

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

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

YIHAN FANG

Acupuncture License No. AC-4603

Case No. 1A-2010-197

OAH No. 2011010069

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby
adopted by the Acupuncture Board as its Decision in the above-entitled matter.

This Decision shall become effective APR 24 2011.

IT IS SO ORDERED.

Date: MAR 25 2011



ROBERT BREWER, Chair
Acupuncture Board
Department of Consumer Affairs
State of California

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Petitioner.

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DECISION

On February 24, 2011, a quorum of the Acupuncture Board, Department of Consumer Affairs, State of California, heard the Petition of Yihan Fang for the Reinstatement of a Surrendered License. Those present included Acupuncture Board President Robert Brewer, Board Members Charles Kim, George Wedemehyer, AnYork Lee, Paul Weisman, Nancy Carroll, and Frank He, and Administrative Law Judge James Ahler, Office of Administrative Hearings, State of California, who presided over the hearing on the petition.

Petitioner, Yihan Fang, appeared on her own behalf and was present throughout the hearing.

Lori J. Forcucci, Deputy Attorney General, Department of Justice, State of California, represented the Office of the Attorney General, State of California.

The matter was submitted on February 24, 2011.

FACTUAL FINDINGS

Background and License History

1. On August 27, 1993, the Acupuncture Board issued Acupuncture License No. AC-4603 to petitioner, Yihan Fang.
2. On July 26, 2005, petitioner was convicted on her plea of guilty of violating Title 18, United States Codes, section 1035 (Knowing and Willfully Making False

2. On July 26, 2005, petitioner was convicted on her plea of guilty of violating Title 18, United States Codes, section 1035 (Knowing and Willfully Making False Statements Related to Healthcare Matters), a Class D Felony, in the United States District Court, Eastern District of California, in Case No. CRS-03-286, entitled *United States of America v. Yi Han Fang, aka Helen Fang*.

The United States District Court placed petitioner on 36 months supervised probation, ordered her to serve 180 days in home detention, and directed her to pay \$130,000 in restitution.

3. The circumstances of the offense involved petitioner submitting statements to the Medi-Cal Program between January 2000 and December 2002 in which petitioner falsely represented that she provided acupuncture services, which were covered by Medi-Cal, when in fact she provided patients with creams and other skin treatments that were not covered by Medi-Cal. As a result of petitioner's false statements, Medi-Cal paid approximately \$130,000 to petitioner for which she was not entitled to Medi-Cal reimbursement.

4. On October 24, 2005, the Acupuncture Board's Executive Officer signed the Accusation in Case No. 1A-2005-163. The Accusation sought the suspension or revocation of petitioner's license on the basis of petitioner's conviction and on the basis of false advertising in which petitioner referred to herself as "Dr. Helen Fang" at her place of business and on her business cards

On January 22, 2007, petitioner signed a Stipulated Surrender of License and Order in which petitioner admitted the truth of each and every charge and allegation in the accusation and agreed to the surrender of her license.

On March 5, 2007, the Acupuncture Board accepted the Stipulated Surrender of License and Order as its Decision and Order in the matter. The Decision and Order became effective on March 5, 2007.

The May 3, 2010, Citation

5. On January 13, 2010, the Acupuncture Board received a tip from the Department of Consumer Affairs Unlicensed Activity Program that there was an advertisement in the Los Angeles Chinese Yellow Pages that represented that petitioner was conducting an acupuncture practice in Monterey Park and in West Covina. There was also an Internet advertisement in the Tycoon.com website in which it was represented that petitioner conducted a practice in Monterey Park where she specialized in acupuncture, physical therapy, and herbal medicine. Petitioner's picture appeared in the advertisements. She was wearing a white doctor's coat. Petitioner was cited and was given the opportunity to contest the citation.

