

IN THE MATTER OF

QU HUI ZHU, L.Ac.

Respondent,

License Number: U0051

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BEFORE THE

MARYLAND STATE

ACUPUNCTURE BOARD

Case No.: 2009-001

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CONSENT ORDER

On January 30, 2009, the Maryland State Acupuncture Board (the "Board") charged **QU HUI ZHU, L.Ac.** (the "Respondent"), License number U0051, under the Maryland Acupuncture Act (the "Act"), Md. Health Occ. Code Ann. ("H.O.") §§ 1A-101 *et seq.* (2005 Repl. Vol.). The pertinent provision of the Act and those under which the Charges were based, are as follows:

Health Occ. § 1A-309. Reprimands, probations, suspensions, and revocations – Grounds.

Subject to the hearing provisions of §1A-310 of this subtitle, the Board, on the affirmative vote of a majority of its full authorized membership, may deny a license to practice acupuncture to any applicant, reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:

- (3) Is guilty of immoral or unprofessional conduct in the practice of acupuncture;
- (6) Knowingly violates any provision of this title or any rule or regulation of the Board adopted under this title, to wit:

COMAR 10.26.03.03C A licensee shall: (5) At all times respect the patient's dignity, autonomy and privacy;

COMAR 10.26.03.03D A licensee may not: (2) Knowingly engage in or condone behavior which is fraudulent, dishonest, or deceitful, or involves moral turpitude;

COMAR 10.26.03.04A A licensee shall: (4) Maintain a written record of treatment of the patient under the licensee's care for at least 5 years after the termination of treatment;

COMAR 10.26.03.05B The licensee may not: (2) Engage in a sexually intimate act with a patient;

- (17) Engages in a course of conduct that is inconsistent with generally accepted professional standards in the practice of acupuncture.

FINDINGS OF FACT

Background

1. At all times relevant, the Respondent was and is licensed to practice acupuncture in the State of Maryland, being issued License Number U0051 by the Board.

2. At all times relevant, the Respondent was and is practicing acupuncture at Magic Health Plus Acupuncture and Acupressure ("Magic Health"), 701 Russell Avenue, Lakeforest Mall, Gaithersburg, Maryland 20877.

3. On or about July 8, 2008, the Board received a complaint from Patient A¹, an individual who received treatment at Magic Health. In her complaint, Patient A indicated that she had never before been treated by the Respondent, but that she had received acupuncture once before and acupressure many times before from other practitioners.

4. On June 14, 2008, Patient A visited Magic Health in search of treatment for severe lower back and knee pain. Patient A relayed her symptoms to a female receptionist, who then informed the Respondent. The Respondent escorted Patient A to a private treatment room and motioned for Patient A to lay face down on the treatment table.

¹ The name of the patient and other individuals identified herein are confidential. The Respondent may obtain the names of these individuals by contacting the Administrative Prosecutor.

5. The Respondent began pressing on Patient A's lower back, but was restricted by the tight waistband of Patient A's shorts. Patient A loosened the waistband of her shirts to allow the Respondent access to her lower back. The Respondent removed Patient A's shorts, but did not cover her buttocks with a towel or sheet while the Respondent worked on her lower back and legs.

6. The Respondent inserted several needles into Patient A's lower back before moving to her inner thigh. Patient A asked how many more needles the Respondent intended to insert, and the Respondent answered, "two," before inserting a needle into Patient A's inner thigh.

7. The Respondent then touched Patient A inappropriately.

8. At the conclusion of the treatment, Patient A was pain-free and left Magic Health. However, she returned to Magic Health a short time later to speak to the owner about the incident with the Respondent.

9. Later that evening, at approximately 11:00 p.m., Patient A went to Shady Grove Adventist Hospital ("Shady Grove") in Rockville, Maryland to obtain DNA evidence (skin cells) to support her allegation against the Respondent. Shady Grove personnel informed Patient A that it could not perform any testing until Patient A reported the incident to the police.

10. Patient A then contacted the Montgomery County Police Department and filed a complaint. However, a police officer stated that it was Patient A's responsibility to go to the Commissioner's Office to apply for a statement of charges so that a criminal summons or warrant could be issued. Patient A then learned that Shady Grove could

not do any type of DNA testing because no bodily fluids were exchanged during the incident with the Respondent.

11. Patient A was later contacted by two victim services representatives, who indicated that based on the circumstances of the incident (no witnesses or evidence), it would be unlikely that a criminal case against the Respondent would go to trial. As a result, Patient A did not pursue criminal charges against the Respondent.

12. On or about July 8, 2008, the Board's investigator visited Magic Health to speak with the Respondent. The Respondent introduced himself as "Dr. Zhu." The Board's investigator informed the Respondent that he could not identify himself as a doctor because he is not a licensed medical doctor.

