

IN THE MATTER OF
EUN YIL CHOI
APPLICANT

* BEFORE THE
* STATE BOARD OF
* ACUPUNCTURE
* Case No. 2007-02

* * * * *

CONSENT ORDER FOR INITIAL LICENSURE

On April 17, 2007, the State Board of Acupuncture (the "Board") notified Eun Yil Choi (the "Applicant), (D.O.B. 01/04/1961), of its Intent to Deny his application for a license to practice acupuncture under the Maryland Acupuncture Act (the "Act"), Md. Health Occ. Code Ann. ("H.O.") §§ 1A-301 *et seq.* (2005 Repl. Vol.).

The pertinent provision of the Act provides:

H.O. § 1A-302. Qualifications of applicants.

(a) *In general.* – To qualify for a license, an applicant shall be an individual who meets the requirements of this section.

(b) *Enumeration.* – The applicant shall:

- (1) Be of good moral character.

In addition, under Code Md. Regs. ("COMAR") tit. 10, § 26.02.03, the Board's regulations provide:

C. To prove good moral character, the applicant shall provide names and addresses of three individuals who can attest to the applicant's reputation for honesty and credibility, as follows:

- (1) Two of these individuals shall have known the applicant for the 5-year period directly preceding the application for licensure; and
- (2) The third individual shall be a practicing acupuncturist in Maryland or in a state within the United States that has

licensing requirements at least equivalent to those of this State.

The Act further provides:

H.O. § 1A-101. Definitions.

* * *

(f) *Practice acupuncture.* – (1) "Practice acupuncture" means the use of oriental medical therapies for the purpose of normalizing energetic physiological functions including pain control, and for the promotion, maintenance, and restoration of health.

H.O. § 1A-401. Practicing without license.

Except as provided in this title, a person may not practice, attempt to practice, or offer to practice acupuncture in this State unless licensed by the Board.

In its Notice, the Board informed the Applicant that he had the opportunity to request a hearing before the Board by submitting a request in writing to the Board's Executive Director within thirty days of the date of the Notice. The Applicant timely submitted a request for a hearing. On Monday, July 30, 2007, the Applicant appeared before a Case Resolution Conference Committee ("CRC") of the Board. As a result of the negotiations that occurred prior to the CRC, the Applicant agreed to enter into this Consent Order, consisting of Procedural Background, Findings of Fact, and Order, with the terms and conditions set forth below.

FINDINGS OF FACT

The Board makes the following findings of fact:

1. On or about August 17, 2006, the Applicant submitted an application to the Board for a license to practice acupuncture. Along with his

application, the Applicant provided five patient testimonials indicating that the patients had received acupuncture treatments from the Applicant between 2001 and 2006.

2. As a result of the patient testimonials, on or about September 19, 2006, the Board referred the matter to its investigator for an investigation into how many patients the Applicant had treated with acupuncture. The Board's investigator obtained a Board *subpoena duces tecum* and *ad testificatum* directed to the Applicant.

3. On or about October 31, 2006, the Board's investigator went to the Applicant's martial arts business, located at 1080 West Patrick Street, Frederick, Maryland. The Board's investigator observed that there was no advertising on the outside for acupuncture services.

4. On or about September 19, 2006, the Board's investigator met with Manager A, the manager of the Applicant's martial arts business. Manager A informed the Board's investigator that the Applicant owned the business, and that she has been the manager there for the past six years. Manager A admitted that the Applicant had been treating her with acupuncture for several years due to lower back pain. She informed the Board's investigator that the Applicant had treated her two teenage children on numerous occasions with acupuncture as well as family, friends, and martial arts students. Manager A stated that the Applicant does not advertise or solicit acupuncture and does not charge anyone for the treatments.

5. Manager A further told the Board's investigator that the Applicant does not keep patient records or appointment ledgers related to acupuncture since he does not advertise or charge for the treatments. Manager A estimated that the Applicant treats one to two individuals per week with acupuncture. Manager A stated that the Applicant believed that he could perform treatments upon completion of the National Certification Commission for Acupuncture and Oriental Medicine ("NCCAOM") exam as long as he did not charge or advertise his services. Manager A admitted that she was one of the individuals who authored the testimonial as part of the Applicant's application.

6. While at the Applicant's martial arts business, the Board's investigator was able to observe a treatment room with a leather cushioned treatment table, two boxes of individually sealed acupuncture needles, a glass container containing numerous alcohol packets, and a small sharps container. The Board's investigator was unable to observe any patient records.

7. On or about October 31, 2006, the Board's investigator interviewed the Applicant. The Applicant advised that he is from Korea and received acupuncture training there. He informed the Board's investigator that he began performing acupuncture treatments on family members in 1994-1995, while residing in Frederick. He stated that he passed the NCCAOM examination in 1997-1998. After passing the exam, the Applicant stated that he began to treat members of his church, family, friends, and martial arts students. The Applicant stated that he never accepted payment for his services, and has never advertised his services.

8. The Applicant further told the Board's investigator that it was his understanding that he only needed to obtain a license if he charged or advertised his services. He stated that he would not have submitted the testimonials with his license if he knew it was against the law for him to practice acupuncture in this manner. He admitted to treating approximately 200-300 individuals over the past nine years. He informed the Board's investigator that he does not keep any patient files or appointment ledgers because he is not in the business of acupuncture. He indicated that he performs one to two treatments per week.

9. On November 2, and November 5, 2006, the Board's investigator conducted telephone interviews with four of the five individuals who provided testimonials submitted with the Applicant's licensure application. Patient A informed the Board's investigator that she is a martial arts student. She stated that she received acupuncture treatments from the Applicant at his martial arts business from February 2005, through June 2005, for fertility reasons. She stated that the Applicant never charged her for the treatments.

10. Patient B informed the Board's investigator that the Applicant treated her six year old daughter with acupuncture from February 2005 through March 2006. Patient B indicated that the Applicant treated her daughter twice a week for four to five weeks because of a sinus problem. She stated that her daughter never had any ill effects, and the Applicant never charged her for the treatments.

11. Patient C informed the Board's investigator that the Applicant approached her about performing acupuncture because she noticed she was not

feeling well. Patient C stated that the Applicant performed acupuncture on her twice a week for two years from 2001-2002 until 2003-2004. Patient C told the Board's investigator that the treatments helped some of her illness symptoms. According to Patient C, the Applicant never charged her for any treatments.

12. Patient D told the Board's investigator that the Applicant performed acupuncture on him to treat acid reflux from December 2005 through June 2006. Patient D stated that he received treatments three times per week for six months, and never suffered any adverse effects. He stated that the treatments helped his condition. Patient D further stated that he allowed the Applicant to treat his thirteen year old daughter as well. According to Patient D, the Applicant never charged him for any treatments.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 11 day of September 2007, by a majority of the full authorized membership of the Board considering this case:

ORDERED that the Applicant's application for a license to practice acupuncture in the State of Maryland be **GRANTED** subject to the terms and conditions set forth below, **PROVIDED THAT THE RESPONDENT FULFILLS ALL OTHER REQUIREMENTS FOR LICENSURE INCLUDING THOSE SET FORTH AT COMAR 10.26.02.03**; and be it further

ORDERED that upon issuance, the Applicant's license shall be placed on **PROBATION** for a period of **one (1) year**, subject to the following terms and conditions:

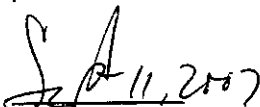
1. The Applicant shall enroll in and successfully complete a Board-approved ethics course within the one year probationary period. The Applicant shall submit the course description and/or syllabus of the course to the Board prior to enrolling in the course. The Board reserves the right to reject the course submitted for fulfillment of this condition, and may request additional information regarding the course. The Applicant shall submit written verification to the Board of course completion within **ten (10) business days** after completing the course. The course work shall be in addition to any continuing education requirements for Board licensure; and be it further

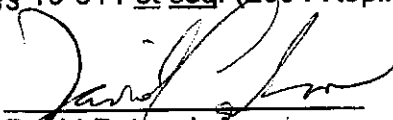
ORDERED after the conclusion of the entire **ONE (1) YEAR** period of **PROBATION**, the Applicant may file a written petition for termination of his probationary status without further conditions or restrictions, provided the Applicant has satisfactorily complied with all conditions of this Consent Order, including all terms and conditions of probation, and provided there are no pending complaints regarding the Applicant before the Board; and be it further

ORDERED that should the Applicant 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, provided said violation having been proven by a preponderance of the evidence; and be it further

ORDERED that the Applicant shall be responsible for all costs incurred in fulfilling the terms and conditions of this Consent Order; and be it further

ORDERED that this Consent Order is considered a **PUBLIC DOCUMENT** pursuant to Md. State Gov't Code Ann. §§ 10-611 et seq. (2004 Repl. Vol.).


Date


David Paton, L.Ac.
Chairman, Board of Acupuncture

CONSENT OF EUN YIL CHOI

I, Eun Yil Choi, by affixing my signature hereto, acknowledge that:

1. I am represented by counsel and have reviewed this Consent Order with my attorney.

2. I am aware that I am entitled to a formal evidentiary hearing before the Board, pursuant to Md. Health Occ. Code Ann. § 1A-301 *et seq.* and Md. St. Gov't Code Ann. §§ 10-201 *et seq.*

3. I acknowledge the validity and enforceability of this Consent Order as if entered after a formal evidentiary hearing in which I would have the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other procedural and substantive protections to which I am entitled by law. I am waiving those procedural and substantive protections.

4. I voluntarily enter into the foregoing Findings of Fact, Conclusions of Law and Order and agree to abide by the terms and conditions set-forth herein as a resolution of the Charges against me. I waive any right to contest the Findings of Fact and Conclusions of Law, and I waive my right to a full evidentiary hearing, as set forth above, and any right to appeal this Consent Order or any adverse ruling of the Board that might have followed any such hearing.

5. I acknowledge that by failing to abide by the conditions set forth in this Consent Order, I may be subject to disciplinary actions, which may include revocation of my license to practice acupuncture.

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

7/26/07
Date

Eun Yil Choi
Eun Yil Choi

STATE OF MARYLAND

CITY/COUNTY OF Frederick :

I HEREBY CERTIFY that on this 26th day of July, 2007, before me, Eun Yil Choi, a Notary Public of the foregoing State and (City/County),
(Print Name)
personally appeared Eun Yil Choi, and made oath in due form of law that signing the foregoing Consent Order was her voluntary act and deed, and the statements made herein are true and correct.

AS WITNESSETH my hand and notarial seal.

Stacy L. Mayo-McDonough
Notary Public

My Commission Expires: 4/1/10