

IN THE MATTER OF

*

BEFORE THE STATE

WILLIAM HENRY ROBERTS, Jr.

*

ACCUPUNCTURE BOARD

APPLICANT

*

CASE NUMBER: 2010-05

* * * * *

FINAL ORDER

On January 1, 2011, the State Board of Acupuncture (the "Board"), notified William Henry Roberts, Jr. ("Applicant"), D.O.B. 05/28/1949, of the Board's Initial Denial of his Application for Licensure under the Maryland Acupuncture Act (the "Act"), Md. Health Occ. Code Ann. ("Health Occ.") §§ 1A-301 *et seq.* (2009 Repl. Vol.).

The pertinent provisions state:

Health Occ. § 1A-301 License required; exemptions.

(a) *In general.* – Except as otherwise provided in this title, an individual shall be licensed by the Board before the individual may practice acupuncture in this State.

Health Occ. § 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;

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

Subject to the hearing provisions of § 1A-310 of this subtitle, the Board . . . may deny a license to practice acupuncture to any applicant . . . if the [applicant]:

- (2) Fraudulently or deceptively:
 - (ii) Solicits or advertises;
- (3) Is guilty of immoral or unprofessional conduct in the practice of acupuncture;
- (17) Engages in a course of conduct that is inconsistent with generally accepted professional standards in the practice of acupuncture [;]

Health Occ. § 1A-101 Definitions.

(f)(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.

(2) "Practice acupuncture" includes:

- i. Stimulation of points of the body by the insertion of acupuncture needles;
- ii. The application of moxibustion; and
- iii. Manual, mechanical, thermal, or electrical therapies only when performed in accordance with the principles of oriental acupuncture medical theories.

Health Occ. § 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.

Health Occ. § 1A-402 Misrepresentation.

(a) *In general.* – Unless authorized to practice acupuncture under this title, a person may not represent to the public, by description of services, methods, or procedures, or otherwise, that the person is authorized to practice acupuncture in this State.

(b) *Certain representations prohibited.* – Unless authorized to practice acupuncture under this title, a person may not use the words or terms "acupuncturist," "licensed acupuncturist", "L.Ac.", or any other words, letters or symbols with the intent to represent that the person is authorized to practice acupuncture.

The Board notified Applicant that a Final Order would be executed thirty (30) days from Applicant's receipt of the Board's notification, unless Applicant requested a hearing.

On February 25, 2011, through counsel, Applicant requested a hearing. Prior to scheduling the hearing, the Board offered Applicant a Case Resolution Conference ("CRC") as an opportunity to resolve the issues without a hearing.

On April 7, 2011, a CRC was convened before a committee of the Board. After consideration of the position of the parties, the CRC determined that it would not

recommend to the full Board that Applicant be licensed, for the reasons stated in the Notice of Initial Denial. On August 9, 2011, Applicant notified the Board that he is withdrawing his application for licensure. As a result, the Board issues this Final Order of Denial of Application for Licensure, consisting of Findings of Fact, Conclusion of Law, and Order.

FINDINGS OF FACT

The Board makes the following findings of fact:

I. Application for Licensure

1. On July 26, 2010, the Board received Applicant's Application for Licensure (the "Application"), dated February 26, 2010. The accompanying cashier's check for the application fee was dated July 21, 2010.

2. Applicant is not now, and has not previously been, licensed to practice acupuncture in Maryland. Applicant graduated from Pacific College of Oriental Medicine in New York, New York in 2008 with a Bachelor of Science degree and a Master of Acupuncture degree.

3. In the Application, Applicant answered "yes" to the following question:

5) Have you pled guilty, nolo contendere, been convicted, received probation before judgment or other diversionary disposition of any criminal act or for driving while intoxicated, or for a controlled dangerous substance offense? (excluding traffic violations)?

4. As required in the Application, based on having answered "yes" to one of the "character" questions, Applicant submitted a signed explanation of an incident that occurred in 1992 which resulted in his being charged with assault. Applicant stated that he got "into an argument with a man over a parking space," which resulted in both men getting out of their cars and getting "face to face" and "bump[ing]" stomachs. Applicant

stated he pled not guilty but was found guilty. Applicant appended to his explanation a copy of a District Court of Maryland Criminal System Inquiry Charge/Disposition Display form, stating that on October 14, 1992, Applicant pled not guilty to the charge of assault but was found guilty, and was ordered to pay a \$50.00 fine and \$50.00 court costs.

