

COMMONWEALTH OF MASSACHUSETTS
BOARD OF REGISTRATION IN MEDICINE
COMMITTEE ON ACUPUNCTURE

MIDDLESEX, ss

Adjudicatory Case No. 2021-035
(RM-21-0329)

In the Matter of)
)
)

Qingping Joy Bai, Lic.Ac.)
_____)

FINAL DECISION AND ORDER

Procedural History

The Board of Registration in Medicine's Committee on Acupuncture (COA) initiated this proceeding by issuing an Order of Temporary Suspension and a Statement of Allegations (SOA) to Qingping Joy Bai, Lic.Ac. (Respondent) on September 3, 2021. The COA also referred the matter to the Division of Administrative Law Appeals (DALA) on that date. On September 7, 2021, the DALA Magistrate issued an order scheduling a conference on September 10, 2021 and offering the Respondent the option to proceed with a hearing on the temporary suspension on that date, or conduct instead a prehearing conference on that date, or postpone the hearing to another date. The Respondent did not respond to the order, nor did she appear at the conference on September 10, 2021.

On September 24, 2021, the DALA Magistrate issued an Order to Show Cause to the Respondent that she provide an explanation for her failure to appear on September 10, 2021. The Order also extended the Respondent's time to file a written answer to the SOA and assert her right to a hearing on the temporary suspension from October 4, 2021¹ to October 8, 2021. The Respondent did not respond, nor offer any explanation as to why

¹ 243 CMR 4.03(7) requires Respondent's to submit a written answer to a SOA within thirty days after the issuance of the SOA.

she had not previously responded to the order setting the hearing date for September 10, 2021².

On December 27, 2021, the DALA Magistrate issued a Recommended Decision³ in which the Magistrate found that the Respondent has waived her right to a hearing on an Order for Temporary Suspension that issued on September 3, 2021. The Magistrate also found that the Respondent, having failed to file an Answer to the Statement of Allegations (SOA) that issued on September 3, 2021, should be disciplined for failing to wear a mask while performing acupuncture.

Both parties were offered the opportunity to file objections to the Recommended Decision as well as Memoranda on Disposition. Neither party filed objections or Memoranda on Disposition.

The COA has reviewed the Recommended Decision. On the basis of its review the COA hereby adopts the Recommended Decision, which is attached hereto and incorporated by reference, with the following amendments:

- deleting on Page 1, in the paragraph entitled “Summary of Decision”, the reference to “....and gloves⁴”, and
- deleting on Page 3, top paragraph, and last paragraph, the reference to “...and gloves”

Discussion and Sanction

Without using the term “default”, the Magistrate cited the elements that constitute a default – namely that the Respondent did not respond to his order and that she did not file an answer to the SOA. Therefore, the COA finds the Respondent in default. When a Respondent defaults, the allegations in the Statement of Allegations are deemed admitted. See *Metropolitan Property and Casualty Insurance Company v. Morrison*, Supreme

² The only hearing date scheduled was September 10, 2021. The Recommended Decision made a reference to September 20, 2021, which was likely in error.

³ In the Recommended Decision, the Magistrate initially refers to the “Board of Registration in Medicine Committee on Acupuncture”, but thereafter frequently makes reference to “the Board”. For clarity, the governing body will be referred to as the Committee on Acupuncture, or “COA”, and any reference to the Board of Registration in Medicine will be referenced as “the Board.”

⁴ The Respondent was not charged with failing to wear gloves, nor did any of the Governor’s COVID orders require the wearing of gloves

Judicial Court, 460 Mass 352 (2011). Those admitted facts and conclusions of law include:

Findings of Fact

1. The Respondent was born on September 27, 1964. She graduated from New England School of Acupuncture in April 2014. She has been licensed to practice acupuncture in Massachusetts under certificate number 258462.
2. On or around November 6, 2020, Charles D. Baker, Governor of the Commonwealth of Massachusetts ("Governor Baker"), issued COVID-19 Order No. 55 in response to the ongoing COVID-19 Pandemic, through which he ordered that "all persons in Massachusetts over the age of 5 years old are required to wear a mask or cloth face covering over their mouth and nose when in a public location, whether indoors or outdoors."
3. In response to an anonymous consumer complaint received on or around November 27, 2020, a representative of the COA left a voice-mail message for the Respondent on November 27, 2020 and spoke with the Respondent by phone on December 1, 2020 regarding same.
4. During the December 1, 2020 phone call as described in the preceding paragraph, the Respondent acknowledged that neither she nor her patients wore masks during acupuncture appointments conducted by the Respondent at her office, located at 332 Washington Street, Suite 280, in Wellesley, Massachusetts, since the imposition of COVID-19 Order No. 55.
5. The Respondent's office, as described in the preceding paragraph, is open to and/or accessible by the public.
6. The aforementioned representative of the COA then referred the above information to the Town of Wellesley Health Department.
7. On or about December 3, 2020, a representative of the Town of Wellesley Health Department inspected the Respondent's office and noted that the Respondent did not wear a mask throughout the entire inspection and that one (1) of the Respondent's patients, also present for acupuncture treatment during the inspection, was not wearing a mask.

8. The representative of the Town of Wellesley Health Department informed the Respondent during the aforementioned inspection that she was required to wear a mask at all times in her office during operating hours.
9. Representatives of the Committee interviewed the Respondent by phone on February 18, 2021, during which the Respondent again confirmed that she does not wear a mask in her office while treating patients.
10. On April 29, 2021, Governor Baker, issued COVID-19 Order No. 67 through which he, in part, expanded on the above-referenced COVID-19 Order No. 55 and maintained that "all persons in Massachusetts over the age of 5 years old are required to wear a mask or face covering over their mouth and nose.....when indoors and in a public location."
11. On May 18, 2021, the Respondent sent an email to Complaint Counsel for the Committee on Acupuncture stating, among other things, she agreed her office needs to be kept clean and comport with most OSHA requirements but she disagreed that she should be required to wear a mask⁵ while performing acupuncture.
12. On May 29, 2021, the above-referenced COVID-19 Order No. 67 was rescinded; however, per an Order of the Commissioner of Public Health issued May 28, 2021, a requirement remained in place that masks be worn at all times in certain locations, including but not limited to "healthcare practice locations of any provider licensed by a professional board which sits within the Department of Public Health or the Division of Professional Licensure."

Conclusions of Law

A. The Respondent violated 243 CMR 4.03(5)(a)2, by violating any provision of the laws of the Commonwealth relating to the practice of medicine or acupuncture, or any rule or regulation adopted thereunder.

⁵ Although the Respondent additionally indicated she disagreed to wear gloves as well, she was not charged with failing to wear gloves, nor did any of the Governor's COVID-19 orders require the wearing of gloves.

B. The Respondent lacks good moral character and has engaged in conduct that undermines the public confidence in the integrity of the acupuncture profession pursuant to Levy v. Board of Registration in Medicine, 378 Mass. 519 (1979); Raymond v. Board of Registration in Medicine, 387 Mass. 708 (1982), and Sugarman v. Board of Registration in Medicine, 422 Mass. 338 (1996).

When determining the appropriate sanction where there has been a violation of the laws and rules relating to the practice of medicine or acupuncture, the COA takes into consideration which laws, rules or regulations were violated, the nature or severity of the violation(s) that occurred, and the inclusion or absence of additional infractions of other laws or regulations. The present matter involves the Respondent violating the Governor's COVID-19 Orders, regulation 243 CMR 4.03(5)(a)2 and also engaging in conduct that undermines the public confidence in the integrity of the medical profession.

The Respondent's failure to file an Answer to the Statement of Allegations, failure to appear for a pre-hearing conference, and her default demonstrate her utter disregard for the COA's statutory mandate to protect the public. Her violations of the Governor's COVID-19 Orders undermine the public's confidence in the medical profession. See In the Matter of Joshua P. Golden, M.D., Board of Registration in Medicine, Adjudicatory Case No. 89-10-SU (Final Decision and Order, August 1, 1990) (Board may discipline a physician who "undermines public confidence in the integrity of the medical profession by flouting the rules and regulations of the agency which granted his license" by failing to respond to Board inquiries.)

The COA notes that, in the past, the Board of Registration in Medicine has historically imposed the sanction of license revocation in cases involving similar issues of default⁶. See, e.g., In the Matter of Paul M. Willette, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2017-035 (Final Decision and Order, September 13, 2018); In the Matter of John P. Katzenberg, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2017-054 (Final Decision and Order, August 9, 2018); In the

⁶Pursuant to the provisions of 243 CMR 5.01, acupuncture is defined as "the practice of medicine based upon traditional oriental medical theories". Where acupuncture is included in the definition of "the practice of medicine", case law having to do with the "practice of medicine" would apply to acupuncture matters as well.

Matter of Christopher D. Owens, M.D., Board of Registration in Medicine, Adjudicatory Case No. 2017-031 (Final Decision and Order, April 25, 2018); *In the Matter of John E. Strobeck, M.D.*, Board of Registration in Medicine, Adjudicatory Case No. 2017-044 (Final Decision and Order, April 25, 2018). In these cases, the Board reasoned that a default demonstrates a physician's "utter disregard for the Board's statutory mandate." Similarly, by failing to respond to the COA, an acupuncturist prevents the COA from investigating the allegations concerning his or her misconduct.

In this instance, the acupuncturist's failure to comply with the Governor's COVID-19 public health orders issued in response to a public health emergency is further compounded by her subsequent failure to respond to these allegations. Her actions hinder and demonstrate disregard for the COA's efforts to fulfill its mission to protect the public health, safety, and welfare.


Based on the foregoing, the COA hereby REVOKES the Respondent's inchoate right to renew her license to practice acupuncture⁷, effective as of the date of this Final Decision and Order.

The Respondent shall provide a complete copy of this Final Decision and Order, with all exhibits and attachments within ten (10) days by certified mail, return receipt requested, or by hand delivery to the following designated entities: any in- or out-of-state hospital, nursing home, clinic, other licensed facility, or municipal, state, or federal facility at which she practices acupuncture; any in- or out-of-state health maintenance organization with whom she has privileges or any other kind of association; any state agency, in- or out-of-state, with which she has a provider contract; any in- or out-of-state medical employer, whether or not she practices acupuncture there; and the state licensing boards of all states in which she has any kind of license to practice acupuncture. The Respondent shall also provide this notification to any such designated entities with which she becomes associated for the duration of this revocation. The Respondent is further directed to certify to the Board within ten (10) days that she has complied with this directive. The Board expressly reserves the authority to independently notify, at any time, any of the entities designated above, or any other affected entity, of any action it

⁷ Because the Respondent's license lapsed during the pendency of these proceedings on September 27, 2021, disciplinary action is being imposed against her inchoate right to renew her license.

has taken. The Respondent has the right to appeal this Final Decision and Order within thirty (30) days, pursuant to G.L. c. 30A, §§14 and 15, and G.L. c. 112, § 64.

Date: April 21, 2022


Weidong Lu, Lic. Ac.
Chair
Committee on Acupuncture