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ACUPUNCTURE BOARD

8
9 **BEFORE THE**
ACUPUNCTURE BOARD
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11
12 In the Matter of the Accusation Against:

Case No. 1A-2006-60

13 **JOSEPH MULVENNA, L.Ac.**
1202 Loma Drive #67
14 Ojai, CA 93023

ACCUSATION

15 License No. AC 9573

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Janelle Wedge (Complainant) brings this Accusation solely in her official capacity as
21 the Executive Officer of the Acupuncture Board, Department of Consumer Affairs.

22 2. On or about August 10, 2004, the Acupuncture Board issued License Number AC
23 9573 to Joseph Mulvenna, L.Ac. (Respondent). Respondent's license is currently on inactive
24 status,¹ and will expire March 31, 2011.

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27 ¹ Licensees on inactive status cannot practice. Licensees on inactive status are required to
28 pay the full renewal fee but are exempt from complying with continuing education requirements.

1 **JURISDICTION**

2 3. This Accusation is brought before the Acupuncture Board, Department of Consumer
3 Affairs (Board), under the authority of the following laws. All section references are to the
4 Business and Professions Code (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 Board in
7 exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the
8 public is inconsistent with other interests sought to be promoted, the protection of the public shall
9 be paramount."

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 " . . .

15 (d) Aiding or abetting in, or violating or conspiring in, directly or indirectly, the
16 violation of the terms of this chapter or any regulation adopted by the board pursuant
17 to this chapter.

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

20 " . . . "

21 6. Section 4955.1 of the Code states:

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

25 " . . .

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

28 " . . .

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

3 7. Section 4959 of the Code states:

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

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

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

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

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

24 8. Section 4927, subdivision (d), of the Code states:

25 “‘Acupuncture’ means the stimulation of a certain point or points on or near the
26 surface of the body by the insertion of needles to prevent or modify the perception of pain
27 or to normalize physiological functions, including pain control, treatment of certain
28 diseases or dysfunctions of the body and includes the techniques of electroacupuncture,

1 cupping, and moxibustion."²

2 9. Section 4935 of the Code states:

3 "(a)(1) It is a misdemeanor, punishable by a fine of not less than one hundred
4 dollars (\$100) and not more than two thousand five hundred dollars (\$2,500), or by
5 imprisonment in a county jail not exceeding one year, or by both that fine and
6 imprisonment, for any person who does not hold a current and valid license to
7 practice acupuncture under this chapter or to hold himself or herself out as practicing
8 or engaging in the practice of acupuncture.

9 "(2) It is a misdemeanor, punishable by a fine of not less than one hundred
10 dollars (\$100) and not more than two thousand five hundred dollars (\$2,500), or by
11 imprisonment in a county jail not exceeding one year, or by both that fine and
12 imprisonment, for any person to fraudulently buy, sell, or obtain a license to practice
13 acupuncture, or to violate the provisions of this chapter.

14 "(b) Notwithstanding any other provision of law, any person, other than a
15 physician and surgeon, a dentist, or a podiatrist, who is not licensed under this article
16 but is licensed under Division 2 (commencing with Section 500), who practices
17 acupuncture involving the application of a needle to the human body, performs any
18 acupuncture technique or method involving the application of a needle to the human
19 body, or directs, manages, or supervises another person in performing acupuncture
20 involving the application of a needle to the human body is guilty of a misdemeanor.

21 "(c) A person holds himself or herself out as engaging in the practice of
22 acupuncture by the use of any title or description of services incorporating the words
23 "acupuncture," "acupuncturist," "certified acupuncturist," "licensed acupuncturist,"
24 "oriental medicine," or any combination of those words, phrases, or abbreviations of
25 those words or phrases, or by representing that he or she is trained, experienced, or an
26 expert in the field of acupuncture, oriental medicine, or Chinese medicine.

27 ² Moxibustion is defined in Eastern medicine as the practice of burning a cone or cylinder
28 of downy or woolly material derived from various plants on the skin for its counterirritant effect.

1 ..."

