BEFORE THE ACUPUNCTURE BOARD DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

))

In the Matter of the Accusation Against:

Case No. 1A-2009-57

KAM MAN LAM 320 Yale Ave. Claremont, CA 91711

Acupuncture License No. AC 329

Respondent.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the

Acupuncture Board, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on

APR 0 6 2011

It is so ORDERED

MAR 0 7 2011

Robert Brewer, Chair

Acupuncture Board Department of Consumer Affairs State of California

Acupunture Board RECEIVED FEB 1 1 2011

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1	Edmund G. Brown Jr.	
2	Attorney General of California ROBERT MCKIM BELL	
3	Supervising Deputy Attorney General JUDITH T. ALVARADO	
4	Deputy Attorney General State Bar No. 155307	
5	300 South Spring Street, Suite 1702	
	Los Angeles, California 90013 Telephone: (213) 576-7149	
6	Facsimile: (213) 897-9395 Attorneys for Complainant	
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8		URE BOARD
9	DEPARTMENT OF C STATE OF C	ONSUMER AFFAIRS ALIFORNIA
10		
11	In the Matter of the Accusation Against:	Case No. 1A-2009-57
12	KAM MAN LAM, L.AC.	STIPULATED SETTLEMENT AND
13	320 Yale Ave. Claremont, CA 91711	DISCIPLINARY ORDER
14	Acupuncture License No. AC 329,	
15	Respondent.	
16.		
17	IT IS HEREBY STIPULATED AND AGR	EED by and between the parties to the above-
18	entitled proceedings that the following matters ar	e true:
19	PAR	TIES
20	1. Janelle Wedge (Complainant) is the l	Executive Officer of the Acupuncture Board
21	("Board"). She brought this action solely in her	official capacity and is represented in this matter
22	by Edmund G. Brown Jr., Attorney General of th	e State of California, by Judith T. Alvarado,
23	Deputy Attorney General.	
24	2. Respondent Kam Man Lam, L.Ac., is	s represented in this proceeding by attorney
25	William H. Ginsburg, whose address is 3933 Dix	ie Canyon Avenue, Sherman Oaks, California
26	91423.	
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3. On or about February 15, 1977, the Board issued Acupuncture License number AC 329 to 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

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4. Accusation No. 1A-2009-57 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on August 18, 2010. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 1A-2009-57 is attached hereto as Exhibit "A" and incorporated herein by reference.

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ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the
charges and allegations in Accusation No. 1A-2009-57. Respondent has also carefully read, fully
discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
Order.

6. 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

21 Administrative Procedure Act and other applicable laws.

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

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CULPABILITY

8. Respondent admits that at a hearing, Complainant could set forth a prima facie case
 for the charges and allegations in Accusation No. 1A-2009-57, and Respondent declines to defend
 same. Respondent agrees to be bound by the Board's imposition of discipline as set forth in the
 Disciplinary Order below.

RESERVATION

9. The admissions made in paragraph 8 by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Acupuncture Board or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

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CONTINGENCY

This stipulation shall be subject to approval by the Acupuncture Board. Respondent 10. 7 understands and agrees that counsel for Complainant and the staff of the Acupuncture Board may 8 communicate directly with the Board regarding this stipulation and settlement, without notice to 9 or participation by Respondent or his counsel. By signing the stipulation, Respondent 10 understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation 11 prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation 12 as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or 13 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, 14 and the Board shall not be disqualified from further action by having considered this matter. 15

16 11. The parties understand and agree that facsimile copies of this Stipulated Settlement
and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
effect as the originals.

19 12. In consideration of the foregoing admissions and stipulations, the parties agree that
20 the Board may, without further notice or formal proceeding, issue and enter the following
21 Disciplinary Order:

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DISCIPLINARY ORDER

IT IS HEREBY ORDERED that upon expiration of Acupuncture License No. AC 329
issued to Respondent Kam Man Lam, L.Ac., on November 30, 2010, Respondent agrees that he
does not intend to reapply for an active license as an Acupuncturist. Further, Respondent
permanently waives his right to reapply for an active license as an Acupuncturist, by his signature
hereon. Respondent further agrees that if he ever petitions for renewal or reinstatement of his
Acupuncture License, or reapplies for an active license as an Acupuncturist, without presently

admitting any of the charges or allegations, all of the charges and allegations contained in Accusation No. 1A-2009-57, shall be deemed true, correct and fully admitted by Respondent for purposes of that proceeding or any other licensing proceeding involving Respondent in the State of California.

ACCEPTANCE

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

11 DATED: 12

DATED:

1/12/11

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KAM MAN LAM. L.AC. Respondent

I have read and fully discussed with Respondent KAM MAN LAM, L.Ac. the terms and
conditions and other matters contained in the above stipulated Settlement and Disciplinary Order.
I approve its førm and content.

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STIPULATED SETTLEMENT (1A-2009-57)

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1	ENDORSEMENT
2	The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
3	submitted for consideration by the Acupuncture Board of the Department of Consumer Affairs.
4	Dated: Respectfully Submitted,
5	EDMUND G. BROWN JR. Attorney General of California ROBERT MCKIM BELL
6	ROBERT MCKIM BELL Supervising Deputy Attorney General
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7	Allurito
8	JUDITH T. ALVARADO
9	Deputy Attorney General Attorneys for Complainant
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Exhibit A

Accusation No. 1A-2009-57

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	FILED
1	EDMUND G. BROWN JR. Attorney General of California
2	JUDITH T. ALVARADO AUG 18 2010
3	State Bar No. 155307 300 South Spring Street, Suite 1702 Los Angeles, California, 90013 ACUPUNCTURE BOARD
4	Los Angeles, California 90013 Telephone: (213) 576-7149
. 5	Facsimile: (213) 897-9395 Attorneys for Complainant
6	
7	
8	BEFORE THE ACUPUNCTURE BOARD
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA
10	
11	In the Matter of the Accusation Against: Case No. 1A-2009-57
12	KAM MAN LAM, L.AC.A C C U S A T I O N320 Yale Avenue320 Yale Avenue
13	Claremont, California 91711
14	Acupuncture License No. AC 329,
15	Respondent.
16	
17	
18	Complainant alleges:
19	PARTIES
20	1. Janelle Wedge ("Complainant") brings this Accusation solely in her official capacity
21	as the Executive Officer of the California Acupuncture Board ("Board").
22	2. On or about February 15, 1977, the Board issued Acupuncture License number
23	AC 329 to Kam Man Lam, L.Ac. ("Respondent"). That license was in full force and effect at all
24	times relevant to the charges brought herein, and will expire on November 30, 2010, unless
25	renewed.
26	JURISDICTION
27	3. This Accusation is brought before the Board under the authority of the following
28	laws. All section references are to the Business and Professions Code unless otherwise indicated
	1 Accusation
	II Accusatio

4. Section 726 of the Code states:

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2	"The commission of any act of sexual abuse, misconduct, or relations with a patient, client,
3	or customer constitutes unprofessional conduct and grounds for disciplinary action for any
4	person licensed under this division, under any initiative act referred to in this division and under
5	Chapter 17 (commencing with Section 9000) of Division 3.
6	"This section shall not apply to sexual contact between a physician and surgeon and his or
7	her spouse or person in an equivalent domestic relationship when that physician and surgeon
8	provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person
9	in an equivalent domestic relationship."
10	5. Section 4955 of the Code states:
11	"The board may deny, suspend, or revoke, or impose probationary conditions upon, the
12.	license of any acupuncturist if he or she is guilty of unprofessional conduct.
13	"Unprofessional conduct shall include, but not be limited to, the following:
14	"(a) Using or possessing any controlled substance as defined in Division 10
15	(commencing with Section 11000) of the Health and Safety Code, or dangerous drug
16	or alcoholic beverage to an extent or in a manner dangerous to himself or herself, or
17	to any other person, or to the public, and to an extent that the use impairs his or her
18	ability to engage in the practice of acupuncture with safety to the public.
19	"(b) Conviction of a crime substantially related to the qualifications, functions,
20	or duties of an acupuncturist, the record of conviction being conclusive evidence
21	thereof.
22	"(c) False or misleading advertising.
23	"(d) Aiding or abetting in, or violating or conspiring in, directly or indirectly,
24	the violation of the terms of this chapter or any regulation adopted by the board
25	pursuant to this chapter.
26	"(e) Except for good cause, the knowing failure to protect patients by failing to
27	follow infection control guidelines of the board, thereby risking transmission of
28	blood-borne infectious diseases from licensee to patient, from patient to patient, and
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from patient to licensee. In administering this subdivision, the board shall consider 1 referencing the standards, regulations, and guidelines of the State Department of 2 Health Services developed pursuant to Section 1250.11 of the Health and Safety Code 3 and the standards, regulations, and guidelines pursuant to the California Occupational 4 5 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 6 7 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 8 Dental Board of California, the Board of Registered Nursing, and the Board of 9 Vocational Nursing and Psychiatric Technicians, to encourage appropriate 10 consistency in the implementation of this subdivision. 11 "The board shall seek to ensure that licensees are informed of the responsibility 12 of licensees and others to follow infection control guidelines, and of the most recent 13 14 scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases. 15 "(f) The use of threats or harassment against any patient or licensee for 16 providing evidence in a disciplinary action, other legal action, or in an investigation 17 contemplating a disciplinary action or other legal action. 18 19 "(g) Discharging an employee primarily for attempting to comply with the terms of this chapter. 20 "(h) Disciplinary action taken by any public agency for any act substantially 21 related to the qualifications, functions, or duties of an acupuncturist or any 22 23 professional health care licensee. "(i) Any action or conduct that would have warranted the denial of the 24 acupuncture license. 25 "(j) The violation of any law or local ordinance on an acupuncturist's business 26 premises by an acupuncturist's employee or a person who is working under the 27 acupuncturist's professional license or business permit, that is substantially related to 28 3

Accusation

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.
"(1) 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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1	8. Section 125.3 of the Code states, in pertinent part, that the Board may request the
2	administrative law judge to direct a licentiate found to have committed a violation or violations of
3	the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
4	enforcement of the case.
5	FIRST CAUSE FOR DISCIPLINE
6	(Sexual Misconduct)
7	Patient S.G. ¹
8	9. Respondent is subject to disciplinary action under section 726 of the Business and
9	Professions Code in that he committed acts of sexual misconduct with patient S.G. The
10	circumstances are as follows:
11	10. On or about October 2, 2008, S.G., a 54-year-old female, sought acupuncture
12	treatment from Respondent at his office in Hesperia, for pain to her left groin, left leg, buttocks,
13	neck and right arm. At the October 2, 2008 visit, Respondent provided acupuncture treatment
14	using needles, electro-acupuncture stimulation and infrared treatment, followed by massage.
15	Respondent also gave S.G. herbal medications.
<u>1</u> 6	11. S.G. returned to Respondent's office for a scheduled appointment for acupuncture
17	treatment on October 6, 2008, at approximately 9:30 a.m. At this visit, S.G. was given a patient
18	gown, which she put on. She removed her clothing, but kept her bra, panties and socks on.
19	12. Respondent placed acupuncture needles in S.G.'s back and attached the electro-
20	acupuncture stimulation. Similar to her initial session, Respondent gave S.G. herbal medicine
21	and left the room. S.G. then fell asleep.
22	13. Some time later, Respondent returned to the treatment room, removed the needles
23	from S.G.'s back and provided massage. Following the massage, Respondent told S.G. that she
24	could remain in the room for a few minutes if she was tired. Despite the fact that she felt dazed,
25	S.G. got off the treatment table and attempted to dress.
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27	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.

