

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

KEIBUN SON,

Acupuncture License No. AC 11246

Respondent.

Case No. 1A-2010-140

OAH No. 2012010787

DECISION

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

This Decision shall become effective on JUL 24 2012.

IT IS SO ORDERED JUN 25 2012



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PROPOSED DECISION

Administrative Law Judge Jill Schlichtmann, State of California, Office of Administrative Hearings, heard this matter on May 17, 2012, in Oakland, California.

Catherine Santillan, Senior Legal Analyst, represented complainant Janelle Wedge, the Executive Officer of the Acupuncture Board.

Bernard L. Bray, Attorney at Law, represented Keibun Son, who was present throughout the administrative hearing.

The record was left open to allow respondent to submit documentary evidence of the payment of restitution and completion of community service. Respondent's submission was timely received, marked as Exhibit C and admitted into the record. Complainant had previously waived the filing of a response. The record closed and the matter was deemed submitted for decision on May 18, 2012.

FACTUAL FINDINGS

1. Janelle Wedge made the accusation in her official capacity as the Executive Officer of the Acupuncture Board (Board).
2. On October 2, 2006, the Board issued license no. AC 11246 to Keibun Son (respondent). The license will expire on September 30, 2012, unless renewed.
3. On April 13, 2011, respondent was convicted of violating Vehicle Code section 20001, subdivisions (a) and (b)(2) (failure to stop after an accident resulting in

permanent injury or death), a felony. Imposition of sentence was suspended and respondent was placed on formal probation for three years on conditions that included serving 30 days through the electronic monitoring program, performing 200 hours of community service, and paying \$7,500 to the Victims Compensation Fund. Respondent has completed these terms of probation.

4. The facts and circumstances underlying the conviction occurred on the evening of July 19, 2010. Respondent was driving in Mountain View, California, when an 80 year old man was walking in a marked crosswalk. Respondent's vehicle hit the man. Witnesses called 911 and emergency personnel were on the scene within minutes. Respondent failed to stop at the scene of the collision. Instead, she drove home and telephoned police to report the incident 30 to 40 minutes after it occurred. The victim died the next day from the injuries sustained in the accident. Respondent was driving approximately 23 miles per hour at the time of the collision. She was not under the influence of alcohol or a drug.

Respondent's Evidence

5. Respondent had returned from Hong Kong after burying her father four days before the accident. She met her husband at a restaurant for dinner after work on July 19, 2010. On her way home, the accident occurred. Respondent did not see the man before she hit him. Respondent panicked and her mind went blank; she did not have a cell phone with her and decided to drive home to seek her husband's support. As soon as she arrived home and told her husband what had happened, they called the police. Officers arrived at their home shortly thereafter to investigate the incident and take respondent into custody. Respondent was deeply saddened by the accident and the death of the victim. She realizes that she should have stopped to render aid to the victim, but was in shock and made the wrong decision.

6. Respondent has been married for 29 years. Her only child, a son, died at age 18. While he was ill, respondent began studying Chinese herbal medicine and acupuncture with the intention of treating her son's medical problems, however, he passed away before she completed her education. She became an acupuncturist out of her desire to bring help and relief to those in need. Respondent's husband is also an acupuncturist.

7. Following the accident, respondent sought counseling from a psychologist and her pastor. Respondent submitted a letter from Colin R. Wright, Ph.D., whom she saw five times between July 26, 2010 and November 16, 2010. Dr. Wright found respondent to be cooperative, quiet, polite and reserved. Dr. Wright found no indications of sociopathic or anti-social behaviors. In his opinion, respondent would not intentionally bring harm to another person.

8. David Ng, the senior pastor at Logos Baptist Church in Los Altos, submitted a letter in support of respondent. Pastor Ng has known respondent since 2009. Respondent has been a member of the church for six years. Pastor Ng reports that respondent has often volunteered her time to the needy as an herbal medicine consultant. Pastor Ng considers respondent to be an attentive and patient friend to those around her.

9. Michael H. Tao, the manager of the South Bay Chinese Christian Mission Gospel Center (CCM Gospel Center) in Cupertino submitted a character reference. Tao has worked closely with respondent since 2006. The CCM Gospel Center is a non-profit organization that provides free courses and medical assistance to low income families. Respondent has volunteered her time at the center every Wednesday morning from 10:00 a.m. to 12:30 p.m. since 2006. Respondent and her husband have also offered free Chinese medicine seminars at the facility.

10. The Reverend Simon Fan, the previous pastor at respondent's church, submitted a character reference. He has known respondent since 2006. Respondent has consistently offered her services free of charge to those in need. Reverend Fan holds respondent in high esteem.

11. Respondent submitted letters from 10 friends, church acquaintances and patients who attest to her good nature, generous volunteerism, dedication to her religious beliefs and knowledge as an herbalist and acupuncturist.

12. Respondent began her acupuncture studies in 2003. She graduated from the University of East-West Medicine with a major in traditional Chinese medicine and acupuncture in 2006. Respondent has worked part-time as an acupuncturist at an office in the Dena Market in Mountain View since 2007.

Prosecution Costs

13. The Board reasonably incurred prosecution costs in this matter in the amount of \$960. Respondent did not object to the costs of prosecution.

LEGAL CONCLUSIONS

1. Business and Professions Code section 4955 provides that the Board may suspend, revoke or impose probationary conditions upon a licensee who is guilty of unprofessional conduct. Subdivision (b) of that section defines as unprofessional conduct the conviction of a crime that is substantially related to the qualifications, functions or duties of an acupuncturist. By reason of the matters set forth in Factual Findings 3 and 4, cause for discipline of respondent's license exists pursuant to section 4955.

2. In 1996, the Board adopted penalty guidelines to be considered in disciplinary proceedings. The guidelines are incorporated by reference in California Code of Regulations, title 16, section 1399.469. For a conviction of a crime substantially related to

the functions of an acupuncturist, the maximum penalty is revocation. The minimum recommended penalty is five years probation with standard terms and conditions, 30 days suspension, an ethics course and community service. The maximum penalty is to be applied in crimes of violence against a person or property, or an economic crime resulting in substantial harm to a patient. Respondent's offense, leaving the scene of an accident, is not a crime of violence, or an economic crime resulting in harm to a patient. The minimum penalty applies to a conviction of a crime resulting in little or no harm to patients. Respondent's behavior resulted in no harm to her patients. The facts of this case do not fit squarely in the penalty descriptions outlined by the guidelines.

Respondent clearly exercised poor judgment when she failed to stop to assist the victim after the accident. While it does not appear that the victim would have survived if she had stopped, it would have been the right thing to do, especially for a professional in the healing arts. On the other hand, respondent came forward and cooperated fully with authorities shortly after the incident. In addition, she has served 30 days on electronic monitoring, paid the restitution order, expressed remorse and performed her community service. There is no pattern of criminal behavior, respondent is unlikely to intentionally harm anyone, and there is no evidence that respondent is unable to perform competently as an acupuncturist. She has performed many hours of volunteer work as an acupuncturist, is a devoted family member and friend, and is very active in her church. Certainly, respondent regrets the accident and her failure to stop. In consideration of these factors, the minimum penalty under the guidelines applies. It would not be contrary to the public interest to allow respondent to engage in licensed activities under the heightened supervision of a probationary license. (Factual Findings 5 to 12.)

3. Complainant has requested that respondent be ordered to reimburse the Board for the costs of investigating and enforcing the accusation. Business and Professions Code section 4959 provides that any licensee found guilty of professional conduct may be ordered to pay the Board a sum not to exceed the reasonable costs of the investigation and prosecution of the case. The Board reasonably incurred costs of investigation and enforcement in the amount of \$960. (Factual Finding 13.) Respondent has not established a basis to reduce or eliminate the costs. (See, *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32.)

ORDER

License No. AC 11246 issued to Keibun Son is hereby revoked. However, revocation is stayed for a period of five (5) years upon the following terms and conditions:

1. **ACTUAL SUSPENSION** - As part of probation, respondent is suspended from the practice of acupuncture for 30 days from the effective date of this decision.

2. **COURSE WORK** - Respondent shall take and successfully complete not less than twenty (20) semester units or thirty (30) quarter units of course work in the following area: ethics. All course work shall be taken at the graduate level at a school approved by the Board. Classroom attendance must be specifically required. Course work must be completed within the first year of probation. The required course work shall be in addition to any continuing education courses that may be required for license renewal. Within ninety (90) days of the effective date of this decision, respondent shall submit a plan for the Board's prior approval for meeting the education requirements. All costs of the coursework shall be borne by the respondent.
3. **COMMUNITY SERVICE** - Respondent shall perform 100 hours of community service in the first three (3) years of probation. The services rendered shall be approved by the Board and shall be professional in nature and under the auspices of a governmental entity or a non-profit corporation tax exempt under the Internal Revenue Code.
4. **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.
5. **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.
6. **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 associated with the case; 2) Board members or members of its staff; or 3) persons serving the Board as expert examiners.
7. **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.
8. **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.

9. 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.
10. 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 supervisorial relationship in existence on the effective date of this probation.
11. COST RECOVERY - Respondent shall pay to the Board its costs of investigation and enforcement in the amount of \$960.
12. 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 stayed. 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.
13. COMPLETION OF PROBATION - Upon successful completion of probation, respondent's license will be fully restored.

DATED: May 24, 2012


JILL SCHLICHTMANN
Administrative Law Judge
Office of Administrative Hearings