

IN THE MATTER OF * BEFORE THE
ALEXANDER MAINES, L. Ac. * MARYLAND BOARD OF
Respondent * ACUPUNCTURE
License Number: U01381 *

.....

CONSENT ORDER

On August 13, 2007, the Maryland Board of Acupuncture (the "Board") charged Alexander Maines, L.Ac. (the "Respondent") (D.O.B.: 11/20/48), License Number U01381, under the Maryland Acupuncture Act (the "Act"), Md. Health Occ. Code Ann. ("H.O.") §§ 1A-101 *et seq.* (2005 Repl. Vol.).

The pertinent provisions of the Act under H.O. § 14-404(a) provide as follows:

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 ...unprofessional conduct in the practice of acupuncture;
- (16) Commits any act of gross negligence, incompetence, or misconduct in the practice of acupuncture; and
- (17) Engages in a course of conduct that is inconsistent with generally accepted professional standards in the practice of acupuncture.

On September 11, 2007, a conference with regard to this matter was held before the Board's Case Resolution Conference ("CRC") Panel. As a result of

negotiations entered into after the CRC, the Respondent agreed to enter into this Consent Order, consisting of Procedural Background, Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. At all times relevant to these charges, the Respondent was licensed to practice acupuncture in Maryland. The Respondent was originally issued a license to practice acupuncture on or about September 14, 2004, being issued license number U01381.
2. At all times relevant hereto, the Respondent maintained an office for the private practice of acupuncture at the Massage Therapy and Wellness Center, 4812 St. Elmo Avenue, Bethesda, Maryland.
3. The Respondent's web site represents that he is a Diplomate in Acupuncture. The Respondent received his clinical training at the Maryland Institute of Traditional Chinese Medicine and at the Shanghai University of Traditional Chinese Medicine. He completed post-graduate studies in Chinese herbal medicine at the Tai-Sophia Institute in Maryland.

Procedural Background

4. On or about August 30, 2006, the Board received a complaint from Patient A,¹ a former patient of the Respondent, regarding the adverse effects of an herbal decoction² he had prepared to treat her Vitiligo. The Board referred the complaint to its investigative unit. In furtherance of its

¹ The patients' names are confidential.

² A decoction is one of the traditional Chinese medicine methods for administering herbs. A customized herbal formula is developed and the herbs are steeped in liquid to extract the active ingredients. The decoction is then administered either orally or topically.

investigation, the Board thereafter obtained an expert in the area of acupuncture and Chinese herbal medicine to conduct of a review of the Respondent's practice. The results of the expert's review of the Respondent's treatment of Patient A and his practice are set forth below.

General Deficiencies

5. Generally accepted standards in the practice of acupuncture relevant to the instant include, but are not limited to, the following:
 - a. An acupuncturist is required to perform an adequate and appropriate initial evaluation of a patient
 - b. An acupuncturist is required to adequately and appropriately document the initial evaluation in the patient's record.
 - c. An acupuncturist is required to adequately document treatment that is provided to a patient. Adequate documentation includes, at a minimum, the acupuncture points the acupuncturist used.
 - d. An acupuncturist is required to be aware of possible side effects of any treatment that is provided to a patient and to provide to the patient appropriate precautions; and
 - e. An acupuncturist is required to obtain and document the patient's informed consent prior to treating the patient.
6. The Board's expert, upon review of the Respondent's practice, concluded that the Respondent violated generally accepted standards of practice as is set forth below.

Allegations pertaining to Patient A

7. On March 13, 2006, Patient A, a 37-year old female, initially presented to the Respondent for treatment of Vitiligo. Patient A also complained of chest pain, night sweats and fatigue.
8. On her first visit, Patient A completed the patient information portion of the Respondent's "Comprehensive Acupuncture Examination" form and reported that she had had Vitiligo for approximately 8 years and that UVB light treatment and cortisone had improved the condition in the past.
9. The Respondent failed to document fully his examination of Patient A on the "Comprehensive Acupuncture Examination" form; however, he did document his Traditional Chinese Medicine ("TCM") diagnosis.
10. On Patient A's March 13, 2006 Patient Statement, the Respondent charged Patient A for acupuncture treatment; however, he failed to document the acupuncture points he had used.
11. ~~Patient A presented to the Respondent for treatment on the following~~ dates: March 20, April 5, 10, 17, 24, May 1, 8, 17, and June 5, 2006. The Respondent failed to include in Patient A's chart his note for the May 17, 2006 note, nor is there a Patient Statement (invoice) for the June 5, 2006 visit.³

³ On September 19, 2006, the Board investigator served upon the Respondent a Subpoena Duces Tecum which directed the Respondent to provide, *inter alia*, the "complete original patient file of [Patient A], [address, birth date, Social Security #]" and specifying that the request included but was not limited to: patient history information, patient medical files/progress notes, computerized/written statements or records of treatment, herbal prescriptions..., records of payment and/or insurance records and any correspondence and/or other documentation that concern, refer to or relate to acupuncture treatments provided to [Patient A].

12. During the course of treatment, the Respondent administered acupuncture to Patient A, prescribed various herbs (including: Jin Gui Shen, Qi Wan and Zhi Bai Di Huang Wan). The Respondent also provided Patient A with TDP lamp⁴ treatment.
13. On the May 17, 2006 Patient Statement, the Respondent noted that he had provided to Patient A a "Vitiligo Decoction" to be used by Patient A "up to 4x/day." The Respondent did not list the ingredients of the decoction of the Patient Statement or elsewhere in Patient A's chart.
14. The Respondent had prepared the decoction himself and provided it to Patient A in several mason jars. Patient A was instructed to apply it to the areas of her body affected with Vitiligo, which included her hands and feet. The Respondent did not give Patient A any precautions regarding the application or effect of the decoction, other than it had a pungent smell and might stain clothing with which it came in contact. The Respondent failed to document that he provided Patient A with precautions regarding the application of the decoction.
15. In early June, 2006, Patient A telephoned the Respondent and advised him that she was going to Ocean City, Maryland with her family for a week and inquired whether she could apply the decoction when there. Patient A told the Respondent that she would be able to apply the decoctions 4

⁴ "TDP" is an abbreviation for Teding Diancibo Pu, a Chinese term that translates to "special electromagnetic spectrum" lamp. According to manufacturer literature, the TDP lamp has a curing plate coated with a mineral formulation consisting of 33 elements essential to the human body. The absorbed energy "promotes microcirculation and metabolism, strengthens the immune system and achieves short and long-term pain relief."

times a day, as the Respondent had instructed. The Respondent replied that that "was a good idea."

16. When interviewed by the Board Investigator, Patient A reported that at no time during this conversation did the Respondent give her any precautions about going out in the sun after applying the decoction.
17. Although inclement weather prevented Patient A from spending time outside during the first part of her vacation, on Friday, June 9, 2006, she was able to spend about 1 hour and 15 minutes on the beach. She applied the decoction prior to going outside.
18. On the morning of Saturday, June 10, 2006, the Respondent awoke with what she thought was a bad sunburn on the areas where she had applied the decoction, especially her feet.
19. By the evening of June 10, the pain got so bad that Patient A could no longer walk. Patient A applied some Neosporin to the affected areas in an attempt to ease the pain.
20. On Sunday, June 11, Patient A's pain had become progressively severe and her feet had developed large fluid-filled blisters. She telephoned the Respondent that morning to advise him of her condition. The Respondent stated that the decoction did not cause the burn and that her symptoms may have been caused by her application of the Neosporin.
21. During the June 11 telephone conversation, the Respondent told Patient A not to go to the Emergency Room, as he did not want her to bear that

- cost. Instead, the Respondent advised Patient A to put her feet in salt water so that "whatever is there will come out and help the blistering."
22. The Respondent concluded the conversation by telling Patient A that it was not a good time for him to talk because his mentor was visiting. He told her to call him back later that day.
23. Patient A complied with the Respondent's treatment instructions and placed her blistered feet in a bowl of salt water. Her pain immediately intensified.
24. On the evening of Sunday, June 11, Patient A sought treatment at the Shady Grove Hospital Emergency Department where she was diagnosed with second degree burns on her left hand and left and right feet. Patient A was administered Demerol⁵ and Phenergan⁶ intravenously and was orally administered Percocet.⁷
25. Patient A was discharged on the evening of June 11, 2006 with instructions to apply Silvadene cream to the affected areas. She was prescribed Oxycodone/APAP⁸ for pain and antiemetics for vomiting.
26. Patient A telephoned the Respondent during the week after she was discharged to advise him what had occurred and to report that she had been referred to a plastic surgeon for debridement of the wound area. According to Patient A, the Respondent offered to apply acupuncture to relieve the blisters. The Respondent also told Patient A that, "Western

⁵ Demerol, a Schedule II Controlled Dangerous Substance ("CDS"), is a narcotic analgesic.

