

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for Early
Termination of Probation of:

DIXIE SHANNON WALL,

Petitioner.

Case No. PETP-1A-2010-136

OAH No. 2013041002

DECISION

This matter was heard before a quorum of the Acupuncture Board in San Francisco, California, on May 23, 2013. The board members present were: AnYork Lee, L.Ac., Chair; Charles J. Kim, Vice Chair; Michael Shi, L.Ac.; George Wedemeyer; and, Paul Weisman. Administrative Law Judge Steven C. Owyang, State of California, Office of Administrative Hearings, presided.

Petitioner Dixie Shannon Wall was present and represented herself.

Ashley Harlan, Deputy Attorney General, appeared on behalf of the Office of the Attorney General, pursuant to Government Code section 11522.

FACTUAL FINDINGS

1. Petitioner Dixie Shannon Wall filed an application for an acupuncture license with the Acupuncture Board. On October 5, 2010, the board issued a statement of issues alleging cause to deny petitioner a license because of felony and misdemeanor convictions based on her possession and use of methamphetamine and possession of marijuana. On December 2, 2010, petitioner entered into a stipulated settlement, which was adopted by the board in a decision and order that took effect on March 12, 2011.

2. On March 12, 2011, pursuant to the stipulated settlement, the board issued license number AC 14079 to petitioner; the license was immediately revoked, with revocation stayed, and placed on probation for five years. The stipulated settlement imposed terms of probation on petitioner, including: drug and alcohol abuse treatment; abstention from drug and alcohol use and random substance testing; and, payment of the board's costs of investigation and prosecution.

3. Petitioner filed a petition for early termination of probation dated March 16, 2013. Included with the petition were petitioner's narrative statement and letters of support from Jim Chialtas, L.Ac., David Karaba, OMD, L.Ac., Paul Anthony Newhouse, L.Ac., M.S., Amy Menkes Stoodly King (petitioner's Alcoholics Anonymous sponsor), John Vostmyer, D.C., Jack O. Piasecki, M.D., Beverly May (Director of Governmental Affairs, California Massage Therapy Council), Ashlie Zussman (mentored by petitioner in Alcoholics Anonymous), Annie Gendaszek, MA, LAADC, attorney J. Peter Gyben, Ann Marie Williams (friend, sobriety partner, patient), attorney Rebekah Martinek, Kimmi Runner (mentored by petitioner in sobriety), attorney Richard V. Mahony (Alcoholics Anonymous participant), attorney Dennis Connelly (Alcoholics Anonymous participant), Phillip (last name illegible, Alcoholics Anonymous participant), Paul Fisher, Director of Sales, Biotics Research of Southern California, and Bradd Friel, Friel Insurance Agency. Petitioner also included certificates of completion for numerous seminars, courses, and continuing education programs.

4. In her narrative statement, petitioner wrote:

A turbulent family history, myriad personal issues and the sudden death of my father when I was 16 caused me to turn to drinking and drugs during my teenage years. In 2000 at age 22 I was arrested and plead [*sic*] to a felony and sentenced to a six month treatment facility. After serving my sentence I voluntarily entered a sober living facility where I lived for an additional 7 months. At that time I made a personal commitment to continued recovery and sobriety[.] I have been clean and sober ever since. This single offense was the basis of the board's disciplinary action.

5. Petitioner detailed her rehabilitation efforts in her narrative statement and testimony before the board. For about 12 years, she has volunteered three to five hours per week working with women who suffer from drug addiction. She has received psychotherapy and been active in a 12-step recovery program. She has been clean and sober since 2000. She considers herself to be a recovering addict.

6. Petitioner has worked in the massage industry as a masseuse, taught massage business classes, and written for *Massage Today* magazine. She has worked at *Massage Today* in Santa Ana since 2005. She is also the owner and operator at *Massageworks, Inc.*, in Tustin.

7. Petitioner has served on the board of the California Massage Therapy Council since 2008 and became its chairman in 2010. In 2012, petitioner was elected to the board of the Federation of States Massage Therapy Board.

8. Petitioner enrolled in South Baylo University acupuncture school in 2005. She graduated in 2009 with a 3.5 grade point average and was the student speaker for her

graduating class. She passed the board's examination on her first try in February 2010 and scored in the top 10 percent of examinees. Petitioner received a probationary acupuncturist license in March 2012.

9. Petitioner has worked for two years as an acupuncturist at two offices, including the Optimal Orthopedic Medical Group in Orange County. In his letter of support, Jack O. Piasecki, M.D., Optimal Orthopedic Medical Group, wrote that petitioner "has shown skilled, ethical and professional behavior." Dr. Piasecki urged the board to grant her petition. Chiropractor John Vostmyer, D.C., of the same medical group, wrote that petitioner "has demonstrated herself to be a caring and professional practitioner, with impeccable standards." Vostmyer also vouched for petitioner's recovery efforts and service to others in recovery.

10. Petitioner has had good compliance with the terms of her probation. Her drug tests have been negative. She had numerous excused non-logins with the testing facility. She on occasion had non-excused failures to login with the facility due to forgetfulness

11. Being on probation has been a humiliating and embarrassing experience for petitioner. Additionally, compliance with the substance testing requirements has been time consuming and expensive. In addition to the direct cost of paying for the substance testing, petitioner has lost hours of work and income. Thus, petitioner seeks early release from probation and the restoration of full privileges as a licensed acupuncturist.

LEGAL CONCLUSIONS

Pursuant to Business and Professions Code section 4928.1, protection of the public is the board's highest priority in exercising its licensing, regulatory, and disciplinary functions. Petitioner has the burden of establishing that she should be granted early termination of probation.

The board commends petitioner's years of sobriety and her efforts in community service and assistance to others in recovery from substance abuse. The board also notes that petitioner has thus far complied with the terms of probation. Petitioner, however, agreed to a five-year term of probation; at the time of her petition had been on probation only about one and one-half years. It is the opinion of the majority of the board members that it is too early to terminate petitioner's probation.

Board members Lee, Kim, and Shi voted to deny the petition. Board members Wedemeyer and Weisman dissented and would have granted the petition. By a three to two vote, the petition shall be denied.

ORDER

The petition of Dixie Shannon Wall for early termination of probation is denied.

DATED:

A handwritten signature in cursive script, appearing to read "AnYork Lee", is written over a solid horizontal line.

AnYork Lee, Chair
Acupuncture Board
Department of Consumer Affairs
State of California