

BEFORE THE  
ACUPUNCTURE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition for  
Reinstatement of Revoked License of:

STEVEN CHEN JING XIA,

Petitioner.

Case No. 1A-2018-25

OAH No. 2018090279

**DECISION**

This matter was heard before a quorum of the Acupuncture Board on October 25, 2018, in Berkeley, California. Karen Reichmann, Administrative Law Judge, State of California, Office of Administrative Hearings, presided.

Petitioner Steven Chen Jing Xia (Petitioner) was present and was self-represented. A Mandarin- language interpreter assisted throughout the hearing.

Mary Cain-Simon, Supervising Deputy Attorney General, represented the Department of Justice, Office of the Attorney General.

The matter was submitted on October 25, 2018, and decided in closed session.

**FACTUAL FINDINGS**

1. On March 6, 2003, the Acupuncture Board (Board) issued Acupuncturist License No. AC 8907 to Petitioner Steven Chen Jing Xia.

2. On October 28, 2014, the Board issued an order, effective November 27, 2014, revoking Petitioner's license and directing him to pay \$3,302.50 in investigation and enforcement costs as a prerequisite to reinstatement. On March 15, 2018, Petitioner submitted a petition for reinstatement of revoked license. This hearing followed.

3. The Board's discipline was the result of an accusation, filed by the Executive Officer of the Board Terri Thorfinnson on March 3, 2014, alleging two causes for discipline. First, that Petitioner was convicted of a crime substantially related to the qualifications, functions, or duties of a licensee pursuant to Business and Professions Code sections 4955, subdivision (b) and 4956.<sup>1</sup> Second, that Petitioner engaged in fraudulent or dishonest acts that are substantially related to the qualifications, functions, and duties of a licensee pursuant to Section 4955.1, subdivisions (b) and (c). These causes for discipline were premised on Petitioner's May 2, 2013, felony conviction, on a plea of no contest, for violating Penal Code

---

<sup>1</sup> All further statutory references are to the Business and Professions Code unless otherwise indicated.

section 550, subdivision (b)(1) (knowingly assisting or conspiring to present a fraudulent statement in support of a claim for payment under an insurance policy with an intent to defraud an insurer).

The circumstances underlying the conviction are that between March 1, 2011, and August 30, 2012, Petitioner submitted fraudulent claims to insurance companies in which he sought compensation for acupuncture services that had not been provided. After receiving complaints of fraudulent billings involving two patients, the California Department of Insurance conducted an undercover investigation in which two detectives sought treatment from Petitioner using assumed names. In both cases, Petitioner billed for acupuncture treatments when in fact he performed massage and other treatments.

As a result of his felony conviction, Petitioner was placed on probation for five years, on terms and conditions which included paying \$7,231.25 in restitution to the California State Automobile Association, the victim of the offense.

4. During the hearing held on October 25, 2018, Petitioner acknowledged his wrongful acts and expressed remorse. He admitted that he billed for acupuncture for patients who did not receive acupuncture treatments. He had provided treatment to the patients, and believes that he did not receive an excessive amount of money in light of the services he actually provided, but he still realizes that he was wrong to use false codes on his billings. He added that he was motivated by compassion for his patients and not financial gain.

At the time he committed the offense, Petitioner did not realize that what he did was a crime. Petitioner now understands the significance of accurate billing and assured the Board that he would not engage in fraudulent billing if his license is reinstated.

5. Petitioner testified that he complied with all terms of probation, including paying all court-ordered restitution and fines. Probation ended in May 2018. Petitioner did not provide proof of having paid restitution.

6. Petitioner has continued taking continuing education courses. He has completed more than 100 hours since 2014, which exceeds the amount required of licensees. Only two hours related to billing practices.

7. Petitioner was educated in his native China. He studied both western and eastern medicine and practiced in China for 14 years before immigrating to the United States. In China he worked in a hospital and did not have to bill for his services in the way it is required in the United States. Petitioner prides himself in being thorough and compassionate in his treatment of his patients. When he was practicing acupuncture, he was often able to help patients who had not achieved positive results from other practitioners.

8. Petitioner teaches at the Academy of Chinese Culture and Health Sciences, a school for Chinese medicine in Oakland. He teaches courses in pathology, pharmacology, diagnostics, and western medicine. He has used his experience losing his license to instruct his students on the importance of following the law.

9. Petitioner has been pressured to perform acupuncture while his license has been revoked, because of his reputation in the community as an effective practitioner. He has refused these requests. On occasion, he has provided other therapies which do not require licensure.

10. Petitioner testified emotionally regarding the personal struggles he has faced since losing his license. He has suffered financially and his health has declined. His marriage ended and his children have struggled in school. Petitioner has not returned to China to see his family because he is ashamed. Petitioner has worked as a handyman and has leased out his former business offices for income.

11. When asked how he would prevent himself from engaging in similar fraudulent conduct in the future, Petitioner stated that he will avoid insurance patients, he will use a "checklist" to make sure he uses the correct codes, and that he might hire someone to do his billing.

### LEGAL CONCLUSIONS

1. 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 the other interests sought to be promoted, the protection of the public shall be paramount.