5. Applicant submitted a second signed explanation, also dated July 23, 2010, regarding his being charged with failing to cover a check for \$300.00. Applicant explained that he started a sporting goods business in 1989, and that "profits to the business were being siphoned off" as employees were stealing equipment, supplies, and merchandise for their own businesses and personal use. Applicant stated that he was found guilty and in addition to having to pay the vendor, he had to perform 100 hours of community service and was under two years of supervised probation. Applicant appended a copy of a District Court of Maryland Criminal System Inquiry Charge/Disposition Display form, 2010, stating that on August 11, 1998, Applicant pled not guilty to one charge of Bad Check(s) under \$300. Applicant was found guilty and ordered to pay \$465.00 in restitution, \$25 in court costs, and was given an 18 months suspended sentence and two years of probation.

6. Applicant also appended a copy of a District Court of Maryland Probation/Supervision Docket form, which confirmed the above information, although it stated there were two counts of bad checks.

7. According to additional documents submitted by Applicant, on February 15, 2000, the District Court of Maryland for Baltimore County dismissed the State's Petition of Violation of Probation ("VOP") filed against Applicant provided that he perform 24 hours of community service by April 1, 2000. Also, on July 24, 2000, a VOP

was postponed until a dispute in regard to whether Applicant had paid the victim was resolved.

8. Subsequent investigation by Board staff of Applicant's criminal background revealed that on August 11, 1998, Applicant was convicted of seven (7) charges of Bad Check(s) under \$300, and eleven (11) charges of Bad Check(s) \$300.00 and up. Applicant was ordered to pay a total of \$3,237.00 in restitution, plus \$20.00 in court fees.

9. Applicant failed to disclose in his explanation of his criminal history his conviction of these additional charges for bad checks and additional restitution of \$3237.00 for a total of \$3702.00.

II. Practicing Without a License and Misrepresentation as Authorized to Practice as Basis for Denial

10. Previously, on May 30, 2010, an Acupuncture Intern¹ filed a complaint with the Board regarding Applicant's recommendations for herbal treatments for Patient A², and other related matters, such as failing to sufficiently respond to her concerns regarding the effectiveness of treatment and a significant change in her menstrual cycle during treatment

11. The Acupuncture Intern had been providing acupuncture treatment to Patient A under supervision. According to the complaint, in January 2010, the Acupuncture Intern referred Patient A to Applicant, at Patient A's request, for an individual who could "prescribe" Chinese herbs.

¹ The Acupuncture Intern's name is confidential, but is available to Applicant upon request to the administrative prosecutor.

² Patient's name is confidential. Applicant is aware of the identity of Patient A.

12. On September 27, 2010, the Board sent a Subpoena Duces Tecum to Applicant to “[p]rovide the original patient files of . . . [Patient A].”

13. Applicant’s treatment file of Patient A revealed that on February 27, 2010, Applicant documented the following:

- iv. “TCM³ Physical Findings” – “tongue swollen, red around edges & tooth marks SLV-distented (sic); pulse⁴ - slippery and fine; “Abdominal/Channel Palpation” – AB cold”
- v. “TCM Disease Diagnosis” - “chronic candida”
- vi. “TCM Pattern Diagnosis” – “Heart Blood & Spleen Qi Xu w/Liver Qi Stagnation”;
- vii. “Treatment Principle” – “Warm and tonify spleen Qi tonify blood and nourish heart blood expel dampness;”
- viii. The location of 14 needles that he inserted (and removed) to “tonify spleen Qi, augment Sp to produce blood, to tonify heart blood and Surround Dragon.”⁵

14. On March 6, 2010, Applicant documented the following:

- i. “TCM Physical Findings” - “tongue scalloped, swollen, damp, and greasy; white sl. yellow in back SLV – distented (sic); pulse slippery & fine; abdominal/channel palpation – cold AB;”
- ii. “TCM Disease Diagnosis” - “chronic candida;”
- iii. “TCM Pattern Diagnosis” – “Ht Blood & Sp Qi w/Liver Qi ↓ Stagnation;”
- iv. “Treatment Principle” – “tonify sp Qi & Blood, Nourish Ht expel damp;”

³ “TCM” means Traditional Chinese Medicine, a term of art used in the practice of acupuncture. See Health Occ. § 1A-101(f).