2 10. Section 4937 of the Code states:

3 AAn acupuncturist=s license authorizes the holder thereof:

4 A(a) To engage in the practice of acupuncture.

5 A(b) To perform or prescribe the use of oriental massage, acupressure,
6 breathing techniques, exercises, or nutrition, including the incorporation of drugless
7 substances and herbs as dietary supplements to promote health. Nothing in this
8 section prohibits any person who does not possess an acupuncturist=s license or
9 another license as a healing arts practitioner from performing, or prescribing the use
10 of, oriental massage, breathing techniques, exercises, or nutrition, to promote health,
11 so long as those activities are not performed or prescribed in connection with the
12 practice of acupuncture.@

13 11. Section 4955.2 of the Code states:

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

16 "(a) Gross negligence.

17 "(b) Repeated negligent acts.

18 "(c) Incompetence."

19 12. Section 2052, subdivision (a), of the Code states:

20 "Notwithstanding Section 146, any person who practices or attempts to
21 practice, or who advertises or holds himself or herself out as practicing, any system or
22 mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates
23 for, or prescribes for any ailment, blemish, deformity, disease, disfigurement,
24 disorder, injury, or other physical or mental condition of any person, without having
25 at the time of so doing a valid, unrevoked, or unsuspended certificate as provided in
26 this chapter or without being authorized to perform the act pursuant to a certificate
27 obtained in accordance with some other provision of law is guilty of a public offense,
28 punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment

1 in the state prison, by imprisonment in a county jail not exceeding one year, or by
2 both the fine and either imprisonment.”

3 13. California Code of Regulations, title 19, section 1399.453, states:

4 "An acupuncturist shall keep complete and accurate records on each patient who is
5 given acupuncture treatment, including but not limited to, treatments given and progress
6 made as a result of the acupuncture treatments."

7 14. Section 118, subdivision (b), of the Code states that:

8 "The suspension, expiration, or forfeiture by operation of law of a license issued by a
9 board in the department, or its suspension, forfeiture, or cancellation by order of the board
10 or by order of a court of law, or its surrender without the written consent of the board, shall
11 not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive
12 the board of its authority to institute or continue a disciplinary proceeding against the
13 licensee upon any ground provided by law or to enter an order suspending or revoking the
14 license or otherwise taking disciplinary action against the licensee on any such ground."

15 15. Section 726 of the Code states:

16 "The commission of any act of sexual abuse, misconduct, or relations with a patient,
17 client, or customer constitutes unprofessional conduct and grounds for disciplinary action
18 for any person licensed under this division, under any initiative act referred to in this
19 division and under Chapter 17 (commencing with Section 9000) of Division 3.

20 "This section shall not apply to sexual contact between a physician and surgeon and
21 his or her spouse or person in an equivalent domestic relationship when that physician and
22 surgeon provides medical treatment, other than psychotherapeutic treatment, to his or her
23 spouse or person in an equivalent domestic relationship."

24 **FIRST CAUSE FOR DISCIPLINE**

25 (Sexual Misconduct)

26 16. Respondent is subject to disciplinary action under section 726 of the Code in that he
27 committed acts of sexual abuse and/or misconduct while treating patient CP. The circumstances
28 are as follows:

1 17. In 1994, patient CP and her husband, NV, met Respondent. Sometime in 1994
2 Respondent began to perform what he described as “bodyworks’ treatments” on patient CP to
3 relieve stress. Patient CP told Respondent she was interested in being treated with bodywork to
4 relieve stress as a result of a trauma she had endured as a minor. Patient CP explained that while
5 a minor she was the victim of sexual abuse by a priest. Respondent said undergoing “bodyworks
6 treatments” would be beneficial in releasing both physical and psychological stress and trauma.
7 Respondent’s “bodyworks treatments” consisted of acupressure and massage, and were
8 performed out of Respondent’s 2211 Oak Street, Santa Monica, California residence. Respondent
9 told patient CP that he was not a licensed acupuncturist.

10 18. Over the next several years patient CP and her husband saw Respondent at social
11 gatherings, and learned they had mutual friends. During this time Respondent revealed that his
12 former wife had threatened to report him to the “Acupuncture Board” for unlicensed acupuncture
13 practice. Respondent told patient CP that as a result of the threats to report him to the Board he
14 began to attend an acupuncture school to obtain his license in 2003. When Respondent entered
15 acupuncture school he began to perform acupuncture treatments on Patient CP. When
16 Respondent obtained his acupuncture license in 2004 he continued to perform acupuncture
17 treatments on patient CP out of his residence.