During a teleconference that followed the issuance of the original citation, petitioner provided the Acupuncture Board Executive Director with a letter from Tycoon, Inc. that stated that that organization visited petitioner's place of business six years before, that no

visit was made to petitioner's place of business thereafter, that petitioner did not request that her advertisement be removed after placing the advertisement, but that petitioner recently removed all references to petitioner's practice at petitioner's request.

The citation was modified and petitioner paid a \$250 penalty assessment in resolution of the citation.

The Petition and Evidence of Rehabilitation

6. On September 27, 2010, petitioner signed a Petition for Penalty Relief (Reinstatement of Revoked License). She stated that the cause for discipline involved submitting some claims to Medic-Cal, which were "defined as false statements because I did not perform acupuncture [but instead] I applied herbs and ointments for patients with skin diseases, not covered by Medi-Cal." Petitioner represented that since her license was revoked, she worked at New Hope Medical Center in Monterey Park, her place of business when she was licensed, as a receptionist.

In a narrative statement, petitioner wanted "to extend my deep apology for the mistake I made." Petitioner did not describe that "mistake" in detail, but promised that future misconduct would not occur and stated that the "pain that has [been] caused will remain unforgettable in the rest of my life." Petitioner mentioned that she had undergone counseling with Fenny Lui, that she learned the importance of admitting misconduct, that past mistakes were a guide to overcoming those mistakes, and that "our sins will be forgiven and God still loves us." In support of her claim of rehabilitation, petitioner mentioned that she had completed the three years of supervised probation required by the Federal District Court, that she attended Friday and Sunday Bible studies, that she sought advice from an attorney, and that she learned that her prior misconduct involved her belief that it was "appropriate to treat some patients with herbs and ointments for skin diseases instead of acupuncture." She asserted that "now I understand why I was wrong." Petitioner stated that immediately after her conviction she was in shock, frustration, and depression, and that her dignity and reputation were "wiped out." She wrote that during her rehabilitation, she improved and accepted her situation with the support of friends and church members. She wrote that in the latter stages of her rehabilitation, she learned the importance of maintaining a healthy physical and spiritual life.

Petitioner provided letters of recommendation from Huachan Su, LAc., Feter Yih, LAc., Fuli Liu, LAc., Attorney Minggang Li, and Fenny Liu, who worships at the Evangelical Formosan Church in El Monte and is President of Casteel, Inc. Acupuncturist Su's letter stated that he works in the same building as petitioner, that he has seen her working hard as a receptionist, that petitioner is highly regarded in her community, that petitioner spent time training in acupuncture and herbal medicine while her license was revoked, and that petitioner is an experienced, responsible, and knowledgeable professional. Acupuncturist Yih's letter stated that he observed petitioner's personality change since her conviction and that she now has an open mind and is humble, that she now accepts the fact that she violated the law, that she has worked hard as a receptionist, that petitioner has great skills in the area of skin diseases, that petitioner has engaged in continuing professional

education during the period of her revocation, and that petitioner is considered to be a responsible, honest, and knowledgeable specialist in the community. Acupuncturist Liu's letter stated that petitioner helped him obtain his license, that petitioner was sad and remorseful concerning the surrender of her license, that she has worked hard as a receptionist and has engaged in continuing professional education, that she is an honest, responsible, and respected professional in the Chinese community. Attorney Li's letter stated that petitioner enjoys the reputation of being an honest, experienced, and well known acupuncturist in his community, that she was upset about the loss of her license shortly after her license was revoked, that she has grown since then and has accepted her responsibilities, and that she is ready to move on with license reinstatement. Ms. Liu's letter stated that petitioner provided volunteer services before her license was revoked that she was recognized as being a kind, honest specialist, that the misconduct resulting in the revocation of petitioner's license was "probably a result of lacking a complete understanding of California Acupuncture Laws and Regulations," that following the revocation of petitioner's license Ms. Liu began counseling sessions on a biweekly basis, that petitioner's prayers were answered and she opened her heart, and that similar misconduct will never occur.

In her presentation at this proceeding, petitioner stated that being a licensed professional had been the "glory of my life," that she "made a big mistake," that she regretted her mistake and apologized to the professional community for it, that she brought disrespect on acupuncturists, that she had learned from her mistake, that she consulted with others in an effort to get her life back on track, that she found out about the importance of having a fit spiritual life, that she realized that the revocation of her license was part of God's plan to put her back on track, and that she was looking forward to the opportunity to return to serve her community as a licensed acupuncturist. In response to questioning, petitioner was unable to clearly articulate what she did that resulted in her convictions, other than she used the wrong billing codes. She stated that she did not authorize the running of the advertisements that gave rise to the citation and was unaware of them until they were brought to her attention. She promised that if her license were reinstated, she would never refer to herself as "doctor." Petitioner testified that she previously owned New Hope Medical Center, that she sold her practice to another, and that she was uncertain if she would resume ownership of that practice if her license were reinstated. Petitioner represented that she made reimbursement to the Medi-Cal Program in the amount of \$130,000, even though the cancelled checks she submitted totaled \$50,000; she explained that the remaining \$80,000 in reimbursement was made with cashier's checks for which she had no receipts.

Petitioner's explanation of her illegal conduct at the hearing on this petition was evasive. She did not admit that she knowingly and willfully falsified information, but asserted that she was confused about the billing codes she submitted to Medi-Cal and believed at the time that creams and skin treatments constituted "other modalities" that were somehow related to acupuncture.

The Attorney General's Recommendation

7. The Attorney General's Office recommended that petitioner's license be reinstated on a probationary basis.

LEGAL CONCLUSIONS

Statutory Authority

1. Business and Professions Code section 4960.5 provides in part:

(a) A person whose license or registration has been revoked, suspended, or surrendered, or who has been placed on probation, may petition the board for reinstatement or modification of penalty, including modification or termination of probation, after a period of not less than the following minimum periods has elapsed from the effective date of the decision ordering that disciplinary action:

(1) At least three years for reinstatement of a license revoked or surrendered.

(2) At least two years for early termination of probation of three years or more. . . .

Regulatory Authority

2. Title 16, California Code of Regulations, section 1399.469 sets forth the regulatory authority for the Acupuncture Board's disciplinary guidelines and directs that in "reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Acupuncture Board shall consider the disciplinary guidelines entitled "Department of Consumer Affairs, Acupuncture Board 'Disciplinary Guidelines' 1996" which are hereby incorporated by reference."

The Disciplinary Guidelines Related To Modification or Termination of Probation

3. That portion of the disciplinary guidelines that applies to petitions for reinstatement provides:

The primary concerns of the Board at reinstatement or penalty relief hearings are that the evidence presented by the petitioner of his/her rehabilitation. The Board is not interested in retrying the original revocation or probation case.

The Board will consider the following criteria of rehabilitation:

1. Nature and severity of the act(s) or offense(s)

2. Total criminal record
3. The time that has elapsed since commission of the act(s) or offense(s)
4. Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person
5. If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
6. Evidence, if any, of rehabilitation submitted by the licensee or registration holder.

In the Petition Decision, the Board would appreciate a summary of the offense and the specific codes violated which resulted in the revocation, surrender or probation of the license.

The Board requests that comprehensive information be elicited from the petitioner regarding his/her rehabilitation. The petitioner should provide details which include:

- A. Continuing education pertaining to the offense and its effect on the practice of acupuncture.
- B. Specifics of rehabilitative efforts and results which should include programs, psychotherapy, medical treatment, etc., and the duration of such efforts.
- C. If applicable, copies of court documents pertinent to conviction, including documents specifying conviction and sanctions, and proof of completion of sanctions.
- D. If applicable, copy of Certificate of Rehabilitation or evidence of expungement proceedings.
- E. If applicable, evidence of compliance with and completion of terms of probation, parole, restitution, or any other sanctions.
- F. A culpability or exculpability statement.

If the Board should deny a request for reinstatement of licensure or penalty relief, the Board requests that the Administrative Law Judge provide technical assistance

in the formulation of language clearly setting forth the reasons for denial. Such language would include methodologies or approaches which would demonstrate rehabilitation.

The Burden and Standard of Proof

4. In a proceeding seeking restoration of a revoked license, the burden at all times rests on the petitioner to prove that he has rehabilitated himself and that he is entitled to have his license restored. The most clear and convincing proof of reform must be shown. A petitioner's actions since his misconduct are the essential criterion to judge whether he has so rehabilitated himself as to compel his unrestricted readmission. (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315-317.)

Relevant Factors in Determining Rehabilitation

5. Rehabilitation is a state of mind. The law looks with favor upon rewarding with the opportunity to serve, one who has achieved reformation and regeneration. (*Hightower v. State Bar* (1983) 34 Cal.3d 150, 157.) (Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. *Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is presented when an application for readmission to a professional practice can demonstrate by sustained conduct over an extended period of time that he or she is once again fit to practice. (*In re Menna* (1995) 11 Cal.4th 975, 991.) Since persons under the direct supervision of judicial or correctional authorities must behave in exemplary fashion, little weight is generally placed on the fact that such an individual did not commit additional crimes or continue inappropriate behavior while under supervision. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

Cause Exists to Grant the Petition

6. Cause exists under Business and Professions Code section 4960.5, under Title 16, California Code of Regulations, section 1399.469, and under the Acupuncture Board's disciplinary guidelines to grant the petition and to restore petitioner's license on a probationary basis.

The conduct giving rise to the discipline in this matter was extremely serious and brought disrespect to the profession. Petitioner remained on probation until late July 2008. According to petitioner, she made restitution to the Medi-Cal Program in the full amount of \$130,000. No evidence to refute petitioner's testimony was introduced at this hearing. Petitioner was not required to undergo any counseling or psychotherapy during the period she was on criminal probation, but she sought counseling through friends and her church. She provided proof of her counseling.

Petitioner presented very impressive recommendations. Petitioner expressed remorse over the loss of her license, and said she learned valuable life lessons as a result of that loss. She promised that she would not engage in similar misconduct in the future and would not represent herself to be a doctor if her license was reinstated. The Acupuncture Board concludes that petitioner presented sufficient evidence of her rehabilitation to justify the reinstatement of petitioner's license on a probationary basis.

ORDER

Yihan Fang's petition for reinstatement of Acupuncture License No. AC-4603 is granted on the following terms and conditions: Acupuncture License No. AC-4602 is issued to Yihan Fang on a probationary basis for a period of seven years and is subject to the following terms and conditions of probation:

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. Ethics Course

Within 60 days of the effective date of this Decision, petitioner shall submit to the Acupuncture Board or its designee for its prior approval details regarding an Ethics course that petitioner intends to complete to satisfy this condition of probation. Petitioner shall complete the Board-approved Ethics course during the first year of her probation.

3. 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.

4. 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.

5. 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.

6. Practice Monitor

Before Petitioner resumes practice, 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 monitor. Once approved, the monitor shall submit to the Board a plan by which petitioner's practice shall be monitored, including petitioner's billing practice. 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, including petitioner's billings. 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 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.

Petitioner shall be solely responsible for payment of monitoring costs and expenses.

7. No Solo Practice

During probation, petitioner shall be prohibited from engaging in the solo practice of acupuncture and acupressure.

8. No Employment or Supervision of Trainees

During probation, petitioner shall not employ or supervise or apply to employ or supervise acupuncture or massage trainees.

9. 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.

10. 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.


11. 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.

12. Completion of Probation

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

DATED: **MAR 25 2011**



ROBERT BREWER, Chair
Acupuncture Board
Department of Consumer Affairs
State of California