

FILED

FEB 5 2009

ACUPUNCTURE BOARD

1 EDMUND G. BROWN JR.,
Attorney General of the State of California
2 THOMAS S. LAZAR
Supervising Deputy Attorney General
3 MATTHEW M. DAVIS State Bar No. 202766
Deputy Attorney General
4 110 West "A" Street, Suite 1100
San Diego, CA 92101

5 P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2074
7 Facsimile: (619) 645-2061

8 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 1A-2008-13

13 CHARLES FRANCIS MAYBERRY, L.Ac.
228 South Cedros Ave., Suites D
14 Solana Beach, CA 92075

ACCUSATION

15 Acupuncturist License No. AC-3641

16 Respondent.
17

18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about August 18, 1989, the Acupuncture Board (Board) issued
23 Acupuncturist License Number AC-3641 to Charles Francis Mayberry, L.Ac (Respondent). The
24 Acupuncturist License was in full force and effect at all times relevant to the charges brought
25 herein and will expire on April 30, 2010, unless renewed.

26 ///

27 ///

1 ///

2 **JURISDICTION**

3 3. This Accusation is brought before the Board, under the authority of the
4 following laws. All section references are to the Business and Professions Code (Code) unless
5 otherwise indicated.

6 4. Section 4955 of the Code states:

7 “The board may deny, suspend, or revoke, or impose probationary
8 conditions upon, the license of any acupuncturist if he or she is guilty of
9 unprofessional conduct.

10 “Unprofessional conduct shall include, but not be limited to, the
11 following:

12 “... .

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

16 “(e) Except for good cause, the knowing failure to protect patients by failing to
17 follow infection control guidelines of the board, thereby risking transmission of blood-
18 borne infectious diseases from licensee to patient, from patient to patient, and from
19 patient to licensee.

20 “...”.

21 5. Section 4955.2 of the Code states:

22 “The board may deny, suspend, revoke, or impose probationary conditions
23 upon the license of any acupuncturist if he or she is guilty of committing any of
24 the following:

25 “(a) Gross negligence.

26 “(b) Repeated negligent acts.

27 “(c) Incompetence.”

28 ///

1 ///

2 ///

3 6. California Code of Regulations, title 16, section 1399.451, states:

4 "... .

5 "(c) Acupuncture points, where needles are to be inserted, shall be cleaned with
6 an appropriate antiseptic before insertion of the needle.

7 "... .

8 "(e) Any complication, including but not limited to, hematoma, peritonitis
9 or pneumothorax arising out of acupuncture treatment shall be referred
10 immediately to a physician or dentist or podiatrist, if appropriate, if immediate
11 medical treatment is required.

12 "...".

13 **RECOVERY OF COSTS**

14 7. Section 4959 of the Code states:

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

20 "(b) The costs to be assessed shall be fixed by the administrative law
21 judge and shall not in any event be increased by the board. When the board does
22 not adopt a proposed decision and remands the case to an administrative law
23 judge, the administrative law judge shall not increase the amount of any costs
24 assessed in the proposed decision.

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

1 any licensee directed to pay costs.

2 ///

3 “(d) In any judicial action for the recovery of costs, proof of the board’s
4 decision shall be conclusive proof of the validity of the order of payment and the
5 terms for payment.

6 “(e) All costs recovered under this section shall be considered a
7 reimbursement for costs incurred and shall be deposited in the Acupuncture Fund.

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Gross Negligence)**

10 8. Respondent is subject to disciplinary action under section 4955.2,
11 subdivision (a) of the Code, in that he has committed acts of gross negligence in the practice of
12 acupuncture. The circumstances are as follows:

13 **Patient T.D..**

14 (a) Beginning on or about November 18, 2007, Respondent provided
15 acupuncture treatment to patient T.D. Respondent continued to provide
16 acupuncture treatment to patient T.D. until December 1, 2007.

17 (b) On or about December 1, 2007, patient T.D. sought acupuncture
18 treatment from respondent for chronic right shoulder pain.

19 (c) On or about December 1, 2007, respondent treated patient T.D. for
20 shoulder pain. Respondent inserted an acupuncture needle into an area anterior
21 and just below patient T.D.’s right shoulder. The needle was inserted through a
22 sweatshirt and a tee shirt. The area of insertion was not cleaned prior to insertion.

23 (d) Shortly after insertion of the needle Patient T.D. began to cry and reported
24 pain to respondent.

25 (e) On or about December 1, 2007, Patient T.D. discovered bruising and
26 swelling at the insertion point below her right shoulder. Patient T.D. called
27 respondent and reported her injury and level of pain.

28 (f) On or about December 2, 2007, respondent called patient T.D. and told

1 her that bruising sometimes happens and it should clear up in about one week.

2 ///

3 (g) Patient T.D. suffered with pain for about two weeks and sought treatment
4 from Kaiser for her injuries.

5 (h) Patient T.D.'s bruise dissipated after about four (4) weeks. During this
6 time respondent never followed up with patient T.D. despite receiving a letter
7 describing patient T.D.'s ongoing pain and bruising.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Incompetence)**

10 9. Respondent is further subject to disciplinary action under section 4955.2,
11 subdivision (c) of the Code, and section 1399.451, subdivision (c) of Title 16 of the California
12 Code of Regulations, in that he has demonstrated incompetence by failing to clean the area of
13 needle insertion with an appropriate antiseptic before insertion of the needle treatment. The
14 circumstances are as follows:

15 10. Paragraphs 8(a), 8(b), 8(c), 8(d), 8(e), 8(f), 8(g) and 8(h), above, are
16 hereby incorporated by reference and realleged as if fully set forth herein.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Incompetence)**

19 11. Respondent is further subject to disciplinary action under section 4955.2,
20 subdivision (c) of the Code, and section 1399.451, subdivision (e) of Title 16 of the California
21 Code of Regulations, in that he has demonstrated incompetence by failing to immediately refer
22 patient T.D. to a physician when complications arose during the provision of acupuncture
23 treatment. The circumstances are as follows:

24 12. Paragraphs 8(a), 8(b), 8(c), 8(d), 8(e), 8(f), 8(g) and 8(h), above, are
25 hereby incorporated by reference and realleged as if fully set forth herein.

26 ///

27 ///

28 ///

1 ///

2 ///

3

4

FOURTH CAUSE FOR DISCIPLINE

5

(Violation of Acupuncture Licensure Act or Regulation)

6

7

8

9

13. Respondent is further subject to disciplinary action under section 4955, as defined by section 4955, subdivision (d), of the Code, in that he has violated the terms of the Acupuncture Licensure Act, or a regulation adopted by the Board pursuant to the Acupuncture Licensure Act. The circumstances are as follows:

10

11

14. Paragraphs 8(a), 8(b), 8(c), 8(d), 8(e), 8(f), 8(g) and 8(h), above, are hereby incorporated by reference and realleged as if fully set forth herein.

12

FIFTH CAUSE FOR DISCIPLINE

13

(Unprofessional Conduct)

14

15

16

17

18

15. Respondent is further subject to disciplinary action under section 4955 of the Code, in that he has engaged in unprofessional conduct by breaching the rules or ethical code of conduct of the profession of acupuncture, or by engaging in conduct unbecoming to an acupuncturist in good standing in the profession and which demonstrates an unfitness to practice acupuncture.¹ The circumstances are as follows:

19

20

16. Paragraphs 8(a), 8(b), 8(c), 8(d), 8(e), 8(f), 8(g) and 8(h), above, are hereby incorporated by reference and realleged as if fully set forth herein.

21

///

22

///

23

///

24

///

25

///

26

///

27

28

1. See *Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.

1 ///

2 ///

3 ///

4

5

PRAYER

6

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

7

8

1. Revoking or suspending Acupuncturist License Number AC- 3641, issued to Charles Francis Mayberry, L.Ac.;

9

10

2. Ordering Charles Francis Mayberry, L.Ac to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 4959; and

11

12

13

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

14

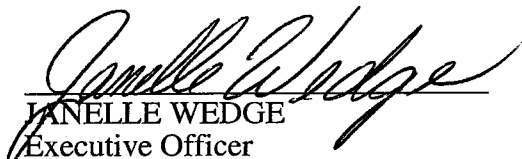
15

DATED: FEB 5 2009

16

17

18


JANELLE WEDGE
Executive Officer
Acupuncture Board
State of California
Complainant

19

20

21

22

23

SD2008802965

24

25

26

27

28