18 19. In July 2004, patient CP and her husband NV decided to undergo In Vitro
19 Fertilization³ (IVF) to conceive a child. Prior to beginning the IVF treatment Patient CP went to
20 Respondent at his residence for both acupuncture and bodywork treatments to prepare her body
21 for the IVF treatments. The first IVF treatment was unsuccessful. Patient CP continued to go to
22 Respondent at his residence for regular acupuncture treatments.

23 20. In January 2005, patient CP and her husband NV decided again that they wished to
24 conceive a child. They decided to undergo another round of IVF. Again, prior to beginning this
25

26 ³ In vitro fertilization is a procedure in which eggs (ova) from a woman's ovary are
27 removed. They are fertilized with sperm in a laboratory procedure, and then the fertilized egg
28 (embryo) is returned to the woman's uterus.

1 IVF treatment Patient CP went to Respondent at his residence for both acupuncture and
2 bodywork treatments to prepare her body for the IVF treatments. The second IVF treatment was
3 unsuccessful.

4 21. In July 2005, patient CP and her husband NV decided to try again to conceive a child.
5 To do this they decided to undergo yet another round of IVF. Once more, prior to beginning this
6 IVF treatment Patient CP again went to Respondent at his Santa Monica, California, residence for
7 both acupuncture and bodywork treatments to prepare her body for the IVF treatments. However,
8 when patient CP presented to Respondent for the acupuncture and bodywork treatments
9 Respondent suggested an additional treatment he called "moxy treatment" (moxibustion) to assist
10 her prior to undergoing IVF. Patient CP did not know what the moxibustion consisted of and
11 asked Respondent for an explanation.

12 22. Respondent explained that patient CP had a "damp uterus" and these treatments
13 would warm the uterus which might help her to conceive. Patient CP agreed to undergo several
14 of the moxibustion treatments. The treatments consisted of patient CP lying completely nude on
15 the treatment table under a sheet. Respondent approached her with several burning "moxy
16 sticks," spread her legs open, placed the burning sticks near her genital area, and then blew the
17 smoke toward her vagina.

18 23. Patient CP felt extremely uncomfortable throughout the treatment. However, she
19 trusted Respondent and believed he was performing the moxibustion treatments to help her
20 conceive. Thus, patient CP allowed Respondent to perform these moxibustion treatments in
21 addition to the acupuncture treatments prior to undergoing the IVF treatment.

22 24. Both patient CP and her husband NV were desperate to conceive a child, and trusted
23 that Respondent's treatments would contribute to the eventual success of the IVF treatments.
24 However, by January 2006, patient CP had undergone five unsuccessful IVF treatments. After
25 the last IVF treatment patient CP was suffering severe ovarian pain. Patient CP decided to return
26 to Respondent for acupuncture treatments to reduce the ovarian pain and reduce the trauma her
27 body had endured as a result of the IVF treatments.

28 25. On or about May 24, 2006, patient CP went to Respondent's Santa Monica,

1 California, residence for another acupuncture treatment. Patient CP completely undressed and lay
2 down on the treatment table covered by a sheet as she had for the prior treatments. Patient CP
3 explained to Respondent she was experiencing pain in her ovaries and her bladder area as a result
4 of the IVF treatments. Respondent performed acupressure on the areas where she told him she
5 was experiencing pain. Respondent then said he was "going to check for infections," but he did
6 not explain how he was going to do so.

7 26. Patient watched as Respondent put on rubber gloves and approached her as she lay on
8 the treatment table. Respondent then opened patient CP's legs and inserted his hand into her
9 vagina.

10 27. Patient CP was completely shocked by Respondent's behavior and simply froze.
11 Patient CP did not know what to do. Respondent eventually removed his hand from her vagina.

12 28. After Respondent withdrew his hand from patient CP's vagina he performed
13 acupuncture on the patient. Patient CP was still in a state of shock. When Respondent completed
14 the acupuncture treatment patient CP immediately dressed and left Respondent's treatment room
15 and went to her vehicle. Patient CP began to cry hysterically, and called her husband, NV, and
16 told him what happened during the acupuncture session.