⁴ Assessing the pulse is a key diagnostic tool in the practice of acupuncture.

⁵ “Surround Dragon” is a technique used in the practice of acupuncture where the acupuncturist inserts needles around a location of pain, or a place where the acupuncturist wants to normalize energy.

- v. The location of the 18 needles that he inserted (and removed) "to balance strange flows (w/ shiatsu)."

15. Also contained in Applicant's treatment file of Patient A were e-mails from Applicant to Patient A, which state the following:

- i. In a March 28, 2010 e-mail to Patient A, Applicant signed his name with the abbreviation "Lac." (sic) (licensed acupuncturist)⁶;
- ii. In that same e-mail, in his signature underneath Applicant's name, Applicant used the words "9 Points Acupuncture & Herbal Medicine"; and
- iii. In an April 15, 2010 e-mail to Patient A, Applicant again signed his name with the abbreviation "Lac." (sic).

16. Investigation by Board staff located an online copy of a newsletter/advertisement for an electrology office in Baltimore City, Maryland, dated February 2008, entitled "Open House Anniversary Issue." The newsletter introduced Applicant as a "new Massage Therapist⁷," stating further that

He has been pursuing excellence in massage therapy for over twenty-five years, with a passion for helping people to ease their pain. He carries that passion into the practice of acupuncture.

The newsletter also contained a photograph of Applicant and further advertised:

In our 15th year, we have a full time Massage Therapist, Acupuncturist and a Naturopath Physician, Bill Roberts.

17. In a recent interview with Board staff, Patient A stated that she initially saw Applicant at the electrology office on February 27, 2010 and that after obtaining a history of her symptoms, Applicant inserted needles in her back, shoulders, and

⁶ Applicant also used the initials "C.M.T." following his name, meaning certified massage therapist; however, based on information received from the Maryland State Board of Chiropractic and Massage Therapy, Applicant is not certified, or licensed by that Board.

⁷ Investigation of records of the Board of Chiropractic and Massage Therapy Examiners reveals that Applicant is not, and never has been, licensed or registered as a massage therapist in Maryland.

performed a "surround the dragon" which involved placing needles in a circle around her anus. In addition, Applicant administered a heat lamp to her abdominal area and performed shiatsu, using acupuncture points. Patient A also saw Applicant on March 6, 2010 when he again performed acupuncture on her.⁸ Patient A noted that Applicant had academic degrees posted on his office wall.

18. In a recent interview with Board staff, Applicant stated that he has been employed as an independent contractor at the electrology office since approximately February 2008, where he sees two to three patients a week, treating family and friends, as well as geriatric patients. Applicant acknowledged that he treated Patient A on February 27, 2010 with the use of acupuncture needles to her back and legs, and that he performed "surround the dragon" where he placed a circle of needles around Patient A's anus. He also used ambient heat on her lower abdomen to generate increased blood flow, followed by shiatsu acupuncture to her shoulder and neck. Applicant acknowledged he also saw Patient A on March 6, 2010, when he performed acupuncture on Patient A again but did not perform the "surround the dragon" technique.

III. Summary of Basis for Denial

19. Applicant's stimulation of points of the body by the insertion of acupuncture needles in Patient A, and other unnamed patients, is evidence of practicing acupuncture without a license, in violation of Health Occ. § 1A-401. Such conduct is a basis for denial as it is evidence of immoral or unprofessional conduct in the practice of acupuncture under Health Occ. § 1A-309(3), and conduct that is inconsistent with

⁸ Applicant's treatment records of Patient A do not contain documentation of a March 6, 2010 office visit; however, there are references to the visit in emails between Applicant and Patient A.

generally accepted professional standards in the practice of acupuncture under Health Occ. § 1A-309(17).

20. Applicant's use of the initials "Lac." (sic) and title of his practice "9 Points Acupuncture & Herbal Medicine" are evidence of misrepresentation to the public that he is authorized to practice acupuncture, in violation of Health Occ. § 1A-402. Such conduct is a basis for denial as it is evidence of fraudulent or deceptive advertising under Health Occ. § 1A-309(2), immoral or unprofessional conduct in the practice of acupuncture under Health Occ. § 1A-309(3), and conduct that is inconsistent with generally accepted professional standards in the practice of acupuncture under Health Occ. § 1A-309(17).

21. Applicant's misrepresentation to the public, in e-mails to Patient A and in a newsletter/advertisement for an electrology office, that he was authorized to practice acupuncture in this state, is evidence of a violation of Health Occ. § 1A-402. Such conduct is a basis for denial as it is evidence of fraudulent or deceptive advertising under Health Occ. § 1A-309(2), immoral or unprofessional conduct in the practice of acupuncture under Health Occ. § 1A-309(3), and conduct that is inconsistent with generally accepted professional standards in the practice of acupuncture under Health Occ. § 1A-309(17).

22. Applicant's practicing acupuncture without a license constitutes, in whole or in part, a failure to meet the prerequisite of good moral character to practice acupuncture in the State of Maryland under Health Occ. § 1A-302(b)(1), and violates Health Occ. § 1A-301.

23. Applicant's misrepresentation of himself in e-mails to Patient A and in a newsletter/advertisement to the public constitutes, in whole or in part, a failure to meet

the prerequisite of good moral character to practice acupuncture in the State of Maryland under Health Occ. § 1A-302(b)(1).

24. Applicant's criminal history, including conviction of assault and multiple counts of bad checks, in the amount of \$3,702.00 constitutes, in whole or in part, failure to meet the prerequisite of good moral character to practice acupuncture in the State of Maryland under Health Occ. § 1A-302(b)(1).

25. Applicant's failure to fully disclose in the Application his complete criminal history constitutes, in whole or in part, failure to meet the prerequisite of good moral character to practice in the State of Maryland under Health Occ. § 1A-302(b)(1), is evidence of immoral or unprofessional conduct in the practice of acupuncture under Health Occ. § 1A-309(3), and conduct that is inconsistent with generally accepted professional standards in the practice of acupuncture under Health Occ. § 1A-309(17).

CONCLUSIONS OF LAW

Based on the above Findings of Fact, the Board concludes as a matter of law that Applicant engaged in prohibited acts under the Act. Applicant practiced acupuncture without a license and misrepresented to the public that he is authorized to practice acupuncture which is evidence of fraudulently or deceptively soliciting or advertising in violation of Health Occ. § 1A-309(2); immoral or unprofessional conduct in the practice of acupuncture in violation of Health Occ. § 1A-309(3); and engaging in conduct that is inconsistent with generally accepted professional standards in the practice of acupuncture in violation of Health Occ. § 1A-309(17). Therefore, under Health Occ. § 1A-309, which provides that the Board may deny a license to an applicant for any of the grounds listed in Health Occ. § 1A-309, the Board concludes as a matter of law that it may deny a license to Applicant.

In addition, based on the above Findings of Fact, the Board concludes as a matter of law that Applicant fails to meet the prerequisite of good moral character and therefore the Board may deny the application based on failure to meet the requirement to be licensed to practice acupuncture in the State of Maryland under Health Occ. § 1A-302(b).


ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 13th day of September, 2011, by an affirmative vote of a majority of the full authorized membership of the Board,

ORDERED that Applicant's Application for Licensure as an Acupuncturist in the State of Maryland be and hereby is **DENIED**; and be it further

ORDERED that this is a Final Order of the Board, and as such, is a **PUBLIC DOCUMENT** pursuant to Md. State Gov't Code Ann § 10-611 *et seq.* (2009 Repl. Vol.).

9/13/2011
Date


Steven Kaufman, L.Ac., Chair
State Board of Acupuncture

NOTICE OF RIGHT OF APPEAL

Pursuant to Health Occ. Code Ann. § 1A-311, the Applicant has the right to appeal this decision to the Board of Review and then take any further appeal as allowed by the Administrative Procedure Act.