BEFORE THE
CALIFORNIA ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for Early Termination of Probation of: YIHAN FANG, Petitioner.	Case No. PETP-1A-2010-197 OAH No. 2014010819

DECISION

This matter was heard before a quorum of the Acupuncture Board (board) on February 14, 2014, in Sacramento, California. The quorum was comprised of Michael Shi, Chair, Kitman Chan, Vice-Chair, Hildegarde Aguinaldo, Francisco Hsieh, Jeannie Kang, and Jamie Zamora. Administrative Law Judge Linda A. Cabatic, State of California, Office of Administrative Hearings, presided.

Michelle L. Angus, Deputy Attorney General, appeared on behalf of the Office of the Attorney General, pursuant to Government Code section 11522.

Petitioner Yihan Fang was present and represented herself.

Evidence was received, and the matter was submitted for decision on February 14, 2014.

FACTUAL FINDINGS

1. On August 27, 1993, the board issued Acupuncture License No. AC 4603 to petitioner.

Petitioner's Surrender of Her License

2. On July 26, 2005, petitioner was convicted on her plea of guilty of violating Title 18, United States Code, section 1035 (knowing and willfully making false statements related to healthcare matters), a Class D Felony, in *United States of America v. Yi Han Fan, aka Helen Fang,* Case No. CRS-03-286, in the United States District Court, Eastern District of California.

3. The Court placed petitioner on 36 months supervised probation, ordered to serve 180 days in home detention, and directed her to pay $130,000 in restitution.

4. The circumstances of the offense involved petitioner submitting statements to the Medi-Cal program between January 2000 and December 2002 in which petitioner falsely represented that she provided acupuncture services, which were covered by Medi-Cal, when in fact she provided patients with creams and other skin treatments that were not covered by Medi-Cal. As a result of petitioner's false statements, Medi-Cal paid approximately $130,000 to petitioner to which she was not entitled.

5. On October 24, 2005, the board filed an Accusation against petitioner seeking to suspend or revoke her license on the basis of her conviction and on the basis of false advertising in which petitioner referred to herself as "Dr. Helen Fang" at her place of business and on her business cards.

On January 22, 2007, petitioner signed a Stipulated Surrender of License and Order in which petitioner admitted the truth of each and every charge and allegation in the accusation and agreed to surrender her license.

6. On March 5, 2007, the board accepted the Stipulated Surrender of License and Order as its Decision and Order in the matter. The Decision and Order became effective on March 5, 2007.

The May 3, 2010 Citation

7. On January 13, 2010, the board received a tip from the Department of Consumer Affairs Unlicensed Activity Program that there was an advertisement in the Los Angeles Chinese Yellow Pages that represented that petitioner was conducting an acupuncture practice in Monterey Park and in West Covina. There was also an Internet advertisement in the Tycloon.com website in which it was represented that petitioner conducted a practice in Monterey Park where she specialized in acupuncture, physical therapy, and herbal medicine. Petitioner's photo appeared in the advertisements, in which she was wearing a white doctor's coat. Petitioner was cited and was given the opportunity to contest the citation.

During the teleconference that followed the issuance of the original citation, petitioner provided the board's Executive Director with a letter from Tyloon, Inc. that stated the organization visited petitioner's place of business six years before, that no visit was made to petitioner's place of business thereafter, that petitioner did not request that her advertisement be removed after placing the advertisement, but that it recently removed all references to her practice at petitioner's request.

8. The citation was modified and petitioner paid a $250 penalty assessment in resolution of the citation.

Petition for Reinstatement

9. Petitioner filed a petition for reinstatement and on February 24, 2011, the hearing on her petition was held before the board. On March 25, 2011, the board issued its decision, which became effective on April 24, 2011. In its decision, the board found petitioner had demonstrated rehabilitation and reinstated petitioner's license. The board issued a probationary license to petitioner for a period of seven years, subject to specified terms and conditions.