13. The Board's investigator asked the Respondent to provide Patient A's patient file. The Respondent stated that no patient file exists for Patient A. The Respondent also stated that he failed to have Patient A complete any paperwork prior to treatment because of the urgency of her treatment. The Respondent could not offer an explanation as to why he did not ask Patient A to complete a patient history form after the treatment, nor could the Respondent provide an explanation as to why he did not complete any acupuncture treatment notes pertaining to Patient A.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact the Board concludes as a matter of law that the Respondent has violated the Maryland Acupuncture Act, H.O. § 1A-309:

- (3) Is guilty of immoral or unprofessional conduct in the practice of acupuncture;
- (6) Knowingly violates any provision of this title or any rule or regulation of the Board adopted under this title, to wit:

COMAR 10.26.03.03C A licensee shall: (5) At all times respect the patient's dignity, autonomy and privacy;

COMAR 10.26.03.03D A licensee may not: (2) Knowingly engage in or condone behavior which is fraudulent, dishonest, or deceitful, or involves moral turpitude;

COMAR 10.26.03.04A A licensee shall: (4) Maintain a written record of treatment of the patient under the licensee's care for at least 5 years after the termination of treatment;

- (18) Engages in a course of conduct that is inconsistent with generally accepted professional standards in the practice of acupuncture.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is this 10th day of March 2009, by a majority of the Board considering this case:

ORDERED that from the date this Order is signed by the Board, the Respondent's license to practice Acupuncture in the State of Maryland is **REPRIMANDED**; and it is further

ORDERED that the Respondent shall be placed on **PROBATION** for a **PERIOD OF TWO (2) YEARS**, to commence from the date that this Consent Order is executed, subject to the following terms and conditions:

1. During the probationary period, the Respondent shall enroll in and successfully complete a Board approved individualized professional ethics tutorial addressing sexual boundary violations with patients, with the costs of the tutorial to be borne by the Respondent. The Respondent shall submit to the Board written proof of his completion of this tutorial.

2. ~~The Respondent shall only treat female patients while in the presence of a female witness, who will remain in the treatment room at all times with the Respondent and the patient.~~

3. Beginning on April 1, 2009 and on a quarterly basis thereafter (i.e. every three (3) months), the Respondent shall submit to the Board for review four (4) patient treatment records demonstrating proper record keeping skills.

ORDERED the above ethics tutorial may count toward existing Continuing Education requirements mandated for continued licensure; and be it further

ORDERED after the conclusion of the entire **TWO (2) YEAR** period of **PROBATION**, the Respondent may file a written petition for termination of his probationary status without further conditions or restrictions, but only if the Respondent has satisfactorily complied with all conditions of this Consent Order, including all terms and conditions of probation, and including the expiration of the two (2) year period of probation, and if there are no pending complaints regarding the Respondent before the Board; and be it further

ORDERED that should the Respondent violate any of the terms or conditions of this Consent Order, the Board, after notice, opportunity for a hearing and determination of violation, may impose any other disciplinary sanctions it deems appropriate, including suspension or revocation, said violation being proven by a preponderance of the evidence; and be it further

ORDERED that the Respondent shall comply with the Maryland Acupuncture Board Act and regulations. Failure to do so shall constitute a Violation of Probation

and of this Consent Order, as well as subject the Respondent to further disciplinary action by the Board; and it is further

ORDERED that the Respondent shall be responsible for all costs incurred under this Consent Order; and it is further

ORDERED that this Consent Order is PUBLIC DOCUMENT as defined in Md. State Gov't Code Ann. § 10-611 et seq.



Tyne Gigliotti, L.Ac., Chair
Maryland State Board of Acupuncture

CONSENT OF QU HUI ZHU, L.Ac.

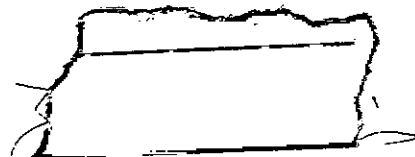
I, QU HUI ZHU, L.Ac., acknowledge that I have had the opportunity to consult with counsel, but chose not to do so, before signing this document. By this Consent, I admit to the Findings of Fact and Conclusions of Law as set forth above, and agree and accept to be bound by the foregoing Consent Order and its conditions and restrictions. I waive any rights I may have had to contest the Findings of Fact and Conclusions of Law.

I acknowledge the validity of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections as provided by law. I acknowledge the legal authority and jurisdiction of the Board to initiate these proceedings and to issue and enforce the Consent Order. I also affirm that I am waiving my right to appeal any adverse ruling of the Board that might have followed any such hearing.

I sign this Consent Order, without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order. I voluntarily sign this Order, and understand its meaning and effect.

3/10/09

Date



Qu Hui Zhu, L.Ac.

NOTARY

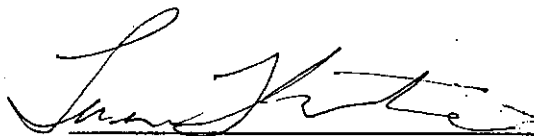
STATE OF MARYLAND

CITY/COUNTY OF Carroll

I HEREBY CERTIFY that on this 10th day of March, 2009
before me, Notary Public of the State and City/County aforesaid, personally appeared
QU HUI ZHU, L.Ac. and made oath in due form of law that the foregoing Consent
was his voluntary act and deed.

AS WITNESSETH my hand and Notarial seal.

Teresa Thornton, Notary Public
Carroll County
State of Maryland
My Commission Expires Aug. 27, 2011


Notary Public

My Commission Expires: _____