

IN THE MATTER OF * BEFORE THE
DAVID WURZEL, L.Ac. * MARYLAND BOARD
Respondent, * OF ACUPUNCTURE
License Number: U01016 * Case No.: 12-06

* * * * *

CONSENT ORDER

The Maryland Board of Acupuncture (the "Board") charged David Wurzel, L.Ac., License No. U01016, (the "Respondent") with various violations under the Maryland Acupuncture Act (the "Act"). Md. Code Ann., Health Occ. §§ 1A-101 *et seq.* (2009 Repl. Vol. & 2012 Supp.).

The pertinent provisions of the Act are as follows:

H.O. § 1A-309

Subject to the hearing provision 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;
- (16) Commits any act of gross negligence, incompetence; or misconduct 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 [.]

The Board also charged the Respondent with the following regulatory violations:

Code Md. Regs. ("COMAR") Title 10.26.03.

.05 Professional Boundaries.

- A. The licensee shall:

- (1) Maintain professional boundaries, even when the patient initiates crossing the boundaries of the professional relationship;
- (2) Respect and maintain professional boundaries and respect the patient's reasonable expectation of professional conduct; and
- (3) If the licensee and the patient mutually desire a personal relationship, immediately terminate the professional relationship, make an appropriate referral to another health care practitioner, and wait before engaging in such a relationship for a time when it is reasonably certain that the professional relationship has no influence on the personal relationship.

B. The licensee may not:

- (1) Exploit a relationship with a patient for the licensee's personal advantage, including, but not limited to, a personal, sexual, romantic, or financial relationship;

FINDINGS OF FACT

1. At all times relevant to the charges herein, the Respondent was licensed to practice acupuncture in the State of Maryland under License Number U01016.
2. At all times relevant to the charges herein, the Respondent practiced acupuncture at a private practice located in Maryland.
3. On or about June 15, 2012, the Board received a complaint from the husband of a patient, hereinafter identified as Patient A,¹ alleging that while the Respondent was providing acupuncture treatments to Patient A the Respondent engaged in an inappropriate relationship with Patient A, which included an exchange of hundreds of personal e-mails and text messages with Patient A and a private dinner.

¹Patient A is not identified in this document in order to protect Patient A's privacy. This information will be provided to the Respondent upon request.

4. Based on this complaint the Board opened an investigation.

5. In furtherance of its investigation Board staff interviewed the Respondent on or about August 22, 2012. According to interview notes, the Respondent stated, during the interview, that he initially had a professional relationship with Patient A, and that he provided training to individuals at Patient A's place of business.

6. Patient records indicate that on or about January 2007, the Respondent started providing acupuncture treatments to Patient A.

7. During the interview the Respondent acknowledged that he developed a personal relationship with Patient A, and that while he was providing acupuncture treatments to Patient A, he communicated with her by phone, exchanged e-mails and text messages, and frequently discussed Patient A's marital problems. The Respondent also admitted that he told Patient A that he loved her, and that she also told him that she loved him. The Respondent acknowledged that his objectivity was compromised, and that he voluntarily discharged Patient A as a result of boundary issues. The Respondent claims that he discharged Patient A from the practice in April 2012.

8. On or about October 4, 2012, Board staff also interviewed Patient A regarding her husband's allegations against the Respondent. According to interview notes, Patient A stated that she began seeing the Respondent for acupuncture treatments, and that during the course of the treatment the Respondent started flirting with her and sent her numerous racy e-mails, and text messages that caused arguments between Patient A and her husband. Patient A stated that her husband accused her of infidelity after he discovered the e-mails. Patient A denies that she had

a sexual relationship with the Respondent, but she admits that there was serious flirtation and hugs. She stated that she did nothing to stop the flirtation.

9. Board staff reviewed hundreds of e-mails between Patient A and the Respondent and noted that many of the e-mails were inappropriate and/or contained sexual content.

10. On or about Friday March 9, 2012, the Respondent sent the following message to Patient A: "Re: Buzzing Thinking of you above me with my tongue tasting your sweet juices." On or about March 9, 2012, the Respondent also sent the following message: "I like my hands on you."

11. On or about May 21, 2012, in an e-mail to Patient A's husband the Respondent discussed his relationship with Patient A and his decision to terminate Patient A's acupuncture treatment:

Re: Correction and Update April 14 was when we decided to officially terminate (I checked her file today when I got to the office). I had discussed it with her before but she wanted to continue. As the messages started getting more sexual and the teasing /flirting increased I was no longer comfortable with the professional side so I decided regardless of what she said I was terminating it. She may have gotten some supplements after but no more acupuncture.

And again, we never had sex with each other.

I did not push you aside. Like I said I got a message from her yesterday that said you looked through her email, etc. then she called me to say you were upset I was ignoring you and told me more of the situation. I responded to you last night when I got home still not really understanding all that went on, not remembering exact dates, etc.

12. Patient A's husband provided the Board with a summary of cellular phone records from his service provider, for the period between December 27, 2011, and June 6, 2012, which indicated that Patient A and the Respondent exchanged over three hundred-thirty (330) phone calls and text messages.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact the Board concludes that the Respondent's actions as described herein violate: H.O. § 1A-309 (3), (16), and (17), and COMAR tit. 10 §§ 26.03.05A (1), (2), (3), and B(1).

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this _____ day of _____, 2014, by a majority of the quorum of the Board considering this case hereby:

ORDERED that the Respondent's license to practice as an acupuncturist (L.Ac.) shall be **SUSPENDED** for a minimum period of **NINETY (90) DAYS**, with the suspension immediately **STAYED**. The **STAYED SUSPENSION** shall begin on the date of execution of this Consent Order.

ORDERED that the Respondent shall be placed on **PROBATION** for a minimum period of **ONE (1) YEAR**, to begin upon the date of execution of this Consent Order, during which time the Respondent shall:

- a. Meet bi-weekly for a minimum of **SIX (6) MONTHS** with a licensed, Board-approved, mental health professional, at his own expense, for the purpose of enabling the Respondent to gain insight into causes of his violations and to integrate his own psychological risks with his professional responsibilities as a licensed acupuncturist in the State of Maryland;
- b. The Respondent's consultations with the licensed, Board-approved, mental health professional shall focus on the prevention of boundary violations, sexual misconduct, sexual and dual relationships and

psychological trauma to patients. Topics shall also include issues of competence, impaired judgment and lack of insight, as well as consultation with colleagues. In addition discussions between the Respondent and the licensed, Board-approved mental health professional shall address the educational gaps in the Respondent's ethical knowledge, and his superficial understanding of ethical and boundary issues with respect to patients;

- c. As part of the approval process, the Respondent shall promptly submit to the Board the name and professional credentials of a licensed mental health professional;
- d. The proposed licensed mental health professional shall not be associated with the Respondent through any current or past personal, collegial, professional or academic affiliation;
- e. The Respondent shall provide the licensed, Board-approved, mental health professional with a copy of the charging document, Consent Order, and whatever other materials the Board deems relevant.
- f. The licensed, Board-approved, mental health professional shall submit monthly reports to the Board detailing the specific issues discussed and the Respondent's progress. The report shall include, but not be limited to, a report of the Respondent's participation in the treatment process, and his understanding of ethical and boundary issues;
- g. After six months, the Respondent shall ensure that the licensed, Board-approved, mental health professional submit a summary report to the

Board assessing the Respondent's overall progress in the area of boundary issues and his ability to integrate his own psychological risks with his responsibility to practice acupuncture safely;

- h. The Respondent has the sole responsibility for ensuring that the licensed, Board-approved mental health professional submits the required monthly reports and the summary report in a timely manner;
- i. If the Respondent fails to complete the meetings and treatment with a licensed, Board-approved mental health professional as set out above, the Respondent will be deemed in violation of probation and this Consent Order;
- j. An unsatisfactory report from the Respondent's licensed, Board-approved, mental health professional may constitute a violation of this Consent Order; and it is further

ORDERED that no earlier than **SIX (6) MONTHS** from the effective date of the period of **PROBATION**, and only if the Respondent has satisfactorily complied with all of the above conditions, as determined by the Board, the Respondent may file with the Board a written request for termination of the meetings with the licensed, Board-approved, mental health professional; and it is further

ORDERED that the Respondent shall not petition the Board for early termination of his stayed suspension or one-year probation or the terms of this Consent Order; and it is further

ORDERED that the Respondent may submit a written petition to the Board requesting termination of his probation **no earlier than one (1) year** from the date of commencement of the probationary period, but only if he has fully and satisfactorily complied with all the terms and conditions of this Consent Order, including all terms and conditions of probation, and including the expiration of the one (1) year period of probation, and if there are no pending complaints against him related to the issues in this case; and it is further

ORDERED that the Respondent's failure to comply with any of the conditions of this Consent Order, shall be considered a violation of probation and a violation of this Consent Order; and it is further

ORDERED that if the Respondent violates any of the terms and conditions of this Consent Order, the Board, in its discretion, after notice and an opportunity for an evidentiary hearing if there is a genuine dispute as to the underlying material facts, or an opportunity for a show cause hearing before the Board otherwise, may impose any other disciplinary sanctions that the Board may have imposed in this case, including additional probationary terms and conditions, reprimand, suspension, revocation and/or monetary penalty; and it is further

ORDERED that the Respondent shall comply with the Maryland Acupuncture Act and all applicable laws, statutes and regulations; and it is further

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

ORDERED that this Consent Order is a **PUBLIC DOCUMENT** pursuant to Md. State Gov't Code Ann. § 10-611 *et seq.* (2009 Repl. Vol.)

Deneb Falabella, L.Ac., Dipl.Ac. (NCCAOM),
Board Chair
Maryland State Acupuncture Board

CONSENT

I, David Wurzel, L.Ac., License No.:U01016, by affixing my signature hereto, acknowledge that:

1. I have consulted with counsel, Lon C. Engel, Esquire, and I have knowingly and voluntarily elected to enter into this Consent Order. By this Consent and for the purpose of resolving the issues raised by the Board, I agree and accept to be bound by the foregoing Consent Order and its conditions.
2. I am aware that I am entitled to a formal evidentiary hearing, pursuant to Md. Health Occ. Code Ann. § 1 A-310. (2009 Repl. Vol.) and Md. State Gov't Code Ann §§ 10-201 *et seq.* (2009 Repl. Vol.).
3. I acknowledge the validity and enforceability of this Consent Order as if entered into after the conclusion of 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 substantive and procedural protections as provided by law. I am waiving those procedural and substantive protections.
4. I voluntarily enter into 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 as a licensed acupuncturist.
6. I sign this Consent Order voluntarily, without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order.

4/22/14
Date


David Wurzel, L.Ac., Respondent

4/24/14
Date


Lon C. Engel, Esquire
Counsel for Respondent

NOTARY

STATE OF Maryland
COUNTY OF Howard

I HEREBY CERTIFY that on this 22nd day of April, 2014, before me, a Notary Public of the State and County aforesaid, personally appeared David Wurzel, L.Ac., License Number U01016, and gave oath in due form of law that the foregoing Consent Order was his voluntary act and deed.

AS WITNESS, my hand and Notary Seal.


Notary Public

My Commission expires: 3/27/2018