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BEFORE THE
OREGON MEDICAL BOARD
STATE OF OREGON

In the Matter of)
MARILYN MILLS WALKEY, MD, LAc)
LICENSE NO. MD18470 & AC01190) COMPLAINT & NOTICE OF
PROPOSED DISCIPLINARY ACTION)

1.

The Oregon Medical Board (Board) is the state agency responsible for licensing, regulating and disciplining certain health care providers, including physicians and acupuncturists, in the State of Oregon. Marilyn Mills Walkey, MD, LAc (Licensee) holds a license to practice medicine and a license to practice acupuncture in the State of Oregon.

2.

The Board proposes to take disciplinary action by imposing up to the maximum range of potential sanctions pursuant to ORS 677.205(2), which may include the revocation of license, a \$10,000 civil penalty per violation, and assessment of costs, against Licensee for violations of the Medical Practice Act, to wit: ORS 677.190(1)(a) unprofessional or dishonorable conduct, as defined in ORS 677.188(4)(a) any conduct or practice contrary to recognized standards of ethics of the profession or any conduct or practice which does or might constitute a danger to the health or safety of a patient or the public; ORS 677.190(4) obtaining any fee by fraud or misrepresentation, as defined in 677.188(1) the intentional misrepresentation or misstatement of a material fact, concealment of or failure to make known any material fact, or any other means by which misinformation or a false impression knowingly is given, and ORS 677.188(2) a claim submitted to any patient, insurance or indemnity association, company or individual for the purpose of gaining compensation, which the person making the claim knows to be false; ORS 677.190(13) gross or repeated acts of negligence; and ORS 677.190(20) making a fraudulent claim.

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3.1 The Oregon Association of Acupuncture and Oriental Medicine (OAAOM) has published a Code of Ethics, which applies to acupuncturists practicing in Oregon. Rule 1.6

“Fees,” states:

(a) Before entering into a practitioner-patient relationship with a new patient, the practitioner shall explain fully to the patient, preferably in writing, the fees expected for service, and any payment policies, including when payment is expected, interest, if any, that will be charged for delayed payment and credit card possibilities. If the practitioner expects payment from the patient without waiting for the insurer (or government program) to pay, the patient should be so advised before any treatment begins. If the practitioner’s fees change during the course of treatment, the practitioner or his or her office staff shall advise the patient of that fact before rendering service under the new fee schedule.

(b) The practitioner shall bill patients or their insurers or government payers only for services actually rendered. Where an insurer or government payer requires that a code number or name identify a service, the practitioner shall furnish that information.

3.3 The National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) has published a document entitled “Grounds for Professional Discipline” in which item 7 reads, “Obtaining or attempting to obtain compensation or reimbursement through fraud.”

3.4 Oregon Administrative Rule 847-070-0030(2), (3) and (5) provide that the Board may revoke the authority of an acupuncturist to engage in the practice of acupuncture if the Board finds that the acupuncturist has performed any act in violation of any applicable law or rules regulating the practice of acupuncture or that the acupuncturist had engaged in conduct constituting gross negligence in the practice of acupuncture, or has violated any of the provisions of ORS 677.190.

3.5 The American Medical Association has published a Code of Medical Ethics, which are widely recognized as a standard of ethics that applies to the medical profession. AMA Code of Medical Ethics Opinion 11.3.1 states:

Physicians are expected to conduct themselves as honest, responsible professionals. They should be knowledgeable about and conform to relevant laws and should adhere to professional ethical standards and sound business practice. Physicians should not recommend, provide, or charge for unnecessary medical services. Nor should they make intentional misrepresentations to increase the level of payment they receive or to secure noncovered health benefits for their patients.

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1 With regard to fees for medical services, physicians should:

2 (a) Charge reasonable fees based on the:

- 3 1. Kind of service(s)
- 4 2. Difficulty or uniqueness of the service(s) performed
- 5 3. Time required to perform the service(s)
- 6 4. Skill required to perform the service(s)
- 7 5. Experience of the physician
- 8 6. Quality of the physician's performance

9 (b) Charge only for the service(s) that are personally rendered or for services performed
10 under the physician's direct personal observation, direction, or supervision. If possible,
11 when services are provided by more than one physician, each physician should submit his
12 or her own bill to the patient and be compensated separately. When physicians have
13 professional colleagues assist in the performance of a service, the physician may pay a
14 reasonable amount for such assistance and recoup that amount through fees charged to
15 the patient, provided the patient is notified in advance of the financial arrangement.

