.

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 Acupuncture License Number AC 329, issued to Kam Man Lam, L.Ac.

2. Ordering Kam Man Lam to pay the Acupuncture Board the reasonable costs of the investigation and enforcement of this case and, if placed on probation, the costs of probation monitoring, pursuant to Business and Professions Code sections 125.3 and 4959;

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

DATED: AUG 18 2010

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