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

In the Matter of the Petition for Early Termination of Probation of: KISOO SONG, Petitioner.	Case No. PETP-1A-2008-135 OAH No. 2014010820

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 Kisoo Song was present and represented himself.

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

FACTUAL FINDINGS

1. On September 25, 2000, the board issued Acupuncture License No. AC 7495 to petitioner.

2. On June 22, 2009, the board filed an Accusation against petitioner, alleging that on April 16, 2008, petitioner pled nolo contendere to violating Penal Code section 243.4, subdivision (e)(1)(sexual battery) and was convicted of a misdemeanor. The facts and circumstances surrounding the conviction were that during the treatment of a patient, petitioner asked him to remove his underwear prior to administering a back massage while the patient was lying face down. After the back massage, petitioner asked the patient to lie face up while he administered

acupuncture. Petitioner did not think this was a problem because the patient was a male. The acupuncture was administered to the patient's head, feet, and hands and around the inner thigh area. The treatment involved massaging the patient's inner thighs.

3. On August 24, 2010, the board issued its Decision After Non-Adoption and Order, effective September 23, 2010, in which the board revoked petitioner's license, but stayed the revocation for a period of five years, suspended him from practice for thirty days, ordered him to pay $4,500 for investigation costs and placed his license on five years' probation, subject to specific terms and conditions.

4. On November 4, 2013, the board received petitioner's Petition for Termination of Probation. Petitioner states he is "pleading for an early reinstatement for my license as I have followed all instructions under probation and I have truly learned my lesson from the unfortunate accident which I believe have made me a better practitioner in caring for patient's discretion." Since the incident, he has been suffering from constant nightmares and both his practice and life deteriorated. It has caused him to suffer mentally, physically, socially and financially over the past six years.

5. Since 2007, petitioner has spent most of his time writing several books and in his spare time, he enjoys reading the *California Journal of Oriental Medicine* and *Acupuncture Today*, as well as several Korean e-journals of traditional medicine. He has also revised his policies regarding his practice, which included always leaving the treatment room slightly open during needle treatment if he is the only practitioner present; requiring the use of disposable/clean gowns for patients to cover private parts or clean trunks and towels; explaining the treatment in advance; and letting patients wash their hands.

6. With his petition, petitioner submitted copies of the Petition for Dismissal and Order for Dismissal pursuant to Penal Code section 1203.4 of petitioner's misdemeanor conviction; a Certificate of Completion issued by the Association of International Sa-am Acupuncture showing petitioner completed two hours of board approved "Ethics and Scope for Acupuncture Practice" on June 8 and 9, 2013; and a Certificate of Completion from Stanton University showing petitioner competed board approved six hours of "Medical Ethics and Its Clinical Applications" on December 7, 2013.

7. Petitioner submitted two letters of recommendations from Bok Soon Angela Yi dated October 15, 2013, and Megan Hah, dated October 25, 2013. Ms. Yi has known petitioner since he was a student in her doctorate program of Oriental Medicine at Yuin University in Compton, California. Ms. Yi discovered petitioner's Accusation on the internet and was surprised because petitioner had avoided contact with his fellows and colleagues and did not discuss the accusation with her. After she discovered the Accusation, she visited his clinic more often to cheer him up and

shared ideas with him, including clinical regulation of Oriental medicine in the United States. Ms. Yi stated petitioner has a "trustworthy personality with unwavering passion as an acupuncturist" and strongly recommended termination of probation.

8. Ms. Hah wrote that she and petitioner were colleagues at Dongguk Royal University and she has known him for over 15 years. She knows him as a school administrator and respected him for his professional accountability, collegiality, diplomacy and dedication to his work. She stated he immigrated to the United States to provide the best possible education for his daughter and is respected and admired by his colleagues, friends and family. She believed petitioner is a great acupuncturist and "believes he has complied with all the stipulations since the conviction." She supports the termination of probation.

9. At the hearing, petitioner was remorseful and apologetic for the incident. Petitioner stated he will not violate any laws and he has been suffering fir six years. He goes to church and provides his services to patients who cannot afford to pay. If he was not on probation, he would volunteer at other organizations, but stated he is viewed as a criminal since the Accusation is on the internet. His friends in Korea think he is a criminal. Other than providing his services to patients who cannot afford to pay, petitioner does not have any volunteer activities and since the incident, he isolated himself and is only recently able to resume his life.

10. Petitioner paid half of the costs imposed upon him and was willing to pay the remaining $1,900 after the hearing.

11. Petitioner stated he will do his best to abide by the law and do his best. He is currently a dean at Stanton University and enjoys teaching students. He would like to terminate his private practice, but feels he cannot until his probation is terminated.

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 his conduct and while his two letters of recommendation speak highly of petitioner, neither address the issue of rehabilitation. (Findings 7 and 8.) Petitioner did not provide any evidence of participation in any rehabilitative programs, such as psychotherapy or counseling that were appropriate to help him deal with his shame or anxiety. 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 his rehabilitation. Further, petitioner is free to close his private clinic and teach because none of the terms of his probation prevent him from doing so.

6. Petitioner continually stressed how burdensome and inconvenient his probation is to him. (Findings 4 and 9.) While petitioner's probation may be burdensome to him, the board's primary obligation is the protection of the public. Petitioner has failed to sustain his burden and cause exists to deny petitioner's petition.

ORDER

Petitioner Kisoo Song'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