

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

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

JIAJIE WANG, L.Ac.,

Acupuncture License Number AC 5271

Petitioner.

Case No. PETP-1A-2009-147

OAH No. 2017060433

DECISION

This matter was heard on August 4, 2017, before a quorum of the Acupuncture Board (Board), Department of Consumer Affairs, State of California, in Sacramento, California. Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, presided.

John S. Gatschet, Deputy Attorney General, appeared pursuant to Government Code section 11522.

Petitioner Jiajie Wang, L.Ac., represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on August 4, 2017.

FACTUAL FINDINGS

Licensure by the Board

1. On September 6, 1995, the Board issued Acupuncture License Number AC 5271 to petitioner. The license expires April 30, 2018, unless renewed or revoked.

2. On February 27, 2013¹, the Executive Officer of the Board filed an Accusation seeking to discipline petitioner's license based on his convictions of two crimes that are

¹ The Decision and Order dated June 25, 2014, relating to Case No. 1A-2009-147 and OAH No. 2013030760, mistakenly lists the Accusation file date as February 8, 2013.

substantially related to the qualifications, functions, or duties of an acupuncturist, and his commission of acts involving dishonesty or corruption. Specifically, petitioner has misdemeanor convictions for being an accessory after the fact and failing to supply information on an income tax return. The factual basis for the convictions was that petitioner billed Medi-Cal for providing acupuncture treatments he did not actually provide.

3. On June 25, 2014, the Board issued a Decision and Order revoking petitioner's license, staying revocation, and placing his license on probation for five years. The terms and conditions of probation include the requirements that he: 1) serve a 30-day suspension; 2) have a billing monitor; 3) complete at least 20 semester units or 30 quarter units of coursework in ethics within the first three years of probation; 4) provide 100 hours of free acupuncture treatments within the first two years of probation; and 5) provide quarterly reports to the Board. The Decision and Order became effective on July 25, 2014.

Petition for Penalty Relief

4. On May 12, 2017, petitioner signed a Petition for Penalty Relief seeking early termination of probation. In his accompanying narrative statement, he explained the following:

Through the painstaking but rewarding experience of such a thorough rehabilitation, I have gained a full knowledge of the ethics and practice as an acupuncturist in the State of California and have upgraded myself to the required professionalism for a better service. I have fully realized the mistakes I have committed. I hereby extend my wholehearted gratitude to the Board for providing me such an opportunity to correct my mistakes, which I will never commit again either intentionally or unintentionally.

5. Petitioner's hearing testimony reflected the same humility and remorse as his narrative statement. He readily admitted his wrongdoing, and accepted full responsibility for his conduct. While he was adamant he would not engage in similar conduct in the future, he explained Medi-Cal no longer covers acupuncture treatment. He also explained he would like to have probation terminated because he has been unable to find an insurance carrier willing to issue him a malpractice insurance policy while his license is on probation. He intends to immediately obtain malpractice insurance once probation is terminated.

Additional Evidence at Hearing

6. Court records of petitioner's convictions show his criminal probation was terminated early on May 19, 2016. The following year, his convictions were vacated, his no contest pleas were withdrawn, not guilty pleas were entered, and all criminal charges were dismissed pursuant to Penal Code section 1203.4.

7. Kristine Brothers is petitioner's probation monitor with the Board. She confirmed at hearing that petitioner is in compliance with the terms and conditions of his probation, and described him as a good candidate for early termination of probation. Her May 30, 2017 correspondence to petitioner confirmed she received proof of his completion of 300 hours of the required coursework on July 31, 2016, and proof of his completion of 100 hours of community service on March 23, 2015.

Summary

8. Petitioner's narrative statement and testimony at hearing was credible. He completed his required coursework and community service one year early. His criminal convictions have been vacated, and all criminal charges have been dismissed. Petitioner established he is capable of performing the duties of an acupuncturist in a manner consistent with public health, safety, and welfare, without any restrictions. Therefore, his petition to terminate probation should be granted.

LEGAL CONCLUSIONS

Applicable Burden/Standard of Proof

1. Petitioner has the burden of proving his entitlement to termination of probation, and he must do so by clear and convincing evidence. (*In re Menna* (1995) 11 Cal.4th 975, 986.) "The courts have defined clear and convincing evidence as evidence which is so clear as to leave no substantial doubt and as sufficiently strong to command the unhesitating assent of every reasonable mind. [Citations.] It has been said that a preponderance calls for probability, while clear and convincing proof demands a *high probability* [citations]." (*In re Terry D.* (1978) 83 Cal.App.3d 890, 899; italics original.)

Applicable Law

2. Business and Professions Code section 4960.5, subdivision (a)(2), allows a person whose license has been placed on probation for three years or longer to petition the Board to terminate probation after two years have elapsed since the effective date of the decision placing the license on probation. Government Code section 11522 requires the Board to give notice of the filing of a petition to modify and terminate probation to the Attorney General's Office, and further provides that the Attorney General and the person seeking modification and termination may present oral or written argument to the Board.

3. Business and Professions Code section 4928.1 provides:

Protection of the public shall be the highest priority for the Acupuncture Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

Conclusion

4. Petitioner established by clear and convincing evidence that he is entitled to termination of probation for the reasons explained in Factual Finding 8. Therefore, his petition to terminate probation is granted.

ORDER

The Petition for Termination of Probation of Jiajie Wang, L.Ac., is GRANTED.

This Decision shall become effective on November 15, 2017.

IT IS SO ORDERED this 16th day of October, 2017.



AMY MATECKI, M.D., M.Sc., L.Ac.
President
Acupuncture Board