17 29. Patient CP ultimately stopped crying, and was able to compose herself enough to
18 drive home. When she arrived home that day she contacted two other acupuncturists to ask each
19 of them if an acupuncturist was legally permitted to perform a vaginal examination. Patient CP
20 was told a vaginal examination was not part of an appropriate acupuncture treatment session, and
21 was urged to report Respondent's conduct to the police. Patient CP also contacted an employee at
22 the American Acupuncture Council⁴ to explain what Respondent did during the acupuncture
23 treatment session which occurred that day. Patient CP was encouraged to report Respondent's
24 actions to the Board as being outside of the permissible scope of his license.

25 30. Due to her outrage at Respondent's actions during the May 24, 2006, examination,
26

27 ⁴ The American Acupuncture Council is the largest and oldest provider of acupuncture
28 insurance in the country. The company has three decades of experience defending acupuncturists
from wrongful malpractice claims.

1 patient CP then telephoned Respondent from her residence while NV listened to the conversation
2 on their phone extension. During that phone conversation patient CP expressed her indignation
3 about what happened during the May 24, 2006, treatment session to Respondent, and told him he
4 had no right to perform a vaginal exam on her.

5 31. Respondent first responded to patient CP's anger by repeatedly justifying his actions
6 as a normal part of an exam. Respondent then apologized, and said he wanted to make it up to
7 patient CP. Patient CP then terminated the phone call.

8 32. Respondent phoned patient CP at her home the following day. Respondent
9 repeatedly claimed he had done nothing wrong, nor was he trying to hurt her. Respondent also
10 said he was surprised patient CP was questioning his actions especially because he was only
11 trying to help her during all of the years he had treated her.

12 33. Patient CP decided not to go to the police to report what occurred. Patient CP
13 believed that, based on what occurred when she was a minor and she reported her abuse by a
14 priest, that she would once again have to relive Respondent's abuse through a criminal
15 investigation and subsequent trial.

16 34. On or about May 26, 2006, patient CP reported Respondent's conduct during the May
17 24, 2006, treatment session to the Board.

18 35. On or about July 11, 2006, Division of Investigation (DOI) Investigator Cristina
19 Vasquez (Vasquez) was assigned to investigate patient CP's complaint to the Board about
20 Respondent. On or about September 20, 2007, Vasquez requested patient CP's acupuncture
21 records from Respondent at his address of record, per the Board's records, of 2211 Oak Street,
22 Santa Monica, California. Respondent did not reply to this request, nor to Vasquez's second
23 request for records, which was sent to the Oak Street address in Santa Monica, California, and
24 returned as undeliverable.

25 36. On or about November 14, 2007, Vasquez requested Respondent's current address of
26 record from the Board. According to Board records Respondent's address was still 2211 Oak
27 Street, Santa Monica, California. On or about November 27, 2007, Vazquez contacted
28 Respondent by phone, and asked him to provide a current address so she could mail him a request

1 for patient records. Respondent provided the address of 2211 Oak Street, Santa Monica,
2 California. When told this address was returning mail Respondent refused to provide a current
3 address. Respondent stated he was no longer in California. He provided Vasquez with a mailing
4 address in Los Angeles, California. Respondent stated he had stopped practicing acupuncture
5 approximately one month prior to this call (i.e., on or about October 27, 2007).

6 37. Respondent told Vasquez that when he had been in practice, he was in a private
7 acupuncture practice located at 1513 6th Street, Santa Monica, California. Respondent stated he
8 had a Santa Monica, California business license to practice acupuncture at the 6th Street address.
9 Respondent denied ever practicing out of his residence at the Oak Street address. At no time
10 during this discussion did Vasquez provide any details with regard to the complaint she was
11 investigating.

12 38. On or about November 27, 2007, Vasquez mailed Respondent another request for
13 patient CP's records to the address Respondent provided. On or about December 13, 2007,
14 Vasquez phoned Respondent to follow up on the third request for records she had sent.
15 Respondent now stated that as of August 31, 2007, he closed his acupuncture practice,
16 subsequently destroyed all of his treatment records, and was no longer living in the country.
17 Vasquez attempted to obtain additional information from Respondent about where he was now
18 residing, but Respondent was very reluctant to cooperate, accusing Vasquez of being too
19 aggressive and asking him too many questions. He refused to answer any further questions.
20 Vasquez requested that Respondent provide a written statement with regard to the destruction of
21 patient CP's records, and Respondent agreed to do so. Other than providing Respondent with
22 patient CP's full name Vasquez provided no further details with regard to the complaint she was
23 investigating.