1 14. While S.G. was dressing, Respondent re-entered the treatment room and embraced
 2 her. He grabbed S.G.'s panties and pushed her down on the treatment table. As soon as S.G. lay
 3 back on the table, she fell asleep. S.G. floated in and out of consciousness and believes that she
 4 was under the influence of a sedative or hypnotic medication².

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

8 16. Respondent licked S.G.'s neck and suckled her breast. Respondent also gave S.G. a
9 sponge bath using wet paper towels.

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

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

16
19. S.G. dressed and exited the treatment room. Respondent handed S.G. a bag
17 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 21. When S.G. got home, she went to the bathroom and noticed that her panties had blood
22 on them. S.G. then told her husband that she had been sexually assaulted by Respondent. S.G.'s
23 husband called the Hesperia police and reported the sexual assault.

24 22. Officer Vasquez arrived at S.G.'s home at approximately 3:00 p.m., and obtained a
25 statement from S.G. and her husband. Officer Vasquez also collected the clothing S.G. wore to
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² Drugs that produces a calming effect, easing agitation and promoting sleep.

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Respondent's office. Officer Vasquez obtained S.G.'s consent to a blood draw and a sexual 1 battery kit. 2 S.G. and her husband followed Officer Vasquez to the Hesperia Sheriff's Station. 23. 3 There, S.G. was interviewed by Detective Ramos. Detective Ramos prepared a photographic 4 lineup which contained Respondent's DMV photograph. S.G. immediately identified Respondent 5 from the photographic lineup. 6 At 8:20 p.m. Detective Ramos requested a Sexual Assault Response Team nurse to 24. 7 respond to Kaiser Hospital to perform a sexual assault examination and blood draw on S.G. 8 Nurse Matiko performed the sexual assault examination on S.G. Nurse Matiko found 25. 9 multiple abrasions, erythemia and swelling to S.G.'s vagina (vestibule, hymen and vaginal walls). 10 26. S.G. submitted a blood and urine sample. The results of the urine toxicology screen 11 were positive for vicodin³, hydromorphone⁴, codeine⁵ and morphone⁶. 12 SECOND CAUSE FOR DISCIPLINE 13 (Unprofessional Conduct) 14 Respondent is subject to disciplinary action under section 4955, subdivision (d) in 27. 15 that he has committed acts which constitute unprofessional conduct. The circumstances are as 16 follows: 17 28. Paragraphs 9 through 26 are incorporated here by reference. 18 THIRD CAUSE FOR DISCIPLINE 19 (Dishonest and Corrupt Acts) 20 Respondent is subject to disciplinary action under section 4955.1, subdivision (c) in 29. 21 that he has committed acts involving dishonesty and corruption. The circumstances are as 22 follows: 23 Paragraphs 9 through 26 are incorporated here by reference. 30. 24 //// 25 26 Vicodin is a narcotic analgesic which contains hydrocodone and acetaminophen. Hydromorphone is a narcotic opioid analgesic. 27 Codeine is a narcotic opioid analgesic. Morphone is a breakdown product of codeine. 28

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Accusation

1	FOURTH CAUSE FOR DISCIPLINE
2	(Gross Negligence)
3	31. Respondent is subject to disciplinary action under section 4955.2, subdivision (a) in
4	that he has committed acts which constitute extreme departures from the standard of practice.
5	The circumstances are as follows:
6	32. Paragraphs 9 through 26 are incorporated here by reference.
7	PRAYER
8	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9	and that following the hearing, the Acupuncture Board issue a decision:
10	1. Revoking or suspending Acupuncture License Number AC 329, issued to Kam Man
11	Lam, L.Ac.
12	2. Ordering Kam Man Lam to pay the Acupuncture Board the reasonable costs of the
13	investigation and enforcement of this case and, if placed on probation, the costs of probation
14	monitoring, pursuant to pursuant to Business and Professions Code sections 125.3 and 4959;
15	3. Taking such other and further action as deemed necessary and proper.
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17	DATED: AUG 18 2010
18	JANELLE WEDGE
19	Acupuncture Board Department of Consumer Affairs
20	State of California Complainant
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