

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

**In the Matter of the Statement of Issues
Against:**

CHANG JUN DOU

Respondent.

Case No. 1A-2009-114

OAH No. 2010060149

PROPOSED DECISION

This matter came on regularly for hearing on September 3, 2010, in Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Janelle Wedge (Complainant) was represented by Albert Y. Muratsuchi, Deputy Attorney General.

Chang Jun Dou (Respondent) was represented by Jeffrey Hans Leo, Attorney at Law.

Oral and documentary evidence was received. The record was closed on the hearing date, and the matter was submitted for decision.

FACTUAL FINDINGS

The Administrative Law Judge makes the following Factual Findings:

1. Complainant made the Accusation in her official capacity as Executive Officer of the Acupuncture Board (Board).
2. On August 31, 2009, the Board received Respondent's application for an Acupuncturist's License. The application was denied on September 24, 2009, and this action ensued.

3. On or about March 18, 2009, Respondent submitted to the Board her Application for Examination. Question No. 17 on that application read:

Have you ever been convicted of, or pled nolo contendere to any offense, misdemeanor or felony in any state, the United States, or a foreign country? **NOTE: You are required** to list any conviction that has been set aside and dismissed under Section 1203.4 Penal Code or under any other provision of law. (You are not required to list minor traffic violations resulting in fines of \$75.00 or less.) (Emphasis in text.)

4. Respondent marked the box marked "no" in response to Question No. 17. She signed the application certifying under penalty of perjury that her answers to the Board's questions were true in every respect. Respondent's answer to Question No. 17 was false.

5. On November 12, 2003, in the Superior Court of California, County of San Mateo, in Case No. NM331089A, Respondent was convicted, on her plea of nolo contendere, of violating Penal Code section 647, subdivision (b) (Solicitation of Prostitution), a misdemeanor substantially related to the qualifications, functions and duties of an acupuncturist.

6. Respondent was placed on court probation for a period of three years under various terms and conditions including incarceration in the San Mateo County Jail for 30 days and payment of fines and fees totaling \$120. On March 7, 2006, on Respondent's motion, the court set aside and vacated the plea and dismissed the complaint pursuant to Penal Code section 1203.4.

7. The facts and circumstances underlying the conviction are that, while working as a masseuse, Respondent agreed to perform a sexual act on a customer in exchange for remuneration. At the administrative hearing, Respondent testified that she did not speak English, and that she did not understand that the customer was seeking performance of a sexual act. That testimony was not credible. She admitted to a police officer, at or around the time of her arrest, that she was going to perform the act because the customer asked her to do so, and she did not want to upset the customer. However, she was not prepared to go through with the act and intended to fool the customer.

8. Respondent appended a statement to her Application for License disclosing the conviction she had failed to disclose on her Application for Examination.

9. A classmate assisted Respondent in filling out the Application for Examination by telling her how to answer the questions. The classmate did not read Question 17 or the certification under penalty of perjury to Respondent, and Respondent did not ask the classmate to do so.

10. Aside from being active in her church, Respondent did not offer any evidence of rehabilitation. She did not offer any plan to avoid repeating the mistakes she made in the past.

LEGAL CONCLUSIONS

Pursuant to the foregoing factual findings, the Administrative Law Judge makes the following legal conclusions:

1. Cause exists to deny Respondent's application pursuant to Business and Professions Code sections 480, subdivision (a)(1), 4955, subdivision (b), and 4956, for conviction of a crime, as set forth in Findings 5, 6, and 7.
2. Cause exists to deny Respondent's application pursuant to Business and Professions Code section 480, subdivision (a)(2), for an act involving dishonesty, fraud, or deceit with the intent to substantially benefit herself, as set forth in Findings 3, 4, 5, 6, and 7.
3. Cause exists to deny Respondent's application pursuant to Business and Professions Code section 4955, for unprofessional conduct, as set forth in Findings 3, 4, 5, 6, and 7.
4. Despite her claims that she did not understand what the customer wanted, that she did not intend to go through with the act, and that she intended to fool the customer, Respondent's plea of nolo contendere stands as conclusive evidence of her guilt. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.)
5. Respondent's conviction is temporally remote. However, the fact that she offered almost no evidence of rehabilitation and no plan to avoid recidivism bodes poorly for public protection.
6. Respondent's failure to disclose her conviction on her Application for Examination is far more recent. By not asking her classmate to read the Application for Examination to her, Respondent gave the classmate authority to answer for her, with Respondent doing nothing more than physically making marks on the application. Respondent cannot exculpate herself from her responsibility to honestly and accurately answer application questions by delegating her authority to another individual. She remains responsible for her wrongdoing under the doctrine of respondeat superior. (*Rob-Mac, Inc. v. Department of Motor Vehicles* (1983) 148 Cal.App.3d 793, 797; *Camacho v. Youde* (1979) 95 Cal.App.3d 161, 163-165.) The fact that Respondent truthfully disclosed her conviction on the subsequent Application for License does not excuse or nullify her dishonest act on the Application for Examination.

7. Respondent bore the burden of proving, by a preponderance of the evidence, that she is fit to hold licensure as an acupuncturist. (*Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205 [97 Cal.Rptr.2d 467]; *Martin v. Alcoholic Beverage Control Appeals Board* (1959) 52 Cal.2d 238 [340 P.2d 1]; *Southern California Jockey Club, Inc. v. California Horse Racing Board* (1950) 36 Cal.2d 167, 177.) She failed to sustain that burden of proof.

ORDER

WHEREFORE THE FOLLOWING ORDER is hereby made:

The application of Respondent, Chang Jun Dou, for an Acupuncturist's License, is denied.

DATED: September 13, 2010



H. STUART WAXMAN

Administrative Law Judge

Office of Administrative Hearings

DECLARATION OF SERVICE BY MAIL

In the Matter of the Statement of Issues filed Against:

CHANG JUN DOU

Case No. 1A-2009-114

I, the undersigned, declare that I am over 18 years of age and not a party to the within cause; my business address is 444 N. 3rd Street, Suite 260, Sacramento, CA 95811. I served a true copy of the attached:

DECISION AND ORDER

by registered/regular mail on each of the following, by placing same in an envelope(s) addressed (respectively) as follows:

NAME and ADDRESS

REGISTERED MAIL NO.

Chang Jun Dou
1954 Denton Ave., #C
San Gabriel, CA 91776

7009 3410 0000 0533 2063

Albert Y. Muratsuchi, DAG
California Department of Justice
Office of the Attorney General/HQE
300 South Spring Street, Suite 1702
Los Angeles, CA 90013

regular mail

H. Stuart Waxman, Administrative Law Judge
Office of Administrative Hearings
320 West Fourth Street, Suite 630
Los Angeles, CA 90013

regular mail

Jeffrey H. Leo, Esq.
1300 Walnut St.
San Gabriel, CA 91776

regular mail

Each said envelope was, on September 22, 2010, sealed and deposited in the U.S. mail at Sacramento, California, the county in which I am employed, with the postage thereon fully prepaid for attempt at service on Respondent.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 22, 2010, at Sacramento, California.



DECLARANT