2. Business and Professions Code section 4960.5 provides that an individual whose license has been revoked may petition for reinstatement after three years have elapsed from the date the license was revoked.

3. In a proceeding for the restoration of a revoked license, the burden of proof is on the petitioner to prove that he is rehabilitated and is entitled to have his license reinstated. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) A petitioner seeking reinstatement of a revoked license must present strong proof of rehabilitation, and the showing must be sufficient to overcome the former adverse determination. The standard of proof is clear and convincing evidence. (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d, 308, 315-316.).

4. California Code of Regulations, title 16, section 1399.469, incorporates the Board's Disciplinary Guidelines by reference. With respect to petitions for reinstatement, the Guidelines provide that:

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.

5. Petitioner has incurred one felony conviction for submitting a false insurance claim. Petitioner's conviction is serious and related directly to his practice as a licensed acupuncturist. During the time that his license has been revoked, Petitioner has continued taking continuing education courses. Petitioner asserted that he complied fully with all terms and conditions of his criminal probation.

There is no evidence that Petitioner lacks technical skills as an acupuncturist. Revocation was based on fraudulent billing rather than deficiencies in his skills. Petitioner expressed deep remorse for the offense. Petitioner appears sincere in his commitment not to commit similar misconduct in the future. However, he has only taken a two-hour course in billing practices, and he has not adopted an adequate plan to improve his business practices such that unrestricted reinstatement of his license would be appropriate.

Reinstatement of Petitioner's license, during a probationary period with appropriate terms and conditions, would not pose a risk to the public safety. Probation conditions addressing Petitioner's deficient business practices will be imposed to provide necessary oversight and afford Petitioner the opportunity to establish ethical practices. These conditions, including a ban on solo practice, a billing monitor, and ongoing ethics coursework, are necessary for the protection of the public.

Accordingly, there is hereby issued the following:

### **ORDER**

The application of Petitioner, Steven Chen Jing Xia, for reinstatement of his acupuncture license is **GRANTED**, provided Petitioner first meets the following three conditions precedent to the reinstatement of his license:

#### **CONDITIONS PRECEDENT TO REINSTATEMENT**

1. **COST RECOVERY**: As a condition precedent to reinstatement of his license, within 60 days of the effective date of this decision, Petitioner shall pay to the Board all unpaid investigation and enforcement costs which were previously imposed by the Board in the

disciplinary action revoking his license. If Petitioner does not make this payment as ordered herein, his license will remain in revoked status.

2. COURSEWORK: As a condition precedent to reinstatement of his license, Petitioner shall take and successfully complete no fewer than eight hours of coursework in the following areas: ethics and business management. All coursework shall be taken at the graduate level at a school approved by the Board. The required coursework is in addition to any continuing education courses that may be required for license renewal. All costs of coursework shall be paid by Petitioner.

3. PROOF OF RESTITUTION: As a condition precedent to reinstatement of his license, Petitioner shall provide proof to the Board that he has paid all restitution ordered by the Superior Court as part of the criminal proceedings.

### **CONDITIONS OF PROBATION**

Upon Petitioner's fulfillment of the conditions precedent, Acupuncturist License No. AC 8907 shall be reinstated; the license shall immediately be revoked, the order of revocation stayed, and the license shall be placed on probation for a period of five 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 Petitioner to the Board in writing within 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.

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 supervisory relationship in existence on the effective date of this probation.

8. 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.

9. Completion of Probation: Upon successful completion of probation, Petitioner's license will be fully restored.

10. 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 billing monitor. Once approved, the monitor shall submit to the Board a plan by which Petitioner's 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 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.

11. Coursework: Petitioner shall take and successfully complete not less than eight hours of coursework annually, in the following area: ethics. All coursework shall be taken at the graduate level at a school approved by the Board. Classroom attendance must be specifically required. 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 Petitioner.

12. Reimbursement for Probation Surveillance Monitoring: Petitioner shall reimburse the Board for the hourly costs it incurs in monitoring the probation to ensure compliance for the duration of the probation period.

13. No Solo Practice: Petitioner is prohibited from engaging in the solo practice of acupuncture. Prohibited solo practice includes, but is not limited to a practice where: 1) Petitioner merely shares office space with another licensed practitioner, but is not affiliated for the purpose of providing patient care, or 2) Petitioner is the sole licensed practitioner at that location.

If Petitioner fails to establish a practice with another licensed practitioner or secure employment in an appropriate practice setting within 60 days of the effective date of this Decision, Petitioner shall receive notification from the Board or its designee to cease the practice of acupuncture within three days after being so notified. Petitioner shall not resume practice until an appropriate practice setting is established.

If, during the course of the probation, Petitioner's practice setting changes and Petitioner is no longer practicing in a setting compliant with this Decision, Petitioner shall notify the Board or its designee within five days of the practice setting change. If Petitioner fails to establish a practice with another licensed practitioner or secure employment in an appropriate practice setting within 60 days of the practice setting change, Petitioner shall receive a notification from the Board or its designee to cease the practice of acupuncture within three days after being so notified. Petitioner shall not resume practice until an appropriate practice setting is established.

This Decision shall become effective on February 22, 2019.

DATED: January 24, 2019.



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