24 39. On or about January 8, 2008, Vasquez received a written letter from Respondent
25 containing another document entitled "Statement" with regard to patient CP's record and
26 treatment provided to Patient CP. One of the documents was signed by "Joseph Mulvenna" and
27 the typewritten portion stated Respondent could not find the requested records
28

1 and SOAP⁵ notes. In summary, the document entitled "Statement" acknowledged meeting patient
2 CP in 1996, and providing her with bodywork treatment, and providing her with treatment while
3 she was attempting to conceive.

4 40. Respondent also said, inter alia, that patient CP had no concept of boundaries. As
5 evidence of this assessment, Respondent cited an alleged request from patient CP and her
6 husband for Respondent to donate his sperm via personal intercourse with patient CP.
7 Respondent also stated that patient CP married her husband to obtain a "green" card.

8 41. On or about January 8, 2008, Vasquez spoke to patient CP about some of the
9 statements made by Respondent in the correspondence he provided to Vasquez. Patient CP
10 unconditionally denied all of Respondent's statements, stating they were complete lies. Patient
11 CP told Vasquez she believed Respondent made the false statements to remove the focus from
12 Respondent's own wrongdoing.

13 42. On or about January 23, 2008, Vasquez contacted the City of Santa Monica to
14 determine if Respondent ever had a business license to practice acupuncture out of his home at
15 2211 Oak Street, Santa Monica, California. Investigation revealed that the city had no record of
16 Respondent having an acupuncture business at his home address.

17 43. On or about May 24, 2006, Respondent engaged in an act of sexual abuse and/or
18 misconduct when he put on rubber gloves, approached patient CP as she lay on the treatment
19 table, spread patient CP's legs and inserted his gloved hand into the vagina of patient CP.

20 **SECOND CAUSE FOR DISCIPLINE**

21 (Gross Negligence)

22 44. Respondent committed acts of gross negligence under section 4955.2 of the Code.
23 Respondent's care and treatment of patient CP represents an extreme departure from the standard
24 of care in each of the following respects:

25 45. The facts and allegations set forth in paragraphs 17 through 42 above are incorporated
26 here as if fully set forth.

27 ⁵ SOAP is an acronym for a standardized note format for entries made in clinical records.
28 The letters S-O-A-P stand for Subjective, Objective, Assessment and Plan.

1 the Code in that he engaged in the practice medicine as defined in section 2052, subdivision (a),
2 of the Code without having at the time of so doing a valid medical certificate. The circumstances
3 are as follows:

4 54. The facts and allegations set forth in paragraph 26 above are incorporated here as if
5 fully set forth.

6 **FIFTH CAUSE FOR DISCIPLINE**

7 (Failure to Maintain Adequate and Accurate Records)

8 55. Respondent is subject to disciplinary action under section 4955.1 (e) of the Code in
9 that he failed to maintain adequate and accurate records of the acupuncture services he provided
10 to patient CP. The circumstances are as follows:

11 56. The facts and allegations set forth in paragraphs 17 through 42 above are incorporated
12 here as if fully set forth.

13 PRAYER

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

16 1. Revoking or suspending License Number AC 9573, issued to Respondent Joseph
17 Mulvenna, L.Ac.

18 2. Ordering Respondent Joseph Mulvenna, L.Ac., to pay the Acupuncture Board the
19 actual and reasonable costs of the investigation and prosecution of the case pursuant to Business
20 and Professions Code section 4959;

21 3. Ordering Respondent Joseph Mulvenna, L.Ac., if placed on probation, to pay the
22 Acupuncture Board the costs of probation monitoring; and

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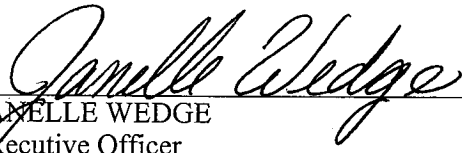
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4. Taking such other and further action as deemed necessary and proper.

DATED: SEP 01 2010


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

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