

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for Reinstatement
of Surrendered License of:

DONG HYUN CHANG,

Petitioner.

Case No. 1A-2009-182

OAH No. 2009100263

DECISION

On November 19, 2009, in Sacramento, California, this matter was heard before a quorum of the Acupuncture Board (Board). The Board members participating in the hearing and decision were: Robert Brewer, Chair; Charles Kim; AnYork Lee, L.Ac.; George Wedemeyer; and Paul Weisman. Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, presided.

W. David Corrick, Deputy Attorney General, appeared on behalf of the Office of the Attorney General, pursuant to Government Code section 11522.

Dong Hyun Chang (petitioner) appeared on his own behalf.

Evidence was received, the record was closed and the matter was submitted on November 19, 2009.

FACTUAL FINDINGS

1. On December 29, 1983, Acupuncture Certificate No. AC-2244 was issued to petitioner.
2. On October 8, 1993, the Executive Officer of the Acupuncture Committee¹ issued an Accusation (First Accusation) against petitioner. On May 13, 1994, petitioner entered into a Stipulation for Settlement (Stipulated Settlement), which was adopted by the Acupuncture Committee as its decision and order on June 27, 1994. In the Stipulated Settlement, petitioner admitted that, as part of a conