

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

BONGJA BENA WON, L.Ac.

Acupuncturist License Number AC4975,

Respondent.

Case No. 1A-2015-117

OAH No. 2016110574

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Acupuncture Board, Department of Consumer Affairs, State of California as its Decision in the above-entitled matter.

This Decision shall become effective July 28, 2017.

IT IS SO ORDERED June 28, 2017.

ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By 

ref

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

BONGJA BENA WON, L.Ac.

Acupuncture License Number AC4975,

Respondent.

Case No. 1A-2015-117

OAH No. 2016110574

PROPOSED DECISION

This matter was heard on March 6 and April 20, 2017, in Los Angeles, California, by Laurie R. Pearlman, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California.

Beneth A. Browne, Deputy Attorney General, represented Complainant Benjamin Bodea, Interim Executive Officer of the Acupuncture Board.

Respondent Bongja Bena Won was represented by Nicole Waters, Attorney at Law. Both Ms. Waters and Respondent were present on March 6, 2017. Respondent stipulated that in 2004, Respondent failed to timely notify the Acupuncture Board of her change of practice location. She also stipulated to the truth and accuracy of all filings made with the Secretary of State contained in Complainant's exhibits.

On April 20, 2017, no appearance was made by, or on behalf of, Respondent despite proper service of notice of the date, time and location of the hearing. On the morning of April 20, 2017, OAH staff reached Ms. Waters by telephone at her office. Ms. Waters said that she had not been aware of the continued hearing date. She stated that she had not picked up her mail despite having been notified by the post office that mail, including certified mail, was being held for her at the post office. Ms. Waters did not offer any reason for her failure to pick up her mail, nor did she request a continuance of the hearing. Therefore, at the request of Complainant's counsel, the hearing proceeded on April 20, 2017.

Oral and documentary evidence was received. The record was closed on April 20, 2017, and the matter was submitted for decision.

FACTUAL FINDINGS

Parties and Jurisdiction

1. On September 26, 2016, Complainant brought the Accusation in his official capacity as the Interim Executive Officer of the Acupuncture Board, Department of Consumer Affairs (Board). Respondent timely submitted a Notice of Defense, which contained a request for a hearing to contest the charges in the Accusation, and this matter ensued. All jurisdictional requirements have been met.

2. On September 19, 1994, the Board issued Acupuncture license number AC4975 to Respondent. The license is scheduled to expire on April 30, 2018.

Disciplinary Action by the Board of Registered Nursing

3. On April 30, 1990, the Board of Registered Nursing issued Registered Nurse License Number 452770 (RN License) to Respondent. On November 7, 2014, the Board of Registered Nursing filed an Accusation against Respondent's RN License in case number 2015-359, based upon the following allegations:

A. Unprofessional conduct in violation of Business and Professions Code section 2761, subdivision (a), on the basis of Respondent working as a registered nurse between 2009 and 2013 without proper physician supervision;

B. Unprofessional conduct in violation of Business and Professions Code section 2761, subdivision (d), on the basis of Respondent's Standardized Procedures and Protocols not being in compliance with California Code of Regulations, title 16, section 1474, between 2009 and 2014; and

C. Unprofessional conduct in violation of Business and Professions Code section 2761, subdivision (a), in conjunction with Business and Professions Code section 2762, subdivision (a), on the basis of Respondent unlawfully prescribing, furnishing and/or administering prescription medications to patients.

4. A Stipulated Settlement and Disciplinary Order was adopted by the Board of Registered Nursing, effective August 14, 2015, placing Respondent's RN License on three years' probation. Respondent stipulated that, at a hearing, the complainant in the Nursing Board matter could establish a factual basis for the charges in the Accusation.

///

///

///

Unprofessional Conduct

5. In 2004, Respondent opened an acupuncture clinic in Studio City, California located at 11239 Ventura Boulevard, #214 under the name of Accumed Corporation. Respondent was its secretary and president.

6. In 2006 or 2007, Respondent expanded Accumed Corporation to 11239 Ventura Boulevard, #215 to include a medical spa called Sunrise Med Spa.

7. At Sunrise Med Spa, Respondent administered Botox, dermal fillers, and laser treatments to clients. She also offered weight loss treatment programs. As part of the weight loss treatment programs, Respondent gave clients phentermine and diethylpropion hydrochloride without a written prescription from a licensed physician or anyone licensed to dispense prescription medication.¹

8. On September 30, 2013, Sunrise Med Spa ceased to do business. Thereafter, Respondent became affiliated with Pacific Rejuvenation Medical in Los Angeles, California as an independent contractor. At Pacific Rejuvenation Medical, Respondent continued to administer Botox, dermal fillers, and laser treatments to clients.

9. At various times between 2009 through 2013, while working as a registered nurse at both Sunrise Med Spa and Pacific Rejuvenation Medical, Respondent failed to work under proper physician supervision. Additionally, the physicians who were nominally Respondent's supervisors failed to have the requisite level of knowledge and competency in the procedures that they were allegedly supervising.

10. At various times between 2009 through 2013, while working as a registered nurse at both Sunrise Med Spa and Pacific Rejuvenation Medical, Respondent engaged in functions that overlap nursing care and medical care, such as the administration of Botox, dermal fillers, laser treatments, and weight loss treatments, but Respondent failed to have in place proper Standardized Procedures and Protocols that conformed to the applicable rules and regulations and therefore failed to work within the scope of her practice as a registered nurse.

11. At various times between 2009 through 2013, while working as a registered nurse at Sunrise Med Spa and Pacific Rejuvenation Medical, Respondent dispensed prescription medications (i.e., Botox, dermal fillers, and weight loss pills) to patients without

¹ Botox, Botulinum Toxin Type A, is a dangerous drug pursuant to Business and Professions Code section 4022. Diethylpropion is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (f)(1), and is a dangerous drug pursuant to Business and Professions Code section 4022. Phentermine is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (f)(4), and is a dangerous drug pursuant to Business and Professions Code section 4022.

a physician or nurse practitioner first performing a good faith examination of the patients. Additionally, Respondent dispensed prescription medications to patients without orders from a licensed physician or anyone licensed to dispense prescription medication.

Failure to Register Change of Address

12. In 2004, Respondent opened an acupuncture clinic located at 11239 Ventura Blvd, #214 in Studio City, California. Respondent failed to notify the Board of her change of practice location within 30 days of making that change.

Costs of Investigation and Prosecution

13. The Board incurred costs totaling \$6,720.75 in connection with the investigation and prosecution of this action. Those costs are reasonable.

Respondent's Evidence

14. Respondent completed three years of nursing school and three-and-one-half years of acupuncture school. She has a Ph.D. in Oriental Medicine from Yuin University in Compton, California.

15. Respondent has been a licensed registered nurse for 27 years and a licensed acupuncturist for 23 years. Aside from the discipline taken against her RN License in 2015, she has had no prior or subsequent discipline taken against either her RN License or her acupuncture license.

16. No evidence of patient harm from Respondent's actions was presented at the hearing.

LEGAL CONCLUSIONS

1. The burden is on Complainant to prove cause for discipline by clear and convincing evidence to a reasonable certainty. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 855-856.) Complainant has met his burden.

2. Cause exists to discipline Respondent's acupuncture license pursuant to Business and Professions Code section 4955, subdivision (h), in that disciplinary action was taken by another public agency for acts substantially related to the qualifications, functions, or duties of a professional health care license, to wit, a registered nurse license, as set forth in Factual Findings 3-11.

3. Cause exists to discipline Respondent's acupuncture license pursuant to Business and Professions Code section 4961, subdivision (c), in that Respondent failed to

notify the Board of a change in the location of her place of practice within 30 days, as set forth in Factual Finding 12.

4. Respondent engaged in misconduct involving care she rendered to patients in her role as a registered nurse. Although no evidence of patient harm was presented, the potential for harm was certainly established in that Respondent dispensed prescription medications to patients, while acting as a nurse, without a physician or nurse practitioner first performing a good faith examination of the patients and without orders from anyone licensed to dispense prescription medication.

5. The Board is a consumer protection agency with the primary mission of protecting consumers of acupuncture services from potentially harmful licensees. In keeping with its obligation to protect consumers, the Board has adopted guidelines for disciplinary orders for violations of the Acupuncture Licensure Act. In determining the appropriate level of discipline, the Board's "Disciplinary Guidelines" [rev. 1999] (Guidelines) have been considered. For engaging in an act resulting in substantial harm to a patient, the Guidelines recommend revocation; for misconduct resulting in minimal harm to a patient, five years' probation under various terms is recommended. The objective of an administrative proceeding is "not to punish but to afford protection to the public . . ." (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.)

6. Respondent's RN License was disciplined by the Board of Registered Nursing for repeated instances of unprofessional conduct between 2009 and 2014, and Respondent failed to notify the Board of a change in the location of her acupuncture practice, as set forth in Factual Findings 3-12. However, there has been no prior discipline against Respondent's acupuncture license and no patient harm was established. The public health, safety, welfare and interest will be adequately protected by revoking Respondent's acupuncture license, staying the revocation, and placing her license on probation for a period of five years with terms and conditions designed to ensure public protection.

7. *Costs.* Business and Professions Code section 4959 provides that the Board may request the administrative law judge, under a proposed decision in resolution of a disciplinary proceeding before the Board, to direct a licensee found guilty of unprofessional conduct to pay to the Board a sum not to exceed the actual and reasonable costs of the investigation and prosecution of the case. In this matter, it was established that Respondent engaged in unprofessional conduct subjecting her to discipline. She shall be required to pay the Board its reasonable costs in the investigation and prosecution of this case in the amount of \$6,720.75. (Factual Finding 13.)

///

///

///

ORDER

Acupuncture license number AC4975, issued to Respondent, Bongja Bena Won, is revoked. However, the revocation is stayed and Respondent's license shall be placed on probation for a period of five years under the following terms and conditions:

1. Obey All Laws

Respondent 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 respondent to the Board in writing within seventy-two (72) hours of occurrence.

2. Quarterly Reports

Respondent 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

Respondent shall comply with the Board's probation surveillance program and shall, upon reasonable notice, report to the assigned investigative district office. Respondent shall contact the assigned probation surveillance monitor regarding any questions specific to the probation order. Respondent 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

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

5. Changes of Employment

Respondent 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 Respondent should leave California to reside or to practice outside the State, Respondent 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

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

8. Cost Recovery

Respondent shall pay to the Board its costs of investigation and enforcement in the amount of \$6,720.75, in the manner determined by the Board.

9. Violation of Probation

If Respondent violates probation in any respect, the Board may, after giving Respondent 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 Respondent 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 Respondent.

10. Completion of Probation

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

Dated: May 18, 2017

DocuSigned by:
Laurie Pearlman
LAURIE R. PEARLMAN
Administrative Law Judge
Office of Administrative Hearings