Petition for Termination of Probation

10. On July 25, 2013, petitioner submitted the instant Petition for Termination of Probation. In her petition, petitioner stated in essence that the seven year probation is too long and difficult for her. It is causing her stress and "extra - loaded duties." She apologized for her prior conduct and promised she would never engage in similar conduct. She completed her ethics course, complied with her required quarterly reporting, works under a supervised practice monitor, meets with her monitor once a week, and has not performed any unsupervised acupuncture or acupressure. She stated she has not employed, trained or supervised any acupuncture or massage trainees. She attended the California Acupuncture Oriental Medical Association's seminars, Oriental Medical Association seminars and other lectures held by Acupuncture Associations on government laws and regulations governing acupuncture.

11. Petitioner stated she is getting older and her health is deteriorating. She has had insomnia for ten years, lost weight, is at risk for diabetes, has thyroid neoplasm, osteoporosis, memory loss, and joint pain. She is also stressed because she cares for her 93 year old mother who has a variety of medical issues and as a single mother, petitioner is raising her daughter. She wants to spend the next five years before retiring, devoting herself to her acupuncture practice "in a manner, free of the conditions of probation."

12. Petitioner stated she has great difficulty in complying with the conditions of her probation. She stated she has difficulty in finding a practice monitor. She has difficulty in finding mutually agreeable times to meet with her practice monitor and her probation requires extra duties on her part and on her practice monitor to complete the reports and turn the reports in on time. She stated she learned a valuable lesson from the experience with Medi-Cal Fraud billing and has not done any billing since that time.

13. Petitioner submitted three letters of recommendation: one from Huachan Su, Chairman of the California Acupuncture Oriental Medical Association

(CAOMA), dated July 29, 2013; one from Feter Yih, former president of the California Alliance of Acupuncture Medicine (CAAM), dated July 28, 2013; and one from Fuli Liu, an acupuncturist from Diamond Bar, California, dated July 25, 2013.

14. Huachan Su is petitioner's Practice Monitor, who works in the same building as petitioner. Su is a board approved Practice Monitor and has been monitoring petitioner for the past two years. Su states petitioner's practice is on a cash basis but knows that she needs to understand how to bill insurance companies and how to understand the coding. Su advised that petitioner has a client sign in sheet where patients are notified that her work is being monitored. Su frequently checks petitioner's medical reports and fiscal records, but has not noticed any billing to a third party. Su makes no mention of any difficulty in meeting with petitioner on a weekly basis.

15. Su stated "I have known Dr. Fang for many years. She is a very honest, well-educated and responsible professional. I am confident she will do better jobs in treating patients and be more aware of government's laws and regulations in her future practice." Su believes a seven year probationary period is too long and unfair to petitioner and supports early termination of her probation.

16. Yih has known petitioner for approximately twenty years. Yih knows petitioner regrets her conduct and has been "working cautiously" to comply with the terms of her probation. Petitioner consults with Yih on issues, seeks advice and understands how important it is to comply with the law. Yih stated petitioner is "an experienced specialist in skin diseases" and that she "also shows great interests [sic] in treating other common diseases." Yih finds petitioner to be "a highly responsible, honest and knowledgeable specialist in our community." Yih strongly recommends early termination of her probation so that "she will be able to better concentrate on treating patients." Yih believes the seven year probationary period is long and too severe on petitioner. Yih is confident petitioner will never repeat her prior misconduct in her future practice.

17. Liu has known petitioner for more than ten years. Liu finds petitioner to be kind and giving to young acupuncturists. Liu opined that petitioner is honest, trustworthy and humble and that "she earns her good credits in the Chinese community." Liu stated that when the Medi-Cal investigation began in 2003, petitioner never denied her involvement and accepted all the penalties caused by her misconduct. Liu noted petitioner is remorseful and understands the importance of complying with the law. Liu stated petitioner attended lectures, reads academic books and journals, exchanges ideas with Liu and is an honest, responsible and respected professional in the Chinese community. Liu supports petitioner's request for early termination of her probation.