⁶ Phenergan is an antiemetic.

⁷ Percocet, a Schedule II CDS, is an opioid analgesic.

⁸ This is the generic name for Percocet.

medicine would not know how to treat this condition" and that "physicians would not know what she had used." The Respondent told Patient A that he would never treat Vitiligo patients again and asked Patient A for pictures of the affected areas so that he could send them to the publisher of the Chinese herbal medicine book from which he had obtained the recipe for the decoction.

27. On October 16, 2006, the Board investigator interviewed the Respondent. The Respondent acknowledged that he had not conducted any research on the herbs that he had compounded for Patient A's decoction and "relied on the book." The Respondent further acknowledged that he had not advised Patient A of the ingredients and did not warn her that one of the ingredients, Psorelea, would make her skin more sensitive to the sun. The Respondent told the investigator, "I don't know that we discussed that. I think it was after the fact that I found that out."
28. The Respondent's conduct with regard to Patient A constitutes in whole or in part unprofessional conduct in the practice of acupuncture, in violation of H.O. § 1A-309(3), an act of gross negligence, incompetence or misconduct in the practice of acupuncture, in violation of H.O. § 1A-309(16) and engaging in a course of conduct that is inconsistent with generally accepted professional standards in the practice of acupuncture, in violation of H.O. § 1A-309(17).

Practice Review: Patient – Specific Findings of Fact

Patient B

29. Patient B, a male born in 1976, initially presented to the Respondent on July 20, 2006 with complaints of "O[bssessive] C[ompulsion] D[isorder]/depression."
30. The Respondent failed to document his initial examination of Patient B except to note that his right pulse was "somewhat deficient" and his left pulse was "wiry."
31. The Respondent noted Patient B's TCM assessment and the acupuncture points he used. The Respondent also prescribed herbs.
32. On the invoice for the July 20, 2006 office visit, the Respondent charged \$90.00 for "initial intake" and \$60.00 for acupuncture treatment, listing "stomach pain."

Patient C

33. ~~Patient C, a male born in 1946, initially presented to the Respondent on July 31, 2006 with complaints of leg pain and diabetes.~~
34. The Respondent failed to document his initial examination of Patient C except to describe Patient C's pulse at 3 locations. The Respondent also failed to document the acupuncture points he applied on July 31, although he charged Patient C for acupuncture treatment.
35. The Respondent's chart for Patient C contains 3 invoices for acupuncture on the following dates: July 31, August 16 and August 31, 2006. The Respondent failed to document the August 16, 2006 office visit.

Patient D

36. Patient D, a male born in 1963, sought treatment from the Respondent in August 2006 for back pain associated with a herniated disc. Although the Patient Comprehensive Acupuncture Examination Form and Consent Form are dated August 31, 2006, the only treatment note in the chart is dated August 6, 2006. The note states in part: "Feels much better from last treatment." There are no treatment notes for treatments before or after August 6, 2006, and the only invoice in the chart has an August 31, 2006 treatment date.
37. The Respondent failed to adequately document Patient D's initial examination, his treatment plan or office visits except that of August 6, 2006.

Patient E

38. Patient E, a female born in 1983, initially presented to the Respondent on August 21, 2006 with complaints of stress, weight gain and fatigue. The August 21 visit is the only visit in Patient E's chart.
39. The Respondent failed to document his initial examination of Patient E on the Comprehensive Acupuncture Examination Form except to note her left and right pulses and to describe Patient E as "pleasant" and overweight.
40. The Respondent noted the TCM diagnosis and the acupuncture points he applied.

Patient F

41. Patient F, a male born in 1964, initially presented to the Respondent on March 2, 2006 complaining of stress.
42. The Respondent failed to document his initial evaluation of Patient F on the patient's initial presentation except for a description of his left and right pulses.
43. Patient F returned on March 20, 2006. The Respondent failed to note the acupuncture points he applied although he charged for acupuncture treatment on this date.

Patient G

44. Patient G, a male born in 1986, initially presented to the Respondent on August 23, 2005, complaining of anxiety and insomnia.
45. The Respondent failed to document his initial examination of Patient G with the exception of describing his tongue and channel disorders.
46. In the August 23, 2005 office note, the Respondent documented his TCM assessment and the acupuncture points he used.
47. Patient G presented thereafter on January 12 and June 15, 2006. The Respondent failed to document the acupuncture points he used on June 15, although he charged Patient G for an acupuncture treatment.
48. On a Patient Statement dated August 24, 2006, the Respondent charged Patient G for acupuncture treatment and herbs. The Respondent failed to otherwise document this visit.

Patient H

49. Patient H, a female born in 1973, initially presented to the Respondent on July 17, 2006 complaining of migraine headaches.
50. The Respondent failed to document any aspect of his initial examination of Patient H. The Respondent did, however, document his TCM diagnosis, his treatment plan and the acupuncture points he applied.

Patient I

51. Patient I, a female whose birth date is not included in the record transmitted to the Board by the Respondent, was billed by the Respondent for acupuncture treatment on 3 occasions: March 2, August 31, and September 13, 2006. The Respondent's chart includes only notes for the March 2 and August 31, 2006 visits, on which dates he treated her for "leg pain" and "stomach pain" respectively.
52. The Respondent failed to document his initial evaluation of Patient I. In ~~the March 2 and August 31, 2006 office visit notes, the Respondent failed~~ to document his objective findings except for the appearance of Patient I's tongue and a description of her pulse.
53. The Respondent failed to document the treatment he provided on September 13, 2006.
54. Patient I's chart contains a "Chinese Medical Clinic Consent to Treatment Form" and a "Consent to the Use and Disclosure of Health Information for Treatment, Payment, or Healthcare Operations" form. Neither are signed by Patient I.

Patient J

- 55. Patient J, a male born in 1948, initially presented to the Respondent on February 23, 2006 complaining of lack of smell, sinus congestion and anxiety.
- 56. The Respondent failed to document his initial evaluation of Patient J and failed to document the acupuncture points he used, although he charged Patient J for acupuncture treatment.

Patient K

- 57. Patient K, a female born in 1972, sought treatment from the Respondent for weight management and carpal tunnel syndrome.
- 58. Patient K's Patient Comprehensive Acupuncture Examination Form and Consent Form are dated June 8, 2006, however, the Respondent billed Patient K for acupuncture treatment on May 11, 2006 and failed to document his treatment on that date.
- 59. ~~The Respondent failed to document his evaluation of Patient K on the Comprehensive Acupuncture Examination Form or elsewhere in the chart.~~

Patient L

- 60. Patient L, a female born in 1971, initially presented to the Respondent on July 20, 2006 complaining of slow weight gain and irregular menstrual cycles.
- 61. The Respondent failed to document any aspect of his initial examination of Patient L, nor did he document the acupuncture points he used although he billed her for acupuncture treatment on July 20, 2006.

62. Patient L returned to the Respondent on August 7 and 14, 2006. The Respondent failed to document the acupuncture points he applied on August 14, although he charged Patient L for acupuncture treatment on that date.

Patient M

63. Patient M, a female born in 1948, initially presented to the Respondent on January 12, 2006 complaining of knee and hamstring pain following knee surgery.

64. The Respondent failed to document any aspect his initial examination of Patient M.

65. Patient M presented to the Respondent on March 23, 2006. The Respondent documented that Patient M was complaining of "pain in feet" and hemorrhoids, but otherwise failed to document any aspect of his assessment or treatment, including the acupuncture points he used, despite billing her for acupuncture treatment on that date.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent's actions constitute in whole or in part, unprofessional conduct in the practice of acupuncture, in violation of H.O. § 1A-309(3), the commission of any act of gross negligence, incompetence, or misconduct in the practice of acupuncture, in violation of H.O. § 1A-309(16), and engaging in a course of conduct that is inconsistent with generally accepted professional standards in the practice of acupuncture.

ORDER

Based on foregoing Findings of Fact and Conclusions of Law, it is this 2nd day of February, 2008, by a majority of the full authorized membership considering this case:

ORDERED that the Respondent shall be **REPRIMANDED**; and it is further

ORDERED that the Respondent shall be placed on **PROBATION** for **TWO (2) YEARS**, beginning on the effective date of the Consent Order and continuing **UNTIL** all of the following terms and conditions are satisfied:

a. Within one (1) month of the effective date of this Consent Order, the Respondent shall obtain a Board-approved monitor ("practice monitor"), who is not connected with the Respondent through any past or current collegial or personal relationship, who will monitor his practice, including his patient charts, on at least a quarterly basis. The practice review shall focus upon whether the Respondent is practicing in a manner consistent with generally accepted professional standards in the practice of acupuncture including, but not limited to, his documentation of patient charts;

b. The Respondent shall authorize the Board to provide to the practice monitor a copy of the Board's investigative file, the Charges, this Consent Order and any other material the Board determines to be appropriate;

c. The Respondent shall provide to the practice monitor the complete record for each patient whose care is being reviewed;

d. The Respondent shall ensure that the practice monitor submits to the Board a sufficiently detailed written report in a timely manner following each

review of the Respondent's practice. The report shall detail the Respondent's practice, the charts reviewed by the practice monitor and any recommendations the practice monitor may have to assist the Respondent improve his practice,

e. The Respondent shall comply with all written recommendations of the practice monitor, if any, or the Board. Failure to comply with the written recommendations shall be deemed a violation of the Consent Order; and it is further

ORDERED that based upon the practice monitor's reports, the Board, in its discretion, may increase the frequency of the practice monitor's reviews; and it is further

ORDERED that the Respondent shall comply with the Maryland Acupuncture Act and all laws, statutes and regulations pertaining to the practice of medicine; and it is further

ORDERED that any violation of the terms and/or conditions of this Consent Order shall be deemed a violation of probation and/or of this Consent Order; and it is further

ORDERED that if the Respondent violates any of the terms and conditions of the probation and/or this Consent Order, the Board, in its discretion, after notice and an opportunity for a hearing may impose additional sanctions under § 1A-309 of the Maryland Acupuncture Act, including a reprimand, additional probation, suspension, revocation and/or a monetary fine; and it is further

ORDERED that the Respondent may petition for termination of probationary status without any further conditions or restrictions after **ONE (1)**

YEAR, but only if the Respondent has satisfactorily complied with all conditions of probation and has no outstanding complaints against him; and it is further

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

ORDERED that this Consent Order shall be a **PUBLIC DOCUMENT** pursuant to Md. State Gov't Code Ann. § 10-611 *et seq.* (2004 & Supp. 2006).

2/7/08
Date

 LAC
Tyme Gigliotti, L.Ac., Acting Chair
Maryland Board of Acupuncture

CONSENT

I, Alexander Maines, L.Ac., acknowledge that I have had the opportunity to be represented by counsel before entering this Consent Order. I neither admit or deny the allegations made by the Board regarding Patient A; however, in order to resolve the Board's charges and to avoid further prosecution and expenses, I accept and agree to be bound by the terms and conditions of the foregoing Consent Order.

I acknowledge the validity of this Consent Order. I understand that by entering into this Consent Order, I am waiving a formal evidentiary hearing in which I would have had 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 provided by the law. I agree to forego my opportunity to challenge these allegations. I acknowledge the legal authority and jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order. I affirm that I am waiving my right to appeal any adverse ruling of the Board that I might have followed after any such hearing.

I sign this Consent Order after having an opportunity to consult with counsel, voluntarily and without reservation, and I fully understand and comprehend the language, meaning and terms of the Consent Order.

1/14/08
Date

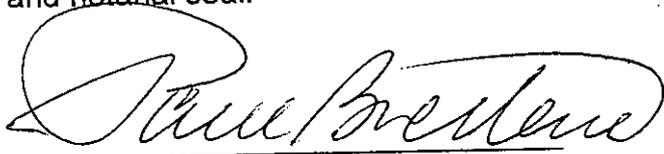


Alexander Maines, L.Ac.
Respondent

STATE OF MARYLAND
CITY/COUNTY OF BETHESDA

I HEREBY CERTIFY that on this 14th day of JANUARY, 2008, before me, a Notary Public of the foregoing State and City/County personally appeared Alexander Maines, L.Ac., License Number U01381, and made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed.

AS WITNESSETH my hand and notarial seal.



Notary Public

My Commission Expires: NOV 22 2010

PAUL BOERTLEIN
NOTARY PUBLIC
Montgomery County, Maryland
My Commission Expires 11/22/2010