16 4.

17 Licensee practices medicine and acupuncture in a solo practice (Flying Crane

18 Acupuncture & Oriental Medicine) in Portland, Oregon. The acts and conduct alleged to violate
19 the Medical Practice Act follow:

20 4.1 A Board review of Licensee's billing practices reveals that Licensee has engaged
21 in a pattern of billing patients (and their insurers) for CPT 99214¹ and CPT 99215² (level 4 and
22 5) comprehensive visits for medical procedures that are not substantiated by medical records. A
23 review of Licensee's records for Patients A – K reveals a pattern of practice in which Licensee
24 used minimal documentation for patient visits that reflected the delivery of acupuncture and/or
25 medical services, which were billed using unrelated diagnosis codes. The Board's review of
26 chart notes as well as billing records reveals the same pattern exists with all patients. Licensee
27 billed most patient visits for CPT 99215 and occasionally used CPT 99214. Licensee's medical

28 ¹ CPT (Current Procedural Terminology) defines a 99214 or level-IV established patient visit as one involving a
detailed history, detailed examination and medical decision making of moderate complexity. CPT also states that
only two of the three key components are required for the selection of the level of service.

² Billing code 99215 represents the highest level of care for established patients being seen in the office. "Complex
Medical Decision Making involves two of the three below: • Extensive management options for diagnosis or
treatment • Extensive amount of data to be review • High Risk of complications and/or morbidity or mortality.
Extensive amounts of data should include, but is not limited to: • Lab results • Diagnostic and imaging results •
Other practitioner's notes/charts (i.e. PT, OT, Consultants) • Labs or diagnostics needing to be performed. High Risk
of complications and or morbidity or mortality should include, but is not limited to: • Comorbidities associated with
the presenting problem • Risk(s) of diagnostic procedure(s) performed • Risk(s) associated with possible

1 records are very minimal with no substantiation provided to support the acupuncture or medical
2 billing. Licensee's chart notes do not reflect a billing for either CPT 99215 or CPT 99214.
3 Specific concerns in regard to patient related issues follow in the paragraphs below.

4 4.2 Patient A, a 53-year-old adult female, was under the care of Licensee for
5 treatment of sciatica, fatty liver and chronic Lyme Disease. Licensee treated the patient with
6 acupuncture and herbal supplements. A review of Licensee's records indicate that Licensee
7 billed for procedures that did not occur. Licensee has explained that she did this as a way to
8 "help" Patient A meet her deductible with her insurance company (Providence Health Plan),
9 which in turn would allow Licensee to receive compensation from the insurance company
10 without the patient having to pay anything out of pocket. In her response, Licensee admitted to
11 this practice as an "act of protest" against the insurance industry. Licensee knowingly billed the
12 Providence Health Plan for fraudulent visits in an attempt to gain reimbursement. Although
13 Licensee only saw Patient A for three visits, Licensee billed Providence for eight additional
14 visits that did not occur. Licensee asserts that fraudulent visits were billed to Providence in an
15 attempt to satisfy deductible amounts so that Licensee could begin being paid without the patient
16 incurring out of pocket expenses. Licensee met with Patient A and provided clinical services on
17 June 13, 2017, June 27, 2017, and July 11, 2017. Licensee submitted additional claims to
18 Providence for payment for visits that did not really occur between May 23, 2017, and July 22,
19 2017.³ Patient A had not been charged for these visits by Licensee. Patient A asked Licensee
20 how much the cost of her three visits had been so she could satisfy the charge billed to
21 Providence. Licensee advised her that the cost of the first visit was \$295 and \$95 for each
22 subsequent visit, which Patient A paid to Providence. Licensee had been requested by
23 Providence to supply the corresponding medical record for billed visits during a routine audit,

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26 management options." See AMA CPT Code Fact Sheet, Revised 2019. A patient visit billed as a 99215 entitles a
provider to the greatest amount of reimbursement for an office visit.

27 ³ Dates billed for which bills were submitted: May 23, 2017; May 30, 2017; June 7, 2017; June 14, 2017; June 14,
2017; June 21, 2017; July 5, 2017; and July 22, 2017.