18. At the hearing, petitioner was remorseful but emphasized the stress she has been under as a result of her misconduct. Petitioner has completed her criminal

probation and paid the restitution ordered by the Court. Petitioner learned her lesson and will not violate the law because she has very few insurance patients and deals mostly in cash.

19. Petitioner believes she is rehabilitated because she completed all the demands placed upon her by the authorities. She wants her probation terminated because it is a heavy burden on her – she has difficulty finding mutually convenient times to meet with her Practice Monitor, she cannot run her own clinic, and she cannot train other practitioners. While she can work, she finds that working under someone limits her career and income.

20. Petitioner attends the Tai Fu Christian Church and attends the gatherings. When the trade associations offer free clinics, petitioner volunteers her services and often treats disadvantaged patients without a charge because they need her services.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 4928.1, protection of the public is the highest priority for the 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 is paramount. (*Ibid.*)

2. The board may consider a licentiate's petition for termination of probation and when doing so, considers the nature and severity of the act(s) or offense(s) committed; the total criminal record of a petitioner; the time that has elapsed since the commission of the act(s) or offense(s); compliance with the terms of parole, probation, restitution or any other sanctions imposed; evidence of expungement proceedings, and evidence of rehabilitation submitted by the licensee. (Bus. & Prof. Code §4960.5; Cal. Code Regs., tit. 16, §1399.469.

3. In a proceeding for the termination of probation, the burden at all times rests on the petitioner to prove that she has rehabilitated herself and is entitled to have her license restored, and not on the board to prove the contrary. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) It goes without saying that the pertinent issues in the inquiry are petitioner's activities since being placed on probation and her present qualifications, ability and learning. (*Ibid.*) The most clear and convincing proof of reform must be shown. A petitioner's actions since her misconduct are the essential criterion to judge whether she has so rehabilitated herself

as to compel her unrestricted readmission. (*Houseman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315-317.) Statutes relating to licensed professions seek to maintain integrity and high standards, and preserve public confidence in holders of professional licenses. (*Clerci v. Dept. of Motor Vehicles* (1990) 224 Cal.App.3d 1016.)

4. Rehabilitation is a state of mind and the law looks with favor upon rewarding with the opportunity to serve one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.)

5. While petitioner is remorseful and apologetic for her conduct, she surrendered her license in 2007 and was granted a probationary license in 2011. (Findings 6, 9, 10, and 18.) Petitioner was convicted eight years ago of a serious offense and was also cited four years ago for false advertising. (Findings 2, 3, 4, 7 and 8.) While there is no evidence of any subsequent similar events, petitioner has only been on the board's probation for two years and provided scant evidence of rehabilitation. Petitioner's three letters of recommendation speak highly of petitioner, but none address the issue of rehabilitation. (Findings 14, 15, 16 and 17.) All state she will follow the law and she is honest, but her Practice Monitor who has known her for twenty years refers to petitioner as "Dr. Fang," and makes no mention of the fact that scheduling meetings with her is difficult; Yih stated petitioner is a "highly responsible, honest and knowledgeable specialist in the community," but did not reference her work as an acupuncturist; and Liu finds petitioner to be kind and giving to young acupuncturists, but provided no specifics in terms of any actions during the past two years demonstrating rehabilitation. Petitioner did not provide any evidence of participation in any rehabilitative programs, such as psychotherapy or counseling that were appropriate to her offenses. Petitioner did not describe any activities, call any witnesses, or provide any letters of recommendations demonstrating changed behavior and reliability that would assist in determining her rehabilitation.

6. Petitioner continually stressed how burdensome and inconvenient her probation is to her. (Findings 10, 11, 12, 18, and 19.) While petitioner's probation may be burdensome to her, the board's primary obligation is the protection of the public. Petitioner has failed to sustain her burden and cause exists to deny petitioner's petition.

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ORDER

Petitioner Yihan Fang's Petition for Termination of Probation is DENIED.

This decision shall become effective on the 20th day of April, 2014.

Dated: MAR 21 2014

MICHAEL SHI, Chair
California Acupuncture Board