

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for
Reinstatement of a Surrendered License
of:

DONG HYUN CHANG,
Petitioner.

Case No. 1A-2015-172

OAH No.2016080387

DECISION

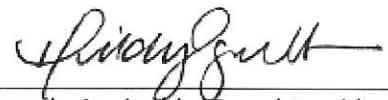
Pursuant to the Board's authority under Government Code section 11517, subdivision (c)(2)(C), the Board hereby revises and corrects the following technical error in the Decision:

- On page 5, paragraph 16, "Since the revocation of his license..." is hereby deleted and replaced with "Since the surrender of his license..."
- On page 7, paragraph 21, "In the 10 years since his license was revoked,..." is hereby deleted and replaced with "In the 10 years since his license was surrendered..."
- On page 7, paragraph 21, "At the hearing, he described the wrongdoing he engaged in that resulted in the revocation of his license." Is hereby deleted and replaced with "At the hearing, he described the wrongdoing he engaged in that resulted in the surrender of his license."

With these clarifications, the Decision is hereby adopted by the Acupuncture Board as its Decision in the above-captioned matter.

This Decision shall become effective on December 16, 2016.

IT IS SO ORDERED this 16th day of November, 2016.



Hildegarte Aguinaldo, Board President
Acupuncture Board
Department of Consumer Affairs
State of California

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DECISION

This matter was heard before a quorum of the Acupuncture Board, Department of Consumer Affairs, State of California, on September 21, 2016, in San Diego, California.

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, presided over the hearing.

Joseph F. McKenna III, Deputy Attorney General, represented the Office of the Attorney General, State of California, as authorized by Government Code section 11522.

Rizza Gonzales, Attorney at Law, represented petitioner, Dong Hyun Chang, who was present.

Petitioner's testimony, petitioner's statement in support of the petition for reinstatement, documents, and the arguments and observations of the Deputy Attorney General were presented in open session. Board members were invited to, and did, ask questions they deemed necessary to help with their deliberations. Additionally, board members had the opportunity to read and consider the petition and attached exhibits. At the conclusion of the open hearing on the petition, the board met in closed session to deliberate and to vote on whether to approve the petition.

The matter was submitted on September 21, 2016.

FACTUAL FINDINGS

1. On December 29, 1983, the board (then-designated as the Acupuncture Committee) issued Acupuncture Certificate No. AC-2244 to petitioner.

First Accusation

2. On October 8, 1993, the executive officer of the Acupuncture Committee filed an Accusation against petitioner alleging that in November 1983, petitioner paid \$5,000 to obtain answers to the state acupuncture written and practical examinations, and he used the answers to take and complete those examinations with passing scores, thereby fraudulently qualifying for a license. Petitioner entered into a Stipulation for Settlement, wherein he admitted the allegations in the Accusation. The Acupuncture Committee adopted this Stipulation as its Decision and Order. In a decision effective June 27, 1994, petitioner was placed on probation for a period of 18 months, under terms and conditions that required him to apply for and undertake the State Acupuncture "practical/clinical" examination, obey all laws, and pay \$250 to the committee for reimbursement of its costs of investigation and prosecution.

Second Accusation

3. On October 9, 1997, the executive officer of the Acupuncture Committee filed another Accusation. It alleged that, on March 28, 1996, petitioner pled nolo contendere to, and was subsequently convicted of, insurance fraud in Los Angeles County Superior Court. The details were that petitioner conspired with the owner of a small gardening business for the owner's employees to become involved in a non-injury vehicular traffic accident. As part of the agreement, petitioner submitted bills for health care services rendered to two individuals who had been in the vehicle at the time of the accident, but who had suffered no injuries and were not treated by petitioner. A hearing was held before an administrative law judge who found that petitioner was "less than forthcoming at the hearing about the facts and circumstances of the conviction." In its Decision and Order, the Acupuncture Committee revoked petitioner's license, stayed the revocation, and placed petitioner on probation for seven years, with an actual suspension of six months. Terms and conditions of the probation included a prohibition on accepting personal injury litigation referrals and undertaking personal injury litigation consultations. Further, petitioner was ordered to complete a specific course titled "Ethics in the Workplace" within the first year of probation. That Decision and Order became effective on January 28, 1999.

Third Accusation/Petition to Revoke Probation

4. On September 13, 2004, in the United States District Court, petitioner was convicted, upon a plea of guilty, of a felony violation of United States Code, title 18, section 141, mail fraud. The facts and circumstances underlying the conviction were, during 2003, petitioner was a licensed and practicing doctor of chiropractic medicine for a medical office. Petitioner would receive patient referrals from a law office that represented claimants alleging

injuries as a result of automobile collisions. On behalf of their clients, the law office filed, processed, and negotiated claims against insurance companies. Petitioner and the law office's administrator entered into an agreement under which petitioner would pay a kickback to the administrator for each patient referred by the law office to petitioner. The amount of the kickback was based on a percentage of the insurance settlement payable to petitioner for chiropractic services he rendered. As support for the claims submitted by the law office, petitioner prepared false and fraudulent medical bills wherein he stated that he had performed chiropractic services for patients when petitioner knew that the patients had not received all of the chiropractic services listed on the bill. The chiropractic bill and report also failed to disclose that a pre-determined percentage of the bill would be paid to the law office as a kickback. The documented actual losses to insurance companies was relatively small - approximately \$8,000.

5. At the time of this conviction, petitioner was still on probation from the last Accusation issued against him. On September 26, 2005, the executive officer of the Acupuncture Board issued an Accusation and Petition to Revoke Probation. In response to the Accusation/Petition to Revoke Probation, petitioner entered into a Stipulated Surrender of License and Order (Stipulation) wherein he admitted the truth of the charges and allegations in the Accusation/Petition, and surrendered his license. Petitioner agreed to reimburse the board for investigation and enforcement costs in the amount of \$3,783.50 prior to the issuance of a new or reinstated license. The board adopted the Stipulation as its Decision, effective April 23, 2006. Petitioner could not petition the board for reinstatement of his license for a period of three years from the effective date of the decision.

First Petition for Reinstatement of Surrendered License

6. Petitioner filed a petition for reinstatement June 2, 2009. He submitted some character references which largely described his work as an acupuncturist rather than documenting a change of attitude on his part. In denying his Petition for Reinstatement of his Surrendered License following a hearing conducted by an administrative law judge, the board found that petitioner had failed to meet his burden of establishing that he had been rehabilitated and that he would not pose a risk to the public if his license were reinstated. In making this finding, the board reasoned that, while petitioner testified he was sorry for the mistakes he had made, his answers to questions about his convictions were evasive and confusing, and he did not accept full responsibility for his wrongdoing. Further, he had not engaged in any rehabilitative efforts. He did not seek treatment or counseling, and did not perform any community service.

Second Petition for Reinstatement of Surrendered License

7. Petitioner filed another petition for reinstatement on January 27, 2011. Petitioner's Narrative Statement explained that he entered into the Stipulated Surrender because his actions warranted discipline, and he regretted the mistakes he had made. He stated that he

had worked very hard to keep current with acupuncture practices and procedures. To help him deal with his behaviors, he saw a clinical psychologist.

8. His sessions with Judith R. Cohn, Ph.D., commenced on October 25, 2010, and lasted four months. In her declaration, Dr. Cohn concluded that petitioner had trouble expressing himself in usual ways, but over time, she sensed that he felt humiliated and recognized his wrongdoing, which appeared to devastate him. He clearly wanted to stay far away from any problematic situations. Dr. Cohn continued that, while petitioner had not volunteered for public service, he did complete a course in ethics at Pierce College. She recommended that petitioner be supervised to ensure that no further wrongdoing would occur, and that he participate in group or personal therapy.

9. Notwithstanding Dr. Cohn's mention of the ethics course, petitioner did not submit a certificate or other evidence of completion of the course.

10. Petitioner presented proof that he had been allowed to withdraw his plea of guilty on the earlier state criminal charge, with the court then dismissing the complaint under Penal Code section 1203.4, and that he had obtained a Satisfaction of Judgment in his federal criminal case. Nonetheless, the board, in its Decision and Order of November 9, 2011, while noting that Petitioner had taken steps in the right direction, determined that he did not demonstrate that he had undertaken specific rehabilitation efforts designed to prevent future acts of fraud or dishonesty, or taken any real steps to prevent any relapse or reoccurrence. The board found that the letter writers did not show they had knowledge of petitioner's offenses or provide support for his claim of having been rehabilitated. There was no corroboration of his statement that he had taken an ethics course. Contrary to Dr. Cohn's recommendation, the board felt that petitioner should not have to be supervised. The board recommended that he continue his therapy. Finally, there was again no showing of involvement in community, church or other programs.

Third Petition for Reinstatement of Surrendered License

11. Petitioner filed a third petition for reinstatement on October 29, 2013. Petitioner submitted a number of exhibits. In his narrative statement attached to the petition, Petitioner expressed regret and remorse for his misconduct. Trying to keep up with current practices and procedures, he engaged in his own personal study. Through his attendance at acupuncture seminars, he accumulated 72 hours of continuing education hours. He volunteered over 181 hours at Conejo Valley Botanic Gardens. To prevent repetition of his past mistakes, he continued to see Dr. Cohn, and joined a self-help group offered through a mental health clinic.

12. Dr. Cohn, in a declaration dated May 8, 2012, which was intended for review by the Board of Chiropractic Examiners in deciding whether to reinstate petitioner's chiropractic license, again provided a largely positive view, emphasizing that petitioner

recognized the extent of his wrongdoing, appeared devastated by his prior dishonest choices, and suffered pain and humiliation as a result of his behaviors.

13. In his testimony before the board, petitioner explained that he surrendered his license because he had engaged in wrongdoing. His acts had tarnished his reputation, placed a financial burden on his family, and caused harm to society. As proof of his rehabilitation, he pointed to the ethics course he took and completed.

14. In a Decision and Order dated February 5, 2014, the board denied the petition for reinstatement. The board recognized the progress petitioner made in his rehabilitation, but felt that petitioner could do more to establish that he was rehabilitated. The board urged petitioner to re-engage with the profession of acupuncture by volunteering at schools and associations. The board also recommended that petitioner take additional ethics courses to demonstrate that he fully understood his ethical obligations.

Fourth Petition for Reinstatement

15. The instant matter is petitioner's fourth petition for reinstatement, filed on August 10, 2015. In a letter attached to his petition, petitioner expressed remorse about his prior misconduct. He asserted that he regretted the mistakes that he made that led to the surrender of his license, and he was remorseful for the effect that his actions had on his profession and his family.

16. Since the revocation of his license, he has worked to keep current with his profession by studying on his own and volunteering at acupuncture clinics. He submitted a list of textbooks he self-studied. He submitted a letter from Sun P. Sin, LAc, Director of Dongguk University in Los Angeles, stating that petitioner volunteered at the school in March and April 2015. Petitioner volunteered 88 hours at the school, where he shared his experience and observed other students. Additionally, petitioner submitted a letter from Garo K. Tchakian, D.C., Clinic Director of L.A. Wellness Spa in Canoga Park. Dr. Tchakian was aware of petitioner's license discipline and permitted him to volunteer at his clinic. Petitioner completed 96 hours of volunteer work at the clinic, where he assisted clinic staff in various aspects of their practice.

17. Petitioner submitted certificates showing that he had taken approximately 170 hours of continuing education from June 22, 2013, to April 19, 2015, 16 ½ hours of which were for ethics and law courses. However, all of the continuing education courses were related to chiropractic medicine.

18. Petitioner submitted a letter from Reyna Chang, a Mental Health Associate at the Simi Valley Behavioral Health Clinic, dated November 9, 2013. Ms. Chang wrote that she provided ongoing case management services to petitioner. He exhibited "significant progress, as evidenced by compliance with referrals" that Ms. Chang gave him. He attended self-help groups, participated in regular therapy sessions, and was volunteering weekly at the

Conejo Valley Botanical Gardens. Ms. Chang noted that petitioner was “initially guarded and appeared depressed and anxious, but as he progressed in his therapy sessions, his engagement increased” and he “displayed motivation to return to the workplace.” Petitioner’s “remorsefulness of his actions and his determination to live honestly as a member of society became apparent as [Ms. Chang] gained rapport with him.”

19. Petitioner submitted a letter dated January 10, 2013, from Cindy Powers, Director of the Retired and Senior Volunteer Program. Petitioner volunteered at the Conejo Valley Botanic Gardens from December 2011 to March 2014. Ms. Powers described him as an “asset to the organization.”

20. Petitioner also submitted six letters in support of his current petition:

- (a) Garo Tchakian, D.C., has been a colleague and friend of petitioner for 12 years. He submitted a letter dated September 3, 2014. Dr. Tchakian considers petitioner to be “loyal, honest, considerate and supportive,” with “an ability to see and understand things from another person’s perspective.”
- (b) Louis J. Ringler is the President of Innercalm Associates. He has known petitioner for five years. Petitioner has taken Mr. Ringler’s seminars as part of his continuing education for reinstatement. Mr. Ringler believes that petitioner “understands the seriousness of his behavior” and has resolved “to avoid any perception of wrong doing.”
- (c) Susan Ramirez was one of petitioner’s patients. His treatments helped her on several occasions. Ms. Ramirez believes that reinstating petitioner’s license would benefit many people like her who have “chronic back problems and need his natural and non-surgical treatments.” According to Ms. Ramirez, petitioner is “truly interested in his patients and can make a very important contribution to the medical community in his area.”
- (d) Daniel Bernstein wrote a letter dated August 8, 2014. Petitioner treated Mr. Bernstein, his wife and three of his four children with acupuncture and chiropractic remedies. Mr. Bernstein believes that petitioner is an “outstanding practitioner in these disciplines.”
- (e) Jeff Maher wrote a letter dated September 1, 2014. Petitioner treated Mr. Maher and his wife for 30 years with acupuncture and chiropractic services. Mr. Maher always found petitioner to be “an honest and forthright person.”
- (f) Tae Ho Kim, LAc, wrote a letter dated January 1, 2015, stating petitioner has endured great hardship since his license was revoked, but he is eager to again serve society with his passion for acupuncture.

Petitioner's Testimony

21. Petitioner testified with the assistance of a Korean interpreter. He expressed sorrow for his wrongdoing and recognized that his dishonest and criminal conduct harmed the insurance company, his family, his profession, and society. In the 10 years since his license was revoked, he has engaged in rehabilitative efforts. He has taken ethics courses, obtained psychological counseling, provided community service to the Conejo Valley Botanic Garden, attended continuing education seminars to remain current with chiropractic medicine, and volunteered at an acupuncture school and clinic. At the hearing, he described the wrongdoing he engaged in that resulted in the revocation of his license. He provided assurances to the board that he would not engage in any wrongful and dishonest conduct in the future if his license were reinstated. He noted that the Board of Chiropractic Examiners reinstated a probationary license in April 2016.

22. However, the board was concerned about petitioner's answers when questioned about specific things he learned in his ethics and law course. Petitioner could not specifically identify what, if anything, he learned except to say that before the course he thought ethics was "abstract," and he learned many "specifics." Petitioner said he found the ethics course to be extremely valuable.

Discussion

23. When all the evidence is considered, petitioner established that he has engaged in sufficient rehabilitation to ensure that the public would be adequately protected if his license were reinstated under the terms and conditions of probation set forth below. At hearing, petitioner accepted responsibility for his wrongdoing and displayed significant remorse. He described his illegal conduct in a manner that demonstrated that he now understands and has internalized the extent and scope of his wrongdoing such that he can be relied upon not to repeat it. His testimony was candid and humble.

24. Because petitioner has not practiced acupuncture for many years, petitioner will be required to take course work in ethics and clean needle techniques. Additionally, given petitioner's disciplinary history, petitioner will be required to obtain a practice and billing monitor.

LEGAL CONCLUSIONS

1. In a proceeding for reinstatement of a license, the burden at all times is on the petitioner to establish rehabilitation. (*Flanzer v. Bd. of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398, citing *Housman v. Bd. of Medical Examiners* (1948) 84 Cal.App.2d 308, 315.) The standard of proof is clear and convincing evidence to a reasonable certainty. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1091-1092; *Feinstein v. State Bar* (1952) 39 Cal.2d 541.)

2. Petitioner presented clear and convincing evidence that he has been rehabilitated to such an extent that it would not be adverse to the public health, safety, and welfare to reinstate his license and allow him to practice on a probationary basis for three years pursuant to terms and conditions designed to ensure public protection.

ORDER

The application of petitioner, Dong Hyun Chang, for reinstatement of his acupuncture license is granted. A license shall be issued to petitioner. Said license shall immediately be revoked, the order of revocation stayed, and petitioner is placed on probation for a period of three years on the following terms and conditions:

1. Obey All Laws

Petitioner shall obey all federal, state and local laws and all regulations governing the practice of acupuncture in California. A full and detailed account of any and all violations of law shall be reported by the petitioner to the board in writing within seventy-two (72) hours of occurrence.

2. Quarterly Reports

Petitioner shall submit quarterly declarations under penalty of perjury on forms provided by the board, stating whether there has been compliance with all the conditions of probation.

3. Surveillance Program

Petitioner shall comply with the board's probation surveillance program and shall, upon reasonable notice, report to the assigned investigative district office. Petitioner shall contact the assigned probation surveillance monitor regarding any questions specific to the probation order. Petitioner shall not have any unsolicited or unapproved contact with 1) victims or complainants associated with the case; 2) board members or members of its staff; or 3) persons serving the board as expert examiners.

4. Interview with the Board or Its Designee

Petitioner shall appear in person for interviews with the board or its designee upon request at various intervals and with reasonable notice.

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5. Changes of Employment

Petitioner shall notify the board in writing, through the assigned probation surveillance compliance officer, of any and all changes of employment, location and address within 30 days of such change.

6. Tolling for Out-of-State Practice or Residence

In the event petitioner should leave California to reside or to practice outside the State, petitioner must notify the board in writing of the dates of departure and return. Periods of residency or practice outside California will not apply to the reduction of this probationary period.

7. Employment and Supervision of Trainees

Petitioner shall not employ or supervise or apply to employ or supervise acupuncture trainees during the course of this probation. Petitioner shall terminate any such supervisorial relationship in existence on the effective date of this probation.

8. Cost Recovery

Petitioner shall pay to the board its costs of investigation and enforcement in the amount of \$3,783.50. Petitioner shall be permitted to pay any costs in a payment plan approved by the board, with payments to be completed no later than three months prior to the end of the probation term.

If petitioner has not complied with this condition during the probationary term, and petitioner has presented sufficient documentation of his good faith efforts to comply with this condition, and if no other conditions have been violated, the board, in its discretion, may grant an extension of petitioner's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation will apply.

9. Violation of Probation

If petitioner violates probation in any respect, the board may, after giving petitioner notice and the opportunity to be heard, revoke probation and carry out the disciplinary order that was stated. If an accusation or petition to revoke probation is filed against petitioner during probation, the board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final. No petition for modification or termination of probation shall be considered while there is an accusation or petition to revoke probation pending against petitioner.

10. Completion of Probation

Upon successful completion of probation, petitioner's license will be fully restored.

11. Practice and Billing Monitor

Within 90 days of the effective date of this decision, petitioner shall submit to the board for its prior approval, the name and qualifications of one or more California licensed acupuncturists whose license is clear (no record of complaints) and current and who has agreed to serve as a practice and billing monitor. Once approved, the monitor shall submit to the board a plan by which petitioner's practice and billing shall be monitored. The monitor's education and experience shall be in the same field of practice as that of the petitioner. The monitor shall submit written reports to the board on a quarterly basis verifying that monitoring has taken place and providing an evaluation of petitioner's performance. It shall be petitioner's responsibility to assure that the required reports are filed in a timely fashion. Petitioner shall provide access to the monitor of petitioner's fiscal and client records and shall be permitted to make direct contact with patients. Further, the monitor shall have no prior business, professional, personal or other relationship with petitioner. Petitioner shall execute a release authorizing the monitor to divulge any information that the board may request. Petitioner shall give the monitor access to all of Petitioner's acupuncture practice business records including financial and patient records. Monitoring shall consist of at least four (4) hours, per quarter, of review of Petitioner's records. This review shall take place in Petitioner's office and/or place of employment. If the monitor prepares a quarterly report to the board which finds substantial errors or omissions in, and/or questionable billing practices, monitoring may be increased at the discretion of the board and Petitioner shall immediately comply therewith.

Petitioner shall notify all current and potential patients of any term or condition of probation which will affect their treatment or the confidentiality of their records (such as this condition which requires a practice monitor). Such notification shall be signed by each patient prior to continuing or commencing treatment.

If the monitor quits or is otherwise no longer available, petitioner shall not practice until a new monitor has been approved by the board. All costs of monitoring shall be borne by the petitioner. Monitoring shall consist of at least one hour per week of individual face to face meetings.

12. Coursework

Petitioner shall take and successfully complete not less than twenty (20) semester units or thirty (30) quarter units of coursework in the following areas: ethics and clean needle techniques. All coursework shall be taken at the graduate level at a school approved by the board. Classroom attendance must be specifically required. All coursework must be

completed within the first two years of probation. The required coursework must be in addition to any continuing education courses that may be required for license renewal.

Within 90 days of the effective date of this decision, petitioner shall submit a plan for the board's prior approval for meeting the educational requirements. All costs of the coursework shall be borne by the petitioner.

DATED: December 16, 2016



Hildegard Aguinaldo
President
Board of Acupuncture
Department of Consumer Affairs