1 however Licensee stated she was not obligated to comply as she was not under contract and
2 refused to provide records to substantiate her billings.

3 4.3 Patient B, a 44-year-old female, was under the care of Licensee for the treatment
4 of emotional and various physical ailments. Licensee treated her with functional medicine and
5 herbal supplements. Licensee did not specify what her physical ailments were. Providence
6 indicated that records had been requested for the billed patient visits on July 21, 2018, August 4,
7 2018, and August 11, 2018. According to Providence records, Licensee had billed these visits
8 with the billing codes CPT 99214 and CPT 99215 with a diagnosis of Herpes, post viral fatigue,
9 vascular headache, and chronic fatigue. Licensee refused to cooperate with the audit and did not
10 provide the requested medical records to Providence. Licensee provided a statement to the
11 Board that a billing error occurred and that the visit on August 4, 2018, was wrong and that the
12 visit actually occurred on July 31, 2018. Medical records received by the Board from Licensee
13 are very limited and indicate an acupuncture treatment with no references to support the billed
14 diagnosis.

15 4.4 Patient C, a 48-year-old male, was treated by Licensee with herbal supplements
16 and anti-microbial herbs to “modify his disturbed microbiome.” Patient C reportedly suffered
17 from persistent purulent drainage from an opening near his anus. This was later corrected with
18 surgery by another practitioner. Licensee continued to see the patient post-operatively to deal
19 with marital issues. Providence had requested records for billed treatment dates of July 31, 2018,
20 August 6, 2018, August 14, 2018, and August 28, 2018. Providence records reflect that Licensee
21 had billed these visits with billing codes CPT 99214 and CPT 99215 with a diagnosis of Herpes,
22 post viral fatigue, vascular headache, and chronic fatigue. Licensee refused to cooperate with the
23 audit and did not provide the medical records as requested. Licensee indicated in her response to
24 the Board that there was a billing error and that the visit on August 6, 2018, was incorrect and
25 that the visit actually occurred on August 5, 2018. Licensee’s submitted records are again very
26 brief and reflect acupuncture therapy with no statements to support the billed diagnosis.

27 4.5 Patient D, a 41-year-old female, was under Licensee’s care for the treatment of
28 emotional and physical issues stemming from personal relationship issues with boyfriends and

1 parents. Again, Licensee does not indicate what these “issues” were. Providence had requested
2 records for treatment dates July 28, 2018, and August 18, 2018. These visits had been billed as
3 CPT 99214 and CPT 99215 with diagnoses of Herpes, adrenal gland disorder, vascular headache,
4 post viral fatigue, and gastro-esophageal reflux with esophagitis. Licensee refused to cooperate
5 with the audit and did not provide the medical records to Providence. Medical records provided
6 to the Board, however, offered no statements regarding treatment. Her records are again very
7 brief and indicate “Body Talk” to release old emotional issues, but no statements to support the
8 billed diagnosis.

9 4.6 Patient E, a 22-year-old female, was under Licensee’s care for more than seven
10 years. Patient E was born with Dyspraxia, which left her unable to understand conversations.
11 Licensee states that her treatment of Patient E is on the “emotional plane” dealing with past
12 mistreatment she has endured living as a disabled person. Licensee does not provide any sort of
13 specific patient complaints or ailments aside from emotional support. Billing records indicate
14 that Licensee has billed Providence repeatedly with CPT 99214 and CPT 99215 codes for the
15 treatment of mesenteric lymphadenitis, chronic pansinusitis, Polycystic Ovarian Syndrome,
16 vascular headache, and post viral fatigue. The medical records do not reflect treatment for any of
17 these conditions. Medical records had also been requested by Providence during their audit,
18 however, Licensee refused to cooperate and did not provide the records as requested.

19 4.7 Patient F, a 56-year-old female, was under Licensee’s care for more than seven
20 years. Licensee states that she treated Patient F’s emotional issues related to dealing with her
21 daughter’s struggle with societal abuses. She provides no other specific diagnosis. Billing
22 records indicate that Licensee has billed Providence with codes CPT 99214 and CPT 99215 for
23 the treatment of adrenal gland disorder, vascular headache, post viral fatigue, Herpes, and
24 chronic fatigue. Medical records provided to the Board do not reflect treatment for any of these
25 conditions. Medical records had also been requested by Providence during their audit, however,
26 Licensee refused to cooperate and did not provide the records as requested.

27 4.8 Patient G, a 57-year-old female, was under Licensee’s care due to exposure to
28 indoor mold at her workplace. Billing records indicate that Licensee billed Providence with code

1 CPT 99214 for the treatment of Herpes, chronic fatigue, vascular headache, and post viral
2 fatigue. Licensee's chart notes for this patient do not reflect care for any of these diagnoses.
3 Medical records had also been requested by Providence during their audit, however, Licensee
4 refused to cooperate and did not provide the records as requested.

5 4.9 Patient H, a 33-year-old female, was under Licensee's care for chronic fatigue,
6 "brain fog" and recurrent "yearly infections" that were unresolved by Bactrim and Augmentin.
7 Billing records show that Licensee billed Providence with CPT code 99214 for the diagnoses of
8 chronic fatigue, Herpes, post viral fatigue, and vascular headache. Licensee's chart notes for this
9 patient do not reflect care for any of these diagnoses. Medical records had also been requested
10 by Providence during their audit, however, Licensee refused to cooperate and did not provide the
11 records as requested.

12 4.10 Patient I, a 39-year-old female, was under Licensee's care for the treatment of
13 Hashimoto's thyroiditis. Licensee treated what she termed as the patient's gut microbiome with
14 herbal supplements for "dysbiosis." Billing records indicate Licensee billed Providence with
15 CPT code 99214 for the treatment of chronic fatigue, post viral fatigue, and Herpes. The
16 medical record submitted by Licensee did not reflect treatment for these conditions as billed.
17 Medical records had also been requested by Providence during their audit, however, Licensee
18 refused to cooperate and did not provide the records as requested.

19 4.11 Patient J, a 50-year-old female, was under Licensee's care for help with her
20 marriage. Licensee states that Patient J ultimately divorced her spouse. Licensee states that a
21 previous naturopath had diagnosed Patient J as having chronic Lyme Disease and Hashimoto's
22 Thyroiditis. Billing records indicate Licensee billed Providence for CPT 99214 and CPT 99215
23 for treatment of post viral fatigue, vascular headache, Other Neurological Disorders in Lyme
24 Disease, and Auto-immune Thyroiditis. Licensee's medical records for this patient do not reflect
25 treatment for these disorders. Medical records had also been requested by Providence during
26 their audit, however, Licensee refused to cooperate and did not provide the records as requested.

27 4.12 Patient K, a 60-year-old female, presented to Licensee for an initial visit, but the
28 patient never completed any of the testing after receiving information for a functional medicine

1 work-up. Billing records indicate that Licensee billed Providence for CPT 99204⁴ for the
2 treatment of chronic fatigue, Herpes, vascular headache, and post viral fatigue. The only record
3 submitted by Licensee to the Board for review was a new patient intake form that did not support
4 the diagnosis. Medical records had also been requested by Providence during their audit;
5 however, Licensee refused to cooperate and did not provide the records as requested.

6 5.

7 The Board alleges that the acts and conduct of Licensee described above constitute
8 violations of the following statutes and rules of the Board, that are more fully explained below:

9 5.1 For each individual Patient, A – K, Licensee’s conduct described in paragraph 4
10 violated ORS 677.190(1)(a) unprofessional or dishonorable conduct, as defined in
11 ORS 677.188(4)(a) any conduct or practice contrary to recognized standards of ethics of the
12 profession or any conduct or practice which does or might constitute a danger to the health or
13 safety of a patient or the public. Licensee engaged in conduct that violates recognized standards
14 of ethics, specifically the ethics codes published by the AMA Code of Medical Ethics,
15 specifically Opinion 11.3.1, by routinely upcoding her patient visits to 99215, 99214, and on one
16 occasion 99204, when her chart notes did not support these billings, and in regard to Patient A,
17 willfully charging Patient A’s insurer for services that she did not personally render to the
18 patient. Licensee also violated OAAOM 1.6 (b) by failing to bill patients or their insurers or
19 government payers only for services actually rendered and failing to provide an accurate billing
20 code for those services which were rendered. Licensee’s conduct is also contrary to the
21 standards established by the NCCAOM, specifically item number 7. In addition, Licensee’s
22 pattern of upcoding and billing for patient visits that did not actually occur places an undue
23 financial burden on the health care system, and constitutes conduct unbecoming a person
24 licensed to practice medicine or acupuncture.

25 5.2 For each individual Patient, A – K, Licensee’s conduct described in paragraph 4
26 violated ORS 677.190(4) obtaining any fee by fraud or misrepresentation, as defined in

27 _____
28 ⁴ CPT 99204 is defined by the AMA as: Office or other outpatient visit for the evaluation and management of a new patient, which requires these three components: A comprehensive history; A comprehensive examination; Medical decision making of moderate complexity.

1 677.188(1) the intentional misrepresentation or misstatement of a material fact, concealment of
2 or failure to make known any material fact, or any other means by which misinformation or a
3 false impression knowingly is given, and ORS 677.188(2) a claim submitted to any patient,
4 insurance or indemnity association, company or individual for the purpose of gaining
5 compensation, which the person making the claim knows to be false, in that Licensee's pattern of
6 conduct of upcoding and/or billing for services that she did not render to Patients A – K.

7 5.3 For each individual Patient, and each individual occurrence of fraudulent coding,
8 (Patient A, seven occurrences; Patient B, three occurrences; Patient C, four occurrences; Patient
9 D, two 2 occurrences; Patient E, two occurrences; Patient F, two occurrences; Patient G, one
10 occurrence; Patient H, one occurrence; Patient I, two occurrences; Patient J, two occurrences;
11 Patient K, one occurrence), Licensee's conduct as described in paragraph 4 violated ORS
12 677.190(13) repeated acts of gross negligence, by upcoding all the patient encounters reviewed
13 by the Board, billing for falsified patient encounters, and failing to create chart notes that other
14 care providers could rely upon to discern patient history, presenting complaints, examination
15 findings, diagnosis and treatment. In reviewing chart notes as well as billing records for Patients
16 A – K, the same pattern exists with all patients. Licensee's billing codes reflected complex
17 medical decision making, yet Licensee's medical records are very minimal with no
18 substantiation provided for medical billing. It is noted that while Licensee previously responded
19 that it would be impossible to summarize the varying complaints of each patient visit, the
20 diagnosis codes for billing are mostly the same in each patient and are not reflective of the
21 documented visit.

22 6.

23 Licensee is entitled to a hearing as provided by the Administrative Procedures Act (chapter
24 183), Oregon Revised Statutes. Licensee may be represented by counsel at the hearing. If
25 Licensee desires a hearing, the Board must receive Licensee's written request for hearing within
26 twenty-one (21) days of the mailing of this Notice to Licensee. Upon receipt of a request for a
27 hearing, the Board will notify Licensee of the time and place of the hearing.

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7.

7.1 If Licensee requests a hearing, Licensee will be given information on the procedures, right of representation, and other rights of parties relating to the conduct of the hearing as required under ORS 183.413(2) before commencement of the hearing.

7.2 In the event of a hearing, the Board proposes to assess against Licensee the Board's costs of this disciplinary process and action, including but not limited to all legal costs from the Oregon Department of Justice, all hearing costs from the Office of Administrative Hearings, all costs associated with any expert or witness, all costs related to security and transcriptionist services for the hearing and administrative costs specific to this proceeding in an amount not to exceed \$75,000, pursuant to ORS 677.205(2)(f).

8.

NOTICE TO ACTIVE DUTY SERVICEMEMBERS: Active Duty Servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll-free telephone number.

9.

Failure by Licensee to timely request a hearing or failure to appear at any hearing scheduled by the Board will constitute waiver of the right to a contested case hearing and will result in a default order by the Board, including the assessment of such penalty and costs as the Board deems appropriate under ORS 677.205. If a default order is issued, the record of

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1 proceeding to date, including Licensee's file with the Board and any information on the subject
2 of the contested case automatically becomes a part of the contested case record for the purpose of
3 proving a prima facie case per ORS 183.417(4).
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5 DATED this 6 day of August, 2020.

6 OREGON MEDICAL BOARD
7 State of Oregon

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9 _____
10 NICOLE KRISHNASWAMI, JD
11 EXECUTIVE DIRECTOR
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