BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	Case No.: 1A-2013-2
	)	OAH No.: 2013070508
	)	
HONG KI YOON, L.AC.	)	
1010 ARLINGTON AVE.	)	
LOS ANGELES, CA 90019	)	
	)	
Acupuncture License No. AC 2219	)	
	)	
Respondent.	)	
	)	

DECISION AND ORDER

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

This Decision shall become effective on APR 06 2014.

IT IS SO ORDERED MAR 07 2014.

Michael Shi, Chair
Acupuncture Board
Department of Consumer Affairs
State of California

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: Hong Ki Yoon, L.Ac. Acupuncture License No. AC 2219, Respondent.	Case No. 1A-2013-2 OAH No. 2013070508

PROPOSED DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on December 9 and 23, 2013, in Los Angeles. The record was closed and the matter submitted for decision upon the conclusion of the hearing.

E.A. Jones III, Supervising Deputy Attorney General, represented Terri Thorfinnson (Complainant).

John H. Oh, Esq., represented Hong Ki Yoon (Respondent), who was present.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Complainant brought the Accusation in her official capacity as the 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 of the Accusation.

2. On December 29, 1983, the Board issued Acupuncture License No. AC 2219 to Respondent. The license is in effect and will expire on March 31, 2014, unless renewed.

Respondent's Convictions

3. Several years after receiving his license from the Board, Respondent committed two separate crimes, which resulted in a conviction in a consolidated criminal matter, as described in more detail below.

4. The first crime occurred on November 12, 1990, when Respondent became involved in a physical altercation with another man on a public street in the MacArthur Park area of Los Angeles. Respondent injured the other man such that he was hospitalized for several days. The particular details of this incident were not established because the only evidence presented was the police report, which contained only uncorroborated administrative hearsay comments attributed to the victim that were insufficient to support a finding over Respondent's timely hearsay objection during the hearing. (Gov. Code, § 11513, subd. (d).) Respondent was arrested and prosecuted for assault with a deadly weapon in violation of Penal Code section 245.

5. Respondent's second crime occurred on March 25, 1991, when police officers were called to a hotel on Silverlake Boulevard in Los Angeles after it was reported that an assault was in progress. Officers were directed to room 408, where they found the door open. Upon entering the room, Respondent was observed standing over a bed in which a bloody female victim was lying under bloodied sheets. The officers also observed blood splattered on the walls and in a closet. The officers also found a bloodied bottle of Thunderbird wine in the room and three teeth of the victim near the bed. When Respondent was arrested he spontaneously stated, "Why are you arresting me? We are not hurting anyone. She asked me to tie her up and beat her so I did." Respondent was arrested and prosecuted for several felony counts, including attempted murder.

6. On May 20, 1991, the two criminal cases filed against Respondent based on his two arrests described above were consolidated into the case of *The People of the State of California v. Hong Ki Yoon*, Los Angeles County Superior Court, State of California, case number BA033721.

7. On August 19, 1991, in the consolidated case number BA033721, Respondent pled guilty to, and was convicted of, two felony counts of assault with a deadly weapon in violation of Penal Code section 245, subdivision (a)(1). Respondent was sentenced to serve eight years in prison, and was remanded to the custody of the Department of Corrections and Rehabilitation. Respondent served his prison sentence and was released on a date not established.

8. On December 17, 2004, in Los Angeles County Superior Court, State of California, Respondent pled nolo contendere to, and was convicted of, one count of misdemeanor battery in violation of Penal Code section 242. Imposition of sentence was suspended and Respondent was placed on three years' summary probation under terms including that he complete a one year parenting class, not use physical discipline on his children, and pay restitution and fines in the amount of $216. Respondent successfully completed the terms of his probation.

9. The circumstances leading to the conviction occurred on August 13, 2004. Police officers responded to a radio call regarding a child abuse investigation at Wilton Place Elementary School, where Respondent's son attended school. Respondent's son was observed having a rectangular bruise on his thigh.

10. No evidence was presented indicating that the Board took any disciplinary action against Respondent as a result of the events described above.

11. On February 6, 2012, in the Superior Court of the State of California, Los Angeles County, an information was filed against Respondent alleging one felony count that he had violated Penal Code section 12316, subdivision (b)(1), a convicted felon being in possession of ammunition. On October 16, 2012, the court ordered the information be amended to add a felony count of second degree commercial burglary in violation of Penal Code section 459. Respondent pled nolo contendere to, and was convicted of, the felony count of violating Penal Code section 459. Imposition of sentence was suspended and Respondent was placed on formal probation for three years and ordered to serve 44 days in the county jail, pay fines and fees, and perform 400 hours of community service. No evidence was presented concerning the underlying circumstances of this crime. However, Respondent was found to have violated the terms of his probation, as described in more detail below. Respondent remains on probation.

