

IN THE MATTER OF \* BEFORE THE  
LOUIS GIOVANNI PESCETTO, L. Ac., \* STATE BOARD OF  
Respondent \* ACUPUNCTURE  
License Number: U00279 \*

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**CONSENT ORDER**

The State Board of Acupuncture (the "Board"), on March 13, 2002, voted to charge Giovanni Louis Pescetto, L.Ac. (the "Respondent") (D.O.B. 08/27/50), License Number U00279, under the Maryland Acupuncture Act (the "Act"), Md. Code Ann., Health Occ. ("H.O.") § 1A-309 (2000 Repl. Vol.).

The Board charged Respondent with violation of the terms of the Board's Consent Order of May 8, 2001. The Consent Order of May 8, 2001, states, in pertinent part, that it is:

ORDERED that Respondent's license to practice acupuncture in the State of Maryland be **SUSPENDED** for one (1) year, effective thirty (30) days from the date of the Consent Order; and be it further

ORDERED that Respondent will comply and practice within all statutes and regulations government (sic) the practice of acupuncture in the State of Maryland; and it is further

ORDERED that any violation of any of the terms of this Order shall constitute unprofessional conduct;

ORDERED that if Respondent violates any of the terms of Respondent's suspension, or fails to comply with the conditions of this probation, the Board, after notice and a hearing, and a determination of violation, may impose any other disciplinary sanctions it deems appropriate, said violation of the Consent Order or violation of probation being proved by a preponderance of evidence [.]

The Board also charged Respondent with violation of the following pertinent provisions of the Act:

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 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; and
- (15) Fails to cooperate with a lawful investigation conducted by the Board [.]

The Board further charged Respondent with violating the Standards of Practice Regulations, Code Md. Regs. tit. 10, § 26.03 C (2), (5) and (7), and D (2) (October 18, 1999) which provide as follows:

.03 Standards of Practice.

(C) A licensee shall:

- (2) Be professional in conduct, with honesty, integrity, self-respect and fairness;
- (5) At all times respect the patient's dignity, autonomy, and privacy;
- (7) Cooperate with a lawful investigation conducted by the Board[.]

(D) A licensee may not:

- (2) Knowingly engage in or condone behavior which is fraudulent, dishonest, or deceitful, or involves moral turpitude[.]

## FINDINGS OF FACT

The Board makes the following facts:

### **I. Background Regarding License**

1. At all times relevant to the Charges, Respondent's license to practice acupuncture in Maryland was suspended. The Respondent was originally issued a license to practice acupuncture in Maryland on or about August 20, 1987, being issued license number U00279. Respondent's license was suspended on June 8, 2001 for one year.

2. Prior to June 2001, Respondent engaged in the private practice of acupuncture in Columbia, Maryland and at the Baltimore Centre for Wellness (the "Centre") in Woodlawn, Maryland.<sup>1</sup> In approximately June 2001, the Centre moved to Ellicott City, Maryland. Respondent continued to go to the Centre, after his suspension, to perform "administrative duties." Currently, Respondent engages in the practice of acupuncture at the Centre in Ellicott City, Maryland.

3. On May 8, 2001, Respondent entered into a Consent Order with the Board whereby the Board and Respondent found that Respondent was guilty of immoral and unprofessional conduct in the practice of acupuncture in regard to his conduct with two patients and agreed that his license to practice acupuncture would be suspended for one year, effective thirty (30) days from the date of the Consent Order.<sup>2</sup>

4. The thirty (30) day time period before the suspension took effect was granted

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<sup>1</sup> The Baltimore Centre for Wellness is the name of the building where Respondent practices acupuncture. Respondent rents the building and sublets to massage therapists, reiki therapists, chiropractors, and physical therapists. The building has a common waiting room. There is no receptionist since each practitioner maintains a separate practice.

<sup>2</sup> Respondent's license to practice acupuncture was suspended on May 8, 2001, effective June 8, 2001.

to permit Respondent the time to transition his patients who required ongoing acupuncture treatment to other acupuncturists.

5. On July 26, 2001, the Board received correspondence from a Maryland licensed acupuncturist alleging that Respondent may still be practicing acupuncture while under suspension.

6. On August 10, 2001, the Board received a written complaint from another acupuncturist, Acupuncturist 1<sup>3</sup>, alleging that Respondent practiced acupuncture after June 8, 2001.

7. Thereafter, the Board initiated an investigation into the matter. The Board issued a subpoena to Respondent for a list of patients treated by Respondent from January 2001 through June 2001. Patients A, B, C, and D<sup>4</sup> were among the names of patients on the list. (See ¶¶ 18-41, 49-66 below.)

8. On July 9, 2002, Respondent's license to practice acupuncture was reinstated by the Board, based on the Board's belief that Respondent had completed the specific technical requirements under the Consent Order.<sup>5</sup> Respondent was placed on probation for three years from the date of reinstatement, with certain probationary

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<sup>3</sup> The name of the acupuncturist is not included in the Consent Order. Respondent is aware of the acupuncturist's name.

<sup>4</sup> The names of the patients are not included in the Consent Order. Respondent has been provided with a list of the patients' names and corresponding letters.

<sup>5</sup> During the period of suspension, Respondent was required to successfully complete an individual tutorial in professional ethics, participate in individual psychotherapy and group therapy, reimburse the Board for costs associated with the investigation, undergo an independent evaluation regarding suitability for treating female patients and to make recommendations for conditions of probation, and appear before a Case Resolution Conference. Having satisfactorily fulfilled these requirements, the Board, on July 9, 2002, reinstated Respondent's license to practice acupuncture and placed Respondent on probation with certain conditions. Respondent is presently under the Order of Reinstatement.

conditions. Respondent's current license will expire on May 31, 2005.

## II. Background Since Being Suspended

### Acupuncturist 1

9. In or about May 2001, Respondent contacted Acupuncturist 1 regarding his covering Respondent's practice.

10. Acupuncturist 1 allegedly learned about the suspension by contacting the Board. When Acupuncturist 1 asked Respondent, Respondent acknowledged the reason for his ceasing the practice of acupuncture was due to the suspension of his license.

11. In or about the end of May 2001, Acupuncturist 1 agreed to treat Respondent's patients. Respondent agreed to refer approximately 20 of his patients to Acupuncturist 1<sup>6</sup>.

12. Acupuncturist 1 began treating Respondent's former patients in Respondent's Ellicott City office on June 11, 2001. Respondent did not begin to introduce Acupuncturist 1 to his patients until June 11, 2001, three days after his license was suspended.<sup>7</sup>

13. On Monday July 30, 2001, Acupuncturist 1 alleges he received a telephone call from Patient A, a male, asking to speak with Respondent and inquiring about whether Patient A was to come in for a treatment the week of July 30, 2001. In response to a question from Acupuncturist 1, Acupuncturist 1 alleges that Patient A informed

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<sup>6</sup> Respondent told Acupuncturist 1 that he would be referring an additional 20 of his patients to other practitioners.

<sup>7</sup> The Consent Order, suspending Respondent's license, was signed on May 8, 2001, but expressly delayed the suspension of Respondent's license for 30 days so that Respondent could utilize the time to transition his patients to another acupuncturist.

Acupuncturist 1 that his last treatment with Respondent, which consisted of acupuncture, was on the previous Wednesday.<sup>8</sup>

14. On July 31, 2001, Acupuncturist 1 confronted Respondent with having treated a patient with acupuncture while his license was suspended. Respondent told Acupuncturist 1 that the purpose of the call was to arrange a dinner date. Respondent told Acupuncturist 1 he would have Patient A call him. Later, Patient A called Acupuncturist 1 and Patient A said the purpose of the call was to arrange a dinner date. Acupuncturist 1 informed Patient A that was contrary to Acupuncturist 1's recollection of what Patient A originally told him.

15. On Friday August 3, 2001, based on his belief that Respondent was treating patients while his license was suspended, Acupuncturist 1 advised Respondent that he would no longer treat Respondent's patients and he would file a report with the Board regarding Respondent.

16. On or about August 7 or 8, 2001, Acupuncturist 1 filed a complaint with the Board regarding Respondent.

17. Acupuncturist 1 treated approximately 19 of Respondent's patients from June 11, to August 6, 2001.

III. **Unprofessional Conduct and Violation of Terms of Order of Suspension by Practicing Acupuncture while Suspended.**

**Patient A**

18. Patient A, a 66 year old male professional photographer and videographer, initially consulted Respondent beginning in approximately 1999 for pain in his hands and

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<sup>8</sup> The Wednesday previous to July 30, 2001 was July 25, 2001.

feet. Previously, Patient A and Respondent had been business associates. At times, Respondent saw Patient A on a weekly basis, and at other times he saw him every couple of months. Patient A received acupuncture from Respondent, and at times, also received moxibustion<sup>9</sup>, zero balancing<sup>10</sup> and massage.

