

FILED

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ACUPUNCTURE BOARD

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

11 In the Matter of the Accusation Against:

Case No. 1A-2009-156

12 **TUNG WEI PAN, L.AC.**

13 **145 AA Duarte Rd. #508**
Arcadia, CA 91006
 14 **Acupuncturist's License No. AC 12012**

ACCUSATION

15 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about October 18, 2007, the Acupuncture Board issued Acupuncturist's License
 22 Number AC 12012 to Tung Wei Pan, L.Ac. (Respondent). Unless renewed, this license will
 23 expire on May 31, 2011. In the criminal action against respondent, however, on October 15,
 24 2009, as a condition of any release on bail or on his own recognizance, respondent was ordered
 25 not to practice acupuncture pursuant to the Acupuncture Board's recommendation under Penal
 26 Code section 23, and after his conviction, the sentencing order prohibits him from practicing
 27 traditional Chinese medicine.

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JURISDICTION

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

5 4. Section 4955 of the Code states, in pertinent part:

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

8 "Unprofessional conduct shall include, but not be limited to, the following:

9 "

10 (b) Conviction of a crime substantially related to the qualifications, functions,
11 or duties of an acupuncturist, the record of conviction being conclusive evidence
12 thereof.

13 "

13 ."

14 5. Section 4956 of the Code states:

15 "A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a
16 charge which is substantially related to the qualifications, functions, or duties of an acupuncturist
17 is deemed to be a conviction within the meaning of this chapter.

18 "The board may order a license suspended or revoked, or may deny a license, or may
19 impose probationary conditions upon a license, when the time for appeal has elapsed, or the
20 judgment of conviction has been affirmed on appeal, or when an order granting probation is made
21 suspending the imposition of sentence irrespective of a subsequent order under the provisions of
22 Section 1203.4 of the Penal Code allowing the person to withdraw his or her pleas of guilty and to
23 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation,
24 complaint, information, or indictment."

25 6. Section 4959 of the Code states:

26 "(a) The board may request the administrative law judge, under his or her
27 proposed decision in resolution of a disciplinary proceeding before the board, to
28 direct any licensee found guilty of unprofessional conduct to pay to the board a sum

1 not to exceed actual and reasonable costs of the investigation and prosecution of the
2 case.

3 "(b) The costs to be assessed shall be fixed by the administrative law judge and
4 shall not in any event be increased by the board. When the board does not adopt a
5 proposed decision and remands the case to an administrative law judge, the
6 administrative law judge shall not increase the amount of any costs assessed in the
7 proposed decision.

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

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

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

18 7. Section 726 of the Code states, in pertinent part:

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

23 **FIRST CAUSE FOR DISCIPLINE**

24 (Conviction of Crime)

25 8. Respondent is subject to disciplinary action under section 4955(b) of the Code in that
26 on or about March 2, 2010, he was convicted of using a concealed camcorder without consent to
27 secretly record patients in his office dressing room in a state of full or partial undress and of
28

1 possessing matter depicting a person under the age of 18 years engaging in or simulating sexual
2 conduct. The circumstances are as follows:

3 9. On or about November 18, 2008, Patient P-1,¹ on the recommendation of her sister,
4 consulted respondent at an office at 10040 Bubb Road in Cupertino, California for acupuncture
5 treatments for hyperhidrosis. After a check of P-1's meridians, respondent diagnosed an
6 imbalance in her system and escorted P-1 to his treatment room. Respondent told P-1 to undress
7 and lie in a heating bed, either nude or covered by a paper gown. As P-1 began to undress, she
8 noticed that on a bookshelf across from the tanning bed, there was a camcorder, set to record,
9 concealed by books on either side. P-1 obscured the lens of the camcorder with a tissue and
10 proceeded to undress and the treatment proceeded. After checking with persons who had also
11 been treated by respondent and ascertaining that they had not been asked to undress to utilize the
12 heating bed, P-1 reported the incident to the Santa Clara County Sheriff's Office on or about
13 November 20, 2008.

14 10. After investigation, P-1's identification of respondent by photo line-up and a
15 description of respondent's office set-up, and surveillance, on or about January 8, 2009, the
16 Sheriff's Office executed a search warrant at what had been ascertained as respondent's residence
17 in Cupertino. Among the items seized were several laptop computers, two camcorders, several
18 hard drives, memory cards, numerous CD/DVD's, and numerous mini-videotapes. On the same
19 day, a search warrant was executed at respondent's office at 10040 Bubb Road in Cupertino, and
20 the office appeared to be no longer used for business and no items responsive to the search
21 warrant were discovered.

22 11. From March through July 2009, sheriff's detectives did viewings of the evidence
23 collected pursuant to the search warrant executed at respondent's residence and at the outset,
24 found some pictures of a pornographic nature.

25 12. On or about July 21, 2009, a sheriff's deputy viewed some video images on an
26 external hard drive seized at respondent's residence. On this drive, the deputy found 72 video

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28 ¹ Patients' names are not used in order to protect patient privacy.

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2 files depicting 15 to 20 female patients undressing. None of the patients were identified by
3 name. One of the females filmed was a young teenaged girl. Subsequently, the minor patient
4 was identified as a then 15 year old high school student, P-2. P-2 was located and interviewed by
5 the Sheriff's Office. She identified respondent's photo and confirmed that she was treated by him
6 for back pain due to scoliosis and was diagnosed as having low energy levels and had been
7 directed to undress and use the heating bed at approximately four (4) different appointments.

8 13. On or about August 26, 2009, a Felony Complaint was filed in Santa Clara County
9 Superior Court charging respondent with violations of Penal Code sections 311.11(a) (Possession
10 or Control of Matter Depicting a Person Under the Age of 18 Engaging in or Simulating Sexual
11 Conduct), 311.4(c) (Employing, Persuading or Inducing a Minor's Involvement in Modeling,
12 Posing, or Performing Sexual Conduct), and 647(j)(3) (Using Concealed Camcorder, Motion
13 Picture Camera, or Photographic Camera without Consent with the Intent to Invade the Privacy of
14 Another Person), and an arrest warrant was issued. On or about September 9, 2009, respondent
15 was arrested for these violations at Los Angeles International Airport, where he was returning
16 from an August trip to Taiwan; he had indicated prior to his trip that he was not planning to return
17 to the United States. Respondent was taken into custody, booked, and placed on immigration
18 hold in Santa Clara County Jail with bail set at \$200,000.00.

19 14. On or about October 16, 2009, the Santa Clara County Superior Court, in Case No.
20 CC953455, *People of the State of California v. Tung Wei Pan, L.Ac.*, granted the Acupuncture
21 Board's recommendation under Penal Code section 23 that respondent be prohibited from
22 practicing acupuncture as a condition of any release on bail or on his own recognizance.

23 15. On or about January 7, 2010, respondent, with the Court's consent, respondent
24 knowingly waived his right to trial by jury and his right against self-incrimination and agreed to
25 that the Court would render a verdict in the case through its consideration of evidence consisting
26 of a DVD of the videotapes in question and the police report in the matter. Count 1 of the
27 Complaint (violation of Penal Code section 311.4(c)) was dismissed, Count 2 of the Complaint

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1 (Violation of Penal Code section 311.11(a)) was reduced to a misdemeanor, and bail was reduced
2 to \$25,000.00, with the Penal Code section 23 order noted.

3 16. On or about March 2, 2010, the Court convicted respondent of misdemeanor
4 violations of Penal Code section 311.11(a) and section 647(j)(3). Respondent was sentenced to
5 271 days in jail with credit for time served, two (2) years formal probation, and a \$450.00 fine.

6 Terms and conditions of probation include:

- 7 a. Do not work, be self-employed or volunteer in organization that involves
8 children under 18 years of age.
- 9 b. Do not reside in a home with children under 18 years of age, except natural
10 children.
- 11 c. Computer subject to forensic analysis search.
- 12 d. Do not practice traditional Chinese medicine.
- 13 e. Submit DNA sample.
- 14 f. Engage in educational training, psychiatric evaluation/treatment.

15 By reason of his conviction under Penal Code section 311.11, respondent is required to register as
16 a sex offender under Penal Code section 290 (Sex Offender Registration Act).

17 17. Therefore, respondent's license is subject to discipline based on his conviction of
18 violations of Penal Code sections 311.11(a) and 647(j)(3), which crimes are substantially related
19 to the qualifications, functions, or duties of an acupuncturist.

20 **SECOND CAUSE FOR DISCIPLINE**

21 (Sexual Misconduct)

22 18. The allegations of the First Cause for Discipline are incorporated herein by reference
23 as if fully set forth.

24 19. Respondent's conduct, as described above, constitutes the commission of acts of
25 sexual abuse or misconduct, and therefore is unprofessional conduct and grounds for disciplinary
26 action under section 726 of the Code.

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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 Acupuncturist's License Number AC 12012, issued to Tung Wei Pan, L.Ac.
2. Ordering Tung Wei Pan, L.Ac. to pay the Acupuncture Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 4959 and, if placed on probation, the costs of probation monitoring;
3. Taking such other and further action as deemed necessary and proper.

DATED: **APR 06 2010**



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

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