12. Respondent's convictions in 1991 and 2004 involved crimes that are substantially related to the qualifications, functions, or duties of a licensed acupuncturist. Those crimes involved physical violence against others, notably Respondent's child, a sexual partner and a man he apparently knew. The repeated infliction of bodily harm on others reflects an inability to follow the law. Moreover, this type of conduct runs counter to the prime purpose of acupuncture to prevent the perception of pain. (Bus. & Prof. Code, § 4927, subd. (d).) The physical altercations underlying these convictions, in combination with the incident in 2013 resulting in the violation of Respondent's current probation described in more detail below, also show a pattern of physical aggression suggesting that Respondent has an anger management problem and a proclivity toward violence. Acupuncturists come into intimate contact with patients. Treatment and billing disputes are always a potential in such a relationship. Therefore, an acupuncturist with such an emotional problem poses a potential risk to the public.

13. Respondent's convictions are not substantially related to the qualifications, functions, or duties of a licensed acupuncturist as they relate to the consumption of alcohol. While the events underlying the 1991 conviction may have involved alcohol, the extent to which they did was not established by clear and convincing evidence, as little evidence of the underlying events was presented and the elements of the involved crimes do not involve the use or abuse of alcohol. The 2004 and 2012 convictions did not involve the use of alcohol.

14. Respondent's conviction in 2012 for second degree commercial burglary is not substantially related to the qualifications, functions, or duties of a licensed acupuncturist. Complainant contends the conviction is substantially related because it involves theft or fiscal dishonesty. However, the elements of the crime set forth in Penal Code section 459 involve entry of a dwelling with either the intent to commit larceny or to commit a felony. The circumstances of Respondent's crime were not established, other than that he was initially charged with being a felon in possession of ammunition. Thus, it was not clearly and convincingly established that the 2012 conviction involved theft or fiscal dishonesty.

Respondent's Probation Violation

15. In the early morning of January 1, 2013, Respondent was at the residence of a friend in Los Angeles. Respondent and the friend were apparently drinking. The two became involved in an argument. According to a spontaneous statement Respondent made to police, "I hit my friend . . . I don't know why." The friend was taken to the hospital for his injuries. The other details of this incident were not established because the only evidence presented was the police report which, other than Respondent's admission to police, contained only uncorroborated administrative hearsay comments attributed to the victim and others that were insufficient to support a finding over Respondent's timely hearsay objection during the hearing. (Gov. Code, § 11513, subd. (d).) Respondent was arrested for assault with a deadly weapon in violation of Penal Code section 245, subdivision (a)(1).

16. Instead of filing a separate criminal case as a result of this arrest, Respondent was charged with violating the probation from his 2012 conviction for violating Penal Code section 459. On March 2, 2013, Respondent admitted to violating his probation as a result of the events that occurred on January 1, 2013. Respondent's probation was revoked, but he was given credit for time already served. No evidence was presented concerning the current status of Respondent's probation.

Respondent's 2006 License Renewal Application

17. On March 2, 2006, the Board received a certification from Respondent, in connection with the renewal of his acupuncture license, in which he affirmed under penalty of perjury under the laws of the State of California that subsequent to his last renewal of his license he had not been convicted of, pled guilty to, or pled nolo contendere to, a misdemeanor or felony.

18. In fact, since he last renewed his acupuncture license prior to March 2006, Respondent had been convicted on December 17, 2004, of violating Penal Code section 242, battery, a misdemeanor, as discussed above. Respondent was required to disclose that conviction in the process of renewing his license in 2006. He offered no explanation for his failure to disclose that conviction to the Board.

Mitigation, Rehabilitation and Costs

19. Since 1983, Respondent has seen thousands of patients without incident. No evidence was presented indicating that Respondent has received or been the subject of any patient complaint or lawsuit.

20. Respondent has no prior disciplinary history with the Board.

21. Respondent lives with his wife, 16-year-old son, and elderly mother. They live in the same building where his acupuncture practice is located. For that reason, sometimes Respondent will see patients later in the evening.

22. Respondent has received honors and commendations from various organizations related to his work in acupuncture, including the City of Los Angeles, the Korean Welfare Organization of America, and the Association of Korean Asian Medicine and Acupuncture.