19. Initially, Patient A paid Respondent in cash or check for his treatments, and then later he traded services with Respondent. Respondent did not provide Patient A a receipt for the treatment. In exchange for the treatment, Patient A prepared medical forms for Respondent's practice, made composite photographs of Indian artifacts and people for resale, and prepared videos of family photographs and made other videotapes.

20. Initially, Patient A received treatment at Respondent's office in either Columbia or Woodlawn, Maryland. Thereafter, Patient A received treatments at Respondent's Woodlawn office.

21. According to Respondent's records, in 2001, Respondent treated Patient A on January 11, 17, 24, and 31, February 7, 14, and 21, March 1, April 5, May 15 and 23, and June 4, 2001.

22. Respondent informed the Board's investigator that on some unspecified date after June 8, 2001, during summer of 2001, he massaged Patient A's feet.

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<sup>9</sup> Moxibustion is a technique used in traditional Chinese medicine in which a stick or cone of burning mugwort, *Artemisia vulgaris*, is placed over an inflamed or affected area on the body. The cone is placed on an acupuncture point and burned. The cone is removed before burning the skin. The purpose is to stimulate and strengthen the blood and the life energy, or *qi*, of the body.

<sup>10</sup> Zero balancing is a hands-on bodywork system designed to align the energy body with the physical structure.

23. On some date after June 8, 2001, during Summer 2001, Patient A alleges that Respondent at his own initiation came to Patient A's home in Glen Burnie, Maryland, for Patient A's treatment session. Respondent performed massage on Patient A's feet. Patient A never received treatment from Respondent in his home before or since. No one else was present.

24. On some date after June 8, 2001, during Summer 2001, and after the visit to Patient A's home, Patient A alleges that Respondent instructed Patient A to meet him at a location in an apartment for a treatment. The apartment was someone's personal residence and was not a clinical office. Respondent allegedly performed acupuncture on Patient A at this location. No one else was present.

25. On or about Monday July 30, 2001, Patient A alleges he called Respondent's office to verify an appointment. Patient A spoke with Acupuncturist 1 who was working in Respondent's office. Acupuncturist 1 called Patient A back after several minutes to obtain additional information.

26. On some date after June 8, 2001, and after the visit at Patient A's home, and after the appointment in the apartment building, in or about July 2001, Respondent called Patient A and scheduled an appointment with Patient A at 6:00 p.m. at the Charlestown Retirement Community, Maiden Choice Lane, Catonsville, Maryland. Respondent provided Patient A with driving instructions and told Patient A to meet him at HV<sup>11</sup> 607.

27. Patient A met Respondent on a parking lot where he got into Respondent's car and they drove together to an apartment building. Respondent and Patient A rode in

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<sup>11</sup> One of the buildings at Charlestown is called "Harbor View".

an elevator to an apartment to which Respondent had a key. The apartment was decorated as a residence. Patient A alleges that Respondent moved the coffee table and set up a portable treatment table in the living room. Respondent told Patient A that "the woman who owned the apartment was in the hospital." Patient A alleges that Respondent said "you will have all of your treatments here." Patient A alleges that Respondent performed acupuncture on Patient A in the apartment.

28. Patient A did not seek any further treatment from Respondent.

### **Patient B**

29. Patient B, a certified nurse anesthetist, initially consulted with Respondent in Fall 2000. Patient B had previously received both acupuncture and zero balancing from other practitioners. In Fall 2000, Patient B was experiencing a lot of stress in her marriage and she was considering going to acupuncture school. Patient B met Respondent in a Medical Qi Gong class and asked Respondent if he would treat her.

30. Thereafter, in approximately Fall 2000, Respondent began treating Patient B with acupuncture and zero balancing. Most of the time, Respondent treated Patient B weekly. Patient B paid for her treatment by check and did not seek insurance reimbursement.

31. According to Respondent's records, in 2001, Respondent treated Patient B on January 15, January 30, February 6, February 15, March 14, March 21, March 28, April 4, April 11, April 25, May 2, May 9, and May 20, 2001. According to Patient B's records, she wrote a check to Respondent on May 22, 2001.

32. Patient B had an acupuncture appointment with Respondent on or about May

20 or 22, 2001. In or about the end of May 2001, Respondent told Patient B that he was taking a year off from the practice of acupuncture to work on the Centre, take classes, and on other projects. Respondent told Patient B he would introduce her to another acupuncturist who could treat her.

33. On July 9, 2001<sup>12</sup>, at approximately 5:00 p.m., Patient B presented at Respondent's new office in Ellicott City. No other patients were present. Respondent treated her with ZB. Respondent informed Patient B about Acupuncturist 1 who was working in his office. Patient B paid Respondent with a check for \$70.

34. On July 23, 2001, Respondent introduced Patient B to Acupuncturist 1 who treated Patient B on that date. Patient B paid Acupuncturist 1 \$70. Patient B was not satisfied with Acupuncturist 1's style and did not continue treatment with him.

35. Thereafter, Patient B had no contact with Respondent.

### Patient C

36. Patient C, a female, has been a patient of Respondent for an unknown period of time. According to Patient C, Respondent usually treated her with a combination of acupuncture and zero balancing, which usually lasted 50 minutes.

37. According to Respondent's records, Respondent treated Patient C on January 8, January 29, February 9, and April 18, 2001.

38. On June 22, 2001, Patient C presented for treatment at Respondent's new office in Ellicott City; however, the treatment session was different than previous sessions in that Respondent did not perform acupuncture but did perform zero balancing and

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<sup>12</sup> Acupuncturist 1, who was covering Respondent's practice, was attending a "healing energy workshop" from July 5 to July 15, 2001.

"twisted" her ankles and her arms. Patient C was dissatisfied with the treatment. After the treatment, Respondent gave Patient C a tour of his new office. No one was present in the office. Patient C paid Respondent \$70 for the treatment session with a check dated June 22, 2001. Respondent walked Patient C to her car where he spoke with Patient C's husband.

#### **Patient D**

39. On or about July 16, 2001, on leaving the Centre, Acupuncturist 1 encountered a female, Patient D, on the parking lot of the Centre whom he recognized as a former patient of Respondent. Patient D informed Acupuncturist 1 that she was coming to the Centre to see Respondent.

40. On or about July 17, 2001, Acupuncturist 1 alleges he called Patient D because he was concerned that Respondent had treated Patient D. In response to his inquiry, Acupuncturist 1 alleges that Patient D told him that she had a "special arrangement" with Respondent in regard to the fee but that she did not feel comfortable discussing it with Acupuncturist 1 without first speaking with Respondent.

41. In or about January 2002, in an interview with the Board's investigator, Patient D acknowledged speaking with Acupuncturist 1 in or about July 2001, but states she went to the Centre to talk with Respondent and that her last treatment by Respondent was on May 17, 2001.

#### **Unidentified Patients**

42. On or about the week of June 25, 2001, Acupuncturist 1 went to the Centre on a date for which he was not scheduled to see patients to look for some belongings he

may have left on a previous day. Acupuncturist 1 noted that the door to the room that he used for treatment was closed and a "do not disturb" sign was on the door. Thereafter, Respondent emerged from the treatment room. Acupuncturist 1 informed Respondent why he was there and Respondent agreed to check the treatment room for the belongings. Respondent reentered the treatment room. Acupuncturist 1 observed an individual lying on the treatment table. After several minutes, when Respondent exited the treatment room, Acupuncturist 1 observed a female person sitting up on the treatment table.

43. Subsequently, Respondent administered ZB to this female individual.

44. In or about the first week of July 2001, Acupuncturist 1 alleges that he asked Respondent who was in the treatment room. Acupuncturist 1 alleges that Respondent told Acupuncturist 1 that the individual was a male who was an old friend of his.

45. On or about July 20, 21, or 22, 2001, when confronted by Acupuncturist 1 about treating patients after the effective date of his suspension, Respondent told Acupuncturist 1 that he was treating some patients but he was not accepting any money for the treatments, which was not in violation of his agreement with the Board, that he was continuing to perform zero balancing, and this was not covered by his agreement with the Board.

46. On or about July 23, 2001, Acupuncturist 1 alleges he contacted the Board to obtain clarification regarding whether ZB is within the practice of acupuncture and whether acupuncture treatment for which there is no payment is within the practice of acupuncture.

47. On or about July 23, 2001, after having spoken with Board staff, Acupuncturist 1 informed Respondent that zero balancing is within the practice of

acupuncture, and that treatment is the practice of acupuncture whether or not there is payment. In response, Respondent allegedly told Acupuncturist 1 that he would not perform any more treatments but that he was going to treat his (Respondent's) son because he feels he has a right to do so and he was going to continue doing a zero balancing trade with a personal friend<sup>13</sup> with whom he had been trading services for fifteen years.

48. On February 19, 2002, Respondent denied to the Board's investigator that he has treated any patients or family members during his suspension, at his Ellicott City office or anywhere else, whether or not he received a fee.

IV. **Unprofessional Conduct and Violation of Terms of Order of Suspension by:**

- A. **Failure to Cooperate with a Lawful Investigation Conducted by the Board and Knowingly Engaging in or Condoning Behavior which is Fraudulent, Dishonest, or Deceitful, or Involves Moral Turpitude, by Providing False Information to the Board's Investigator and by Inducing Patients to Provide False Information;**
- B. **Failure to Respect the Patient's Dignity, Autonomy, and Privacy by Inducing Patients to Provide False Information to the Board's Investigator; and**
- C. **Failure to Comply and Practice within all Statutes and Regulations Governing the Practice of Acupuncture in Violation of the terms of the Order of Suspension by Engaging in the Above Stated Acts.**

**Patient A**

49. In or about August 2001, after the appointment in the Charlestown apartment

<sup>13</sup> This individual is a certified massage therapist and a zero balancer. Respondent did not actually treat either his son or the friend during the period of suspension.

building, as stated in ¶¶ 26-27, Respondent and Patient A met for dinner at the Red Lobster restaurant in Columbia, Maryland. Respondent informed Patient A that he had had "an affair with one of his patients and that his license had been suspended." Respondent acknowledged that he should have told Patient A this information previously.

50. Thereafter, Patient A did not return to Respondent for any acupuncture treatment.

51. In or about August or September 2001, Respondent went to Patient A's home without prior notice. Respondent told Patient A that his attorney wanted Patient A to draft a statement for the Board stating that he had telephoned Respondent's office on July 30, 2001, in order to set a dinner date, not to set an acupuncture appointment. Respondent allegedly attempted to coach Patient A in regard to what information should be in the statement and specifically requested that Patient A state "this statement to the best of my recollection is true." Thereafter, Patient A composed a statement on his computer stating that he had contacted Respondent concerning a dinner date and gave it to Respondent.

52. Thereafter, Patient A has declined any contact with Respondent.

53. Several weeks after Respondent came to his home unannounced in August or September 2001 and, after experiencing "nightmares" regarding his contacts with Respondent, Patient A alleges he realized that when he called Respondent on July 30, 2001, he called to inquire about the scheduling of his acupuncture appointment with Respondent.

**Patient B**

54. On January 28, 2002, during an interview with the Board's investigator, Patient B learned for the first time that Respondent's license to practice acupuncture had been suspended by the Board since June 8, 2001.

55. On or about January 2002, Respondent contacted Patient B by telephone. Respondent told Patient B that his license had been suspended and that he was being investigated by the Board for "breaking" the suspension. Respondent reviewed with Patient B the dates of her treatment on May 22 and July 9, 2001. Respondent told Patient B that the July 9 appointment was the "time I showed you around the new Center" and suggested that Patient B tell the investigator that is what occurred on that date. Patient B informed Respondent that she would not be comfortable making that statement. Patient B alleges that Respondent then suggested to Patient B that she tell the investigator that she made out the check on July 9, 2001 for payment of a previous visit. Patient B did not have any outstanding payments due Respondent when she saw him on July 9, 2001. Patient B alleges that Respondent further requested whether Patient B could not imply to the investigator that he had treated her on July 9. Patient B did not agree.

56. During the week of July 29, 2002, Respondent contacted Patient B and informed her that he had resumed the practice of acupuncture. Respondent treated Patient B on August 14, 2002 with acupuncture and zero balancing. Patient B was scheduled to be treated by Respondent on September 4, 2002, but Patient B cancelled the appointment.

57. Patient B has not returned to Respondent for treatment.

### Patient C

58. When contacted by the Board's investigator on January 16, 2002, Patient C stated that her last two treatment sessions with Respondent were on June 6, 2001 and June 22, 2001. The Board's investigator told Patient C that Respondent's license had been suspended as of June 8, 2001 and why. In response to concerns expressed by Patient C, the Board's investigator informed Patient C that she could obtain a copy of the Board's Order by contacting the Board.

59. On January 16, 2002, later in the day, Patient C sent a facsimile to the Board's investigator containing a copy of her cancelled check of June 22, 2001, a copy of a calendar for June 2001, which states on June 6, 2001 "[Patient C] - G.V." The date of June 22, 2001 is blank. Also on January 16, 2002, Patient C submitted a typed letter with handwritten comments to the investigator stating that her appointment with Respondent was on June 6, 2001 but she neglected to pay him at that time. She stated that subsequently, on June 22, 2001, she mailed him her check for \$70.

60. On January 16, 2002, after receipt of these documents, the Board's investigator called Patient C and informed her that her written submissions contradicted her verbal statements to him and asked her to resolve this conflict. Patient C told the Board's investigator that she would think it over and call him back.

61. Thereafter, Patient C contacted the Board and obtained a copy of the Consent Order of May 7, 2001.

62. On January 19, 2002, Patient C left a telephone message for the Board's investigator. Patient C requested the investigator to destroy the letter and attachments

that she had sent by facsimile on January 16, 2001 and that the check that she sent was proof that she was "at Giovanni's place" on June 22, 2001. Patient further stated that she had read the Board's "report."

63. On January 22, 2001, the Board's investigator spoke with Patient C wherein she alleged she was in Respondent's Ellicott City office on or about June 22, 2001, when Respondent allegedly performed acupuncture on her and that she had a tour of the new office.

#### Patient D

64. On or about July 16, 2001, on leaving the Centre, Acupuncturist 1 alleges he encountered Patient D, whom he recognized as a former patient of Respondent. Patient D informed Acupuncturist 1 that she was coming to the Centre to see Respondent.

65. On or about July 17, 2001, Acupuncturist 1 called Patient D because he was concerned that Respondent had treated Patient D. Acupuncturist 1 alleges that in response to his inquiry, Patient D told Acupuncturist 1 that she had a "special arrangement" with Respondent in regard to the fee but that she did not feel comfortable discussing it with Acupuncturist 1 without first discussing it with Respondent.

66. In or about January 2002, in an interview with the Board's investigator, Patient D acknowledged speaking with Acupuncturist 1 in or about July 2001, but states she went to the Centre to talk with Respondent and that her last acupuncture treatment by Respondent was on May 17, 2001.<sup>14</sup>

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<sup>14</sup> Respondent states that he met with Patient C to listen to her regarding issues pertaining to her son who was incarcerated.

## Respondent

67. On February 19, 2002, in an interview with the Board's investigator, Respondent denied treating any patients during his suspension, at the Centre, or from any other location outside the Centre, whether or not he received a fee.<sup>15</sup>

## Summary

68. By performing zero balancing<sup>16</sup>, massage and "counseling" which are considered within the scope of the practice of acupuncture, on Patients A, B, C, and D, and on the unidentified patients as stated in ¶¶ 13-14, 18 - 47, after June 8, 2001, Respondent is in violation of the Consent Order of May 8, 2001. Under these same facts, Respondent has engaged in unprofessional conduct in violation of the terms of the Consent Order of May 8, 2001, and in violation of §1A-309 (3). Respondent is also in violation of the Consent Order in that he has failed to comply and practice within all statutes and regulations governing the practice of acupuncture, as stated below.

69. By denying to the Board's investigator that he treated any patients while under suspension, as stated in ¶ 67, Respondent failed to cooperate with a lawful investigation conducted by the Board in violation of §1A-309 (15) and violated Code Md. Regs. tit. 10, § 26.03 C (2) failed to be professional in conduct, with honesty, integrity, self-respect and fairness, and (7) failed to cooperate with a lawful investigation conducted by the Board, and D (2) knowingly engaging in behavior which is fraudulent, dishonest, or

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<sup>15</sup> Respondent acknowledged massaging Patient A's feet while suspended but did not consider that treatment.

<sup>16</sup> At a public meeting of the Board on April 26, 2000, the Board determined that ZB is within the scope of the practice of Acupuncture.

deceitful, or involves moral turpitude.

### CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes that Respondent violated the terms of the Board's Consent Order of May 8, 2001 and committed prohibited acts under Health Occupations Article §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; and (15) Fails to cooperate with a lawful investigation conducted by the Board. The specific regulations, which Respondent violated, are the Standards of Practice Regulations, Code Md. Regs. tit. 10, § 26.03 C stating that a licensee shall (2) Be professional in conduct, with honesty, integrity, self-respect and fairness; and (7) Cooperate with a lawful investigation conducted by the Board, and (D) A licensee may not: (2) Knowingly engage in or condone behavior which is fraudulent, dishonest, or deceitful, or involves moral turpitude.

### ORDER

Based upon the foregoing, it is this 17<sup>th</sup> day of June, 2003, by a majority of the full authorized membership the Maryland State Acupuncture Board, hereby

**ORDERED** that this Consent Order supercedes the Board's July 9, 2002 Order of Reinstatement; and it is further

**ORDERED** that Respondent's license to practice acupuncture shall be **SUSPENDED** for six (6) months, with all but three (3) months **STAYED**, effective thirty (30) days from the date of this Consent Order; and be it further

**ORDERED** that during the period of suspension, Respondent shall not have any

client contact that involves the practice of acupuncture, whether it is for the purpose of obtaining diagnostic information to make a referral or for any other aspect of the practice of acupuncture, the insertion of needles, performance of zero balancing, acupressure or massage, and the provision of counseling; and be it further

**ORDERED** that Respondent shall be placed on **PROBATION** for a period of **THREE (3) YEARS**, effective the date of this Order, subject to the terms and conditions described in the Board's July 9, 2002 Order of Reinstatement, which states as follows:

1. Respondent shall continue to submit to evaluative supervision of all of his female clients with a Board-approved supervisor who is experienced in supervising professionals who have committed sexual boundary violations in their practices. In addition, Respondent shall also be supervised in regard to maintaining clear boundaries with all clients, male and female. The supervisor may not be connected with Respondent through any current or past collegial, personal, professional or academic affiliation. The supervisor shall monitor Respondent's practice with his clients, including review of client records, treatment plans, record keeping and whatever else the supervisor deems necessary.
2. The supervisor shall be provided with the entire investigative file in this case, including investigative interviews, investigative reports (excluding medical records), the charging document and this Consent Order as well as the reports from all treating psychotherapists.
3. Respondent shall ensure that the supervisor submits **MONTHLY** reports to the Board regarding Respondent's participation in the evaluative supervision for the first

year of probation, with copies to Respondent's individual psychotherapist and group leader.

4. After the first year of probation, Respondent may petition the Board for BI-MONTHLY submission of the supervisor's reports. If the supervisory reports for the first year are satisfactory to the Board, the reports shall be submitted BI-MONTHLY for the second year of the probation term.

5. After the second year of probation, Respondent may petition the Board for QUARTERLY submission of the supervisor's reports. If the supervisory reports for the second year are satisfactory to the Board, the reports shall be submitted QUARTERLY for the third year of the probation term.

6. Respondent shall continue to participate in individual psychotherapy with a Board-approved psychotherapist as recommended by the Johns Hopkins Sexual Behaviors Consultation Unit. The entire investigative file in this case, including investigative interviews, investigative reports (excluding medical records), the charging document and this Consent Order shall be made available to the treating psychotherapist.

7. Respondent shall ensure that the treating psychotherapist submits MONTHLY reports to the Board for the first year of probation, with copies to Respondent's supervisor and group leader.

8. Following the first year of probation, Respondent may petition the Board for BI-MONTHLY submission of the individual psychotherapist's reports. The Board is under no obligation to grant said petition but will consider all of the prior reports, Respondent's progress and any other information submitted by Respondent. The decision of the Board

regarding Respondent's petition in this matter shall be final and no appeal arises from the denial of said petition.

9. Following the second year of probation, Respondent may petition the Board for QUARTERLY submission of the individual psychotherapist's reports. The Board is under no obligation to grant said petition but will consider all of the prior reports, Respondent's progress and any other information submitted by Respondent. The decision of the Board regarding Respondent's petition in this matter shall be final and no appeal arises from the denial of said petition.

10. Respondent shall participate in a relapse prevention group for individuals with problematic sexual behaviors if recommended by the Johns Hopkins Sexual Behaviors Consultation Unit. The entire investigative file in this case, including investigative interviews, investigative reports (excluding medical records), the charging document and this Consent Order, as well as the reports from the treating psychotherapist and supervisor, shall be made available to the leader.

11. Respondent shall ensure that the group leader submits MONTHLY reports to the Board for the term of the probation. The report shall document Respondent's progress in maintaining clear boundaries in his practice of acupuncture.

12. Respondent shall ensure that all reports from the treating psychotherapist specifically document and address Respondent's medications and the monitoring thereof, as well as Respondent's progress in maintaining clear boundaries in his practice of acupuncture.

13. Respondent shall sign all necessary releases to allow the individual

supervisor, psychotherapist, and the group leader to send reports to and communicate with any health professional providing any psychiatric/psychological evaluation and treatment of Respondent.

14. Respondent shall not establish a personal, business/professional, employer/employee, teaching, supervisory or mentoring relationship with any individual for whom Respondent is providing acupuncture, zero balancing, acupressure, massage or counseling.

15. Respondent shall be responsible for all costs associated with fulfilling the terms and conditions of probation under this Consent Order.

16. There shall be no early termination of probation.

17. Respondent shall obey all laws governing the practice of acupuncture in Maryland; and it is further

**ORDERED** that three (3) years and three (3) months from the date of this Consent Order, Respondent may petition the Board for termination of probation and for full reinstatement of his license, provided that Respondent has satisfactorily complied with all conditions of probation, there are no outstanding complaints or other disciplinary actions pending against Respondent, and the Board-approved treating and evaluating psychotherapists, as well as the Board-approved supervisor, agree that Respondent may resume the unrestricted practice of acupuncture; and it is further

**ORDERED** that if Respondent violates any of the terms of this Consent Order or fails to comply with the terms of probation, the Board may, after providing Respondent with appropriate notice and process, impose any disciplinary sanction it deems appropriate;

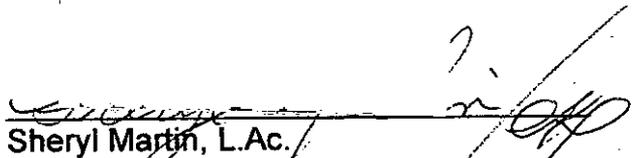
and it is further

**ORDERED** that any violation of any of the terms of this Consent Order by Respondent shall constitute unprofessional conduct; and it is further

**ORDERED** that if the Board has probable cause to believe that Respondent presents a danger to the public health, safety or welfare, the Board, WITHOUT PRIOR NOTICE AND AN OPPORTUNITY FOR A HEARING, MAY SUMMARILY SUSPEND THE RESPONDENT'S LICENSE, provided that Respondent is given notice of the Board's action and an opportunity for a hearing within thirty (30) days of requesting same, in accordance with Md. Gov't Code Ann. § 10-226(c) (2000 Supp.); and it is further

**ORDERED** that this Consent Order is a PUBLIC DOCUMENT and is reportable to any entity to which the Board is obligated by law to report, and it is disclosable under the Maryland Public Information Act, Md. State Gov't Code Ann. §§ 10-611 et seq.

June 17, 2003  
Date

  
Sheryl Martin, L.Ac.  
Vice-Chair, Board of Acupuncture

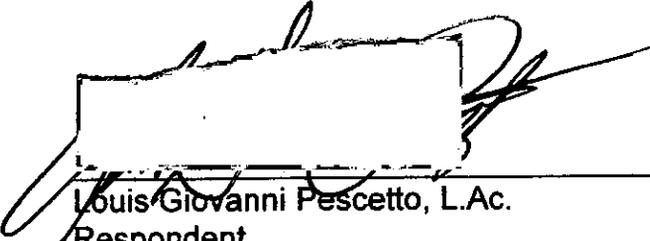
CONSENT

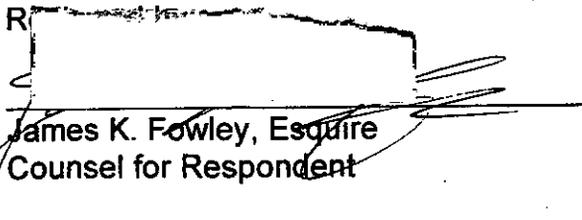
I, Louis Giovanni Pescetto, L.Ac., acknowledge that I am represented by legal counsel, James K. Fowley, Esquire, and I have had the opportunity to consult with counsel before entering into and signing this document. By this consent, I hereby admit the Findings of Fact and Conclusions of Law, and submit to the foregoing Consent Order consisting of twenty-six (26) pages.

I acknowledge the validity of this Consent Order as if entered after the conclusion of 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 law. I acknowledge the legal authority and the jurisdiction of the Board to initiate these proceedings and to issue and enforce this 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 after having an opportunity to consult with counsel, without reservation, and I fully understand and comprehend the language, meaning and terms of this Consent Order.

6/17/03  
Date

  
Louis Giovanni Pescetto, L.Ac.  
Respondent

R  
  
James K. Fowley, Esquire  
Counsel for Respondent

STATE OF MARYLAND

CITY/COUNTY of Baltimore

I HEREBY CERTIFY that on this 17<sup>th</sup> day of June, 2003, before me, a Notary Public of the State and County aforesaid, personally appeared Louis Giovanni Pescetto, L.Ac., and made oath in due form of law that the foregoing was his voluntary act and deed.

AS WITNESS my hand and Notarial Seal.

*Vito Luly*  
Notary Public

My Commission Expires: 2/06