

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

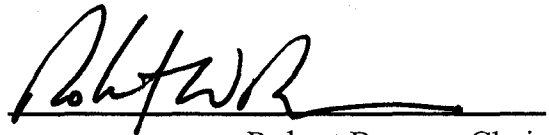
In the Matter of the Accusation Against:)	Case No. 1A-2009-27
)	OAH No. 2009050674
MIRA HERMAN)	
312 Grandview Road)	
Sebastopol, CA 95472)	
)	
Acupuncture License No. AC-7381)	
)	
Respondent.)	
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DECISION AND ORDER

The attached Default Decision and Order is hereby adopted by the California Acupuncture Board, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on JAN 14 2010.

IT IS SO ORDERED DEC 15 2009.



Robert Brewer, Chair
Acupuncture Board
Department of Consumer Affairs
State of California

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

In the Matter of the Accusation Against:

MIRA HERMAN
312 Grandview Road
Sebastopol, California 95472

Acupuncture License No. AC 7381

Respondent.

Case No. 1A-2009-27
OAH No. 2009050674
DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about April 21, 2009, Complainant Janelle Wedge, solely in her official capacity as the Executive Officer of the Acupuncture Board, filed Accusation No. 1A-2009-27 against Mira Herman (Respondent) before the Acupuncture Board.
2. On or about August 9, 2000, the Acupuncture Board issued Acupuncture License Number AC 7381 to Mira Herman (Respondent). The Acupuncture license was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2010, unless renewed.
3. On or about April 23, 2009, Rowena Manalastas, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. 1A-2009-27, Statement to Respondent, Request for Discovery, Notice of Defense, and Government code

1 Sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which
2 was and is:

3 312 Grandview Road
4 Sebastopol, California 95472.

5 4. Service of the Accusation was effective as a matter of law under the provisions of
6 Government Code section 11505, subdivision (c).

7 5. On or about April 27, 2009, Respondent by and through her counsel, Robert Hahn,
8 filed a Notice of Defense, requesting a hearing in this matter. Respondent's counsel was
9 identified as:

10 Robert Hahn (SBN 189901)
11 Gould & Hahn
12 5801 Christie Ave #385
13 Emeryville, CA 94608

14 6. First Amended Accusation No. 1A-2009-27 was filed by the Board on October 1,
15 2009. A copy of the First Amended Accusation is attached as exhibit A, and is incorporated
16 herein by reference.

17 7. On or about October 14, 2009, Joan Randolph, an employee of the Department of
18 Justice, served by Certified and First Class Mail a copy of the First Amended Accusation No.
19 2008-638, on Respondent's Counsel of Record at:

20 Robert Hahn (SBN 189901)
21 Gould & Hahn
22 5801 Christie Ave #385
23 Emeryville, CA 94608

24 8. On or about October 30, 2009, Joan Randolph, an employee of the Department of
25 Justice, served by Certified and First Class Mail a copy of a Second Amended Notice of Hearing,
26 on Respondent's Counsel of Record at:

27 Robert Hahn (SBN 189901)
28 Gould & Hahn
5801 Christie Ave #385
Emeryville, CA 94608

1 The Second Amended Notice of Hearing informed Respondent that an administrative
2 hearing in this matter was scheduled for November 30, 2009.

3 9. On or about November 19, 2009, Respondent withdrew her Notice of Defense and
4 stated she will not be appearing at the hearing scheduled for November 30, 2009. The Notice of
5 Withdrawal of Notice of Defense was signed by both Respondent and her counsel Robert Hahn.
6 A copy of The Notice of Withdrawal of Notice of Defense is attached as Exhibit B and
7 incorporated by reference herein.

8 10. Government Code section 11506 states, in pertinent part:

9 (c) The respondent shall be entitled to a hearing on the merits if the respondent
10 files a notice of defense, and the notice shall be deemed a specific denial of all parts
11 of the accusation not expressly admitted. Failure to file a notice of defense shall
12 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
13 may nevertheless grant a hearing.

14 11. California Government Code section 11520 states, in pertinent part:

15 (a) If the respondent either fails to file a notice of defense or to appear at the
16 hearing, the agency may take action based upon the respondent's express admissions
17 or upon other evidence and affidavits may be used as evidence without any notice to
18 respondent.

19 12. Pursuant to its authority under Government Code section 11520, the Board finds
20 Respondent is in default. The Board will take action without further hearing and, based on the
21 evidence on file herein, finds that the allegations in First Amended Accusation No. 1A-2009-27
22 are true.

23 13. The total cost for investigation and enforcement in connection with the Accusation
24 are \$8,799.25 as of November 16, 2009.

25 DETERMINATION OF ISSUES

26 1. Based on the foregoing findings of fact, Respondent Mira Herman has subjected her
27 Acupuncture License No. AC 7381 to discipline.

28 2. A copy of the First Amended Accusation is attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Acupuncture Board is authorized to revoke Respondent's Acupuncture License
based upon the following violations alleged in the Accusation:

1 a. Respondent is subject to disciplinary action under sections 490 and 4955(b) of the
2 Code in that Respondent was convicted of a crime that is substantially related to the duties,
3 functions, or qualifications of an Acupuncturist.

4 b. Respondent is subject to disciplinary action under section 4955(a) of the code in that,
5 respondent possessed a controlled substance.

6 c. Respondent is subject to disciplinary action under sections 4955(i) and 480 of the
7 Code in that Respondent was involved in conduct that would be cause for denying an
8 Acupuncture license.

9 d. Respondent is subject to disciplinary action under sections 490 and 4955(b) of the
10 Code in that Respondent was again convicted of crimes that are substantially related to the duties,
11 functions, or qualifications of an Acupuncturist.

12 e. Respondent is subject to disciplinary action under section 4955(a) of the code in that
13 respondent again possessed a controlled substance.

14 e. Respondent is subject to disciplinary action under sections 4955(i) and 480 of the
15 Code in that Respondent was involved again in conduct that would be cause for denying an
16 Acupuncture license.

17 ORDER

18 IT IS SO ORDERED that Acupuncture License No. AC 7381, heretofore issued to
19 Respondent Mira Herman, is revoked.

20 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
21 written motion requesting that the Decision be vacated and stating the grounds relied on within
22 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
23 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

24 This Decision shall become effective on JAN 14 2009.

25 It is so ORDERED DEC 15 2009

26 Attachments:

27 Exhibit A: First Amended Accusation No. 1A-2009-27

28 Exhibit B: Withdrawal of Notice of Defense