

IN THE MATTER OF

* BEFORE THE

VIVID YANG, L.Ac.

* MARYLAND

Respondent

* BOARD OF

License No. U00217

* ACUPUNCTURE

* * * * *

CONSENT ORDER

PROCEDURAL BACKGROUND

On the 1997 application for renewal of a Maryland acupuncture license, Vivid Yang, L.Ac, (the "Respondent"), answered "yes" to a question indicating that she had been involved in criminal proceedings since the date of her last licensure renewal. Based on that information, the Board had grounds to charge Respondent with violating Md. Code Ann., Health Occ. § 1A-309(7), which provides:

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 reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:

- (7) Is convicted of or pleads guilty or nolo contendere to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside.

Subsequently, the Maryland Board of Acupuncture (the "Board") voted to offer to Respondent an opportunity to resolve this matter prior to charging. On July 14, 1998, Respondent appeared before the Board to discuss settlement of the case. On that date, the Board voted to accept this Consent Order as a resolution of this matter.

FINDINGS OF FACT

1. At all times relevant to this matter, Respondent was and is licensed to practice Acupuncture in the State of Maryland.

2. On February 27, 1995, Respondent answered "yes" to a question on her 1997 renewal application indicating that she had been involved in criminal proceedings since the date of her last renewal application.

3. Respondent and her husband were jointly charged, through grand jury indictment in the United States District Court for the Middle District of Florida, Tampa Division, with the following: one count of conspiracy in violation of 18 U.S.C. § 371; nineteen counts of filing false insurance claims for Medicare beneficiaries in violation of 18 U.S.C. §§ 2 and 287; and three counts of mail fraud in violation of 18 U.S.C. § 2 and 1341.

4. Respondent pled guilty and was placed on three years supervised probation and ordered to pay restitution, jointly and severally with her husband, in the amount of \$927, 636.93 to the United States Department of Health and Human Services, Health Care Financing Administration.

5. In Att'y Grievance Comm'n v. Walman, 280 Md. 453 (1977), the Maryland Court of Appeals held that a crime involving moral turpitude is one containing fraud as an essential element involves moral turpitude and one which involves intentional dishonesty for purposes of personal gain.

5. The crimes to which Respondent pled guilty contain fraud as an essential element or involve intentional dishonesty for personal gain and thus are crimes involving moral turpitude.

6. The Florida Board of Acupuncture has taken no action against Respondent's license

for this matter.

7. Respondent was excluded from the Medicare program pursuant to 42 U.S.C. § 1320a-7(a) for a period of ten years.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that Respondent violated Md. Code Ann., Health Occ. § 1A-309(7), which provides:

(7) Is convicted of or pleads guilty or nolo contendere to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 10th day of November, 1998, by a majority of the full authorized membership of the Maryland State Board of Acupuncture hereby:

ORDERED, that the license of Vivid Yang, L.Ac., to practice acupuncture in the State of Maryland is **SUSPENDED**; and it is further

ORDERED, that Respondent may petition the Board for reinstatement of her license after January 1, 2000, provided, however, that no complaints are pending against Respondent and no disciplinary action has been taken by the Board, Respondent has complied with and is not in violation of her criminal probation, and her license has not been revoked by the Florida Board of Acupuncture.

11/10/98

Date



Penny Heisler
Executive Director

CONSENT

I, Vivid Yang, L.Ac., License Number U00217, by signing this Consent, agree to be bound by the terms and conditions of the foregoing Consent Order, consisting of 3 pages. I acknowledge that I have read this Consent Order and that I have been notified of my right to consult with an attorney in the course of the Board's proceedings, and that I have had the opportunity to consult with an attorney and to have this Consent Order reviewed by my attorney prior to entering into it.

I further acknowledge that, by signing this Consent Order, I submit to its terms and conditions as a resolution of the Board's case, based on the findings set out herein, and that the Board has entered into this Consent Order in lieu of charging me under the Acupuncture Practice Act. By signing this Consent Order, I waive any rights I have to contest the Findings of Fact and Conclusions of Law.

I acknowledge the validity of this Order as if it were made after a 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 substantial procedural protections to which I am entitled by law.

I also recognize that I am waiving my right to appeal any adverse ruling of the Board that might have followed any such hearing.

I have had an opportunity to review this Consent Order with my attorney and sign it voluntarily, understanding its terms, meaning, and effect.

Date



Vivid Yang, L.Ac., Respondent