23. Respondent testified that he has done volunteer work related to acupuncture, including free aid at senior associations, pro bono services to indigent patients, and traveling to Mexico to perform free acupuncture.

24. During the hearing, Respondent acknowledged that alcohol has played a role in some of his misconduct. As a concession to that fact, Respondent testified that he stopped drinking alcohol as of January 2, 2013, after his most recent arrest. While he denies that he is an alcoholic, he testified that he once surrendered himself to a 30-day alcohol recovery program in the late 1980s.

25. The Board incurred reasonable costs in the investigation of this case in the amount of $5,143.50. The Board incurred reasonable costs in the prosecution of this case in the amount of $3,782.50.

LEGAL CONCLUSIONS

Burden and Standard of Proof

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.)

Cause for Discipline

2. Respondent is subject to disciplinary action under Business and Professions Code sections 4955, subdivision (b),[1] and 490, in that Respondent's convictions in 1991 and 2004 involved crimes substantially related to the qualifications, functions, or duties of a licensed acupuncturist. (Factual Findings 3-9, 12 & 15-16.)

3. Cause was not established to subject Respondent to disciplinary action under section 4955, subdivision (a), for using alcoholic beverages to an extent or in a manner dangerous to himself, to any other person, or to the public, or to an extent that such use impaired his ability to engage in the practice of acupuncture with safety to the public. Complainant contends such cause was established through the events underlying the two sets of crimes Respondent committed in 1991, as well as the events in January 2013 leading to the revocation of his criminal probation. Although those events involved alcohol, the extent to which they did was not established by clear and convincing evidence. Moreover, none of

[1] All further statutory references are to the Business and Professions Code.

those events involved patient treatment. Under these circumstances, it was not clearly and convincingly established that Respondent abused alcohol within the meaning of section 4955. (Factual Findings 3-16.)

4. Respondent is subject to disciplinary action under section 4955.1, subdivision (c), in that he engaged in an act involving dishonesty or corruption with respect to the qualifications, functions, or duties of a licensed acupuncturist. Respondent failed to disclose his 2004 misdemeanor conviction when required to do so in the process of renewing his license in 2006. By failing to disclose his conviction to the Board in this manner, Respondent engaged in an act involving dishonesty. (Factual Findings 17-18.)

5. Respondent is subject to disciplinary action under section 4955, subdivision (i), in that his convictions of substantially related crimes and his act of dishonesty described above would have warranted the denial of an acupuncture license upon application. (Factual Findings 3-19.)

Disposition

6. In determining the appropriate level of discipline, the Board's "Disciplinary Guidelines" [rev. 1999] (Guidelines) have been considered. For engaging in a dishonest act resulting in substantial harm to a patient, the Guidelines recommend revocation; for the same misconduct resulting in minimal harm to a patient, five years' probation under various terms is recommended. For conviction(s) substantially related to acupuncture, the Guidelines recommend revocation for crimes of violence or economic damage resulting in substantial harm to a patient; for convictions of other crimes resulting in little or no harm to a patient, five years' probation under various terms is recommended. It is interesting to note that the Guidelines emphasize misconduct against patients, as opposed to others. In any event, 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.)

7. In this case, Respondent has engaged in serious misconduct. He failed to disclose his 2004 misdemeanor battery conviction to the Board when required to do so in the process of renewing his license in 2006. Respondent offered no explanation for his omission. Respondent was convicted of three separate crimes involving violence against others, and was found to be in violation of his probation as a result of a fourth incident involving violence. Those actions demonstrate that Respondent has an anger management problem and a propensity for violence in dealing with family and friends. Had any of Respondent's misconduct involved a patient, revocation would surely be warranted. Yet, none of Respondent's misconduct involved his practice. Over the past 30 years, Respondent has treated thousands of patients without incident. He has no prior disciplinary history with the Board, and no evidence was presented indicating that he has received a single patient complaint. Respondent has also received awards and recognition for his work in acupuncture and his volunteer service. Those heavy mitigating facts balance against the seriousness of his misconduct. Inasmuch as the Guidelines place emphasis on misconduct related to patients, and Respondent has engaged in none of that type of behavior, the balance of these interests

weigh in favor of placing Respondent on five years of probation under various terms intended to adequately protect the public. (Factual Findings 1-24.)

8A. For the kind of misconduct established in this case, the Guidelines suggest a suspension of 30-60 days. In this case, 30 days is sufficient to allow Respondent to organize his practice and affairs to accommodate the other optional terms of his probation. In light of Respondent's anger management problem and propensity toward violence, a psychological evaluation is warranted, in order for the Board to be assured that Respondent's problems in his personal life will not spill over into his practice. Respondent should also be required to attend and complete an anger management program.

8B. It was not proven that Respondent's abuse of alcohol, in and of itself, rose to the level of requiring discipline; therefore, requiring Respondent to complete an alcohol program is not warranted. However, Respondent's use of alcohol obviously was involved in some of his misconduct proven in this case. Respondent conceded to that fact by voluntarily refraining from using alcohol for the past year. The fact that Respondent's practice is located in the same building where he lives somewhat heightens sensitivity to this issue, in that he could consume alcohol at home and shortly later see a patient. Therefore, the optional term requiring Respondent to abstain from drugs and alcohol, and be randomly tested to confirm his abstinence, is warranted.

8C. Respondent's failure to disclose his 2004 conviction is concerning, but seems to have been an isolated act and not part of a pattern of dishonesty. Nonetheless, Respondent should take and complete an ethics course to emphasize and instill in him the need to disclose all material information to the Board. The Guidelines also recommend community service for the kind of misconduct proven in this case. However, Respondent currently engages in significant community service. Moreover, he will be responsible for reimbursing the Board the costs it incurred in this matter, as well as significant expense complying with other terms of this probation and the lost revenue from a 30 day suspension. Diverting his time from practice will impede his ability to fund these requirements. Under these circumstances, community service is not warranted.

9. *Costs.* Section 4959 provides that the Board may request the administrative law judge, under his 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 actual and reasonable costs of the investigation and prosecution of the case. In this matter, it was established that Respondent committed misconduct subjecting him to discipline. He shall be required to pay the Board its reasonable costs in the investigation and prosecution of this case in the amount of $8,926. (Factual Finding 25.)

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ORDER

The Acupuncture License No. AC 2219, issued to Respondent Hong Ki Yoon, L.Ac., 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. Suspension

Respondent is suspended from the practice of acupuncture for 30 days beginning with the effective date of this decision.

2. Psychological Evaluation

Within 90 days of the effective date of this decision and on a periodic basis thereafter as may be required by the Board or its designee, Respondent shall undergo a psychological evaluation (and psychological testing, if deemed necessary) by a Board-appointed California licensed psychologist. The Board shall receive a current DSM-5 diagnosis and a written report regarding the Respondent's judgment and/or ability to function independently as an acupuncturist with safety to the public, and whatever other information the Board deems relevant to the case. Respondent shall execute a release authorizing the evaluator to release all information to the Board. The completed evaluation is the sole property of the Board.

If the Board concludes from the results of the evaluation that Respondent is unable to practice independently and safely, he shall immediately cease practice and shall not resume practice until notified by the Board. If the Board concludes from the results of the evaluation that Respondent would benefit from on-going psychotherapy, Respondent shall comply with the Board's directives in that regard. Respondent shall pay all costs associated with the psychological evaluation. Failure to pay costs will be considered a probation violation.

3. Abstain from Drugs and Alcohol and Submit to Tests and Samples

Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act (Division 10, commencing with section 11000, Health and Safety Code) and dangerous drugs as defined by Section 4211 of the Business and Professions Code, or any drugs requiring a prescription. Respondent shall abstain completely from the use of alcoholic beverages. Respondent shall undergo random, biological fluid testing as determined by the Board. Respondent shall bear all costs of such testing. The length of time and frequency will be determined by the Board. Any confirmed positive finding will be considered a violation of probation.

4. Coursework

Respondent shall take and successfully complete an ethics course. All coursework shall be taken at the graduate level at a school approved by the Board. Classroom attendance must be specifically required. Course content shall be pertinent to the violation and all

coursework must begin within the first year of probation. 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, Respondent shall submit a plan for the Board's prior approval for meeting the educational requirements. All costs of the coursework shall be borne by Respondent.

5. Anger Management Program

Within the first 18 months of probation, Respondent shall take and successfully complete an anger management program acceptable to the Board. The program chosen shall be certified or used by the Superior Court of the State of California.

6. 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 Respondent to the Board in writing within 72 hours of occurrence.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. Cost Recovery

Respondent shall pay to the Board its costs of investigation and enforcement in the amount of $8,926. Respondent shall make monthly payments according to a schedule approved by the Board. There shall be no deviation from that schedule absent prior written approval by the Board or its designee.

14. 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.

15. Completion of Probation

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

Dated: December 30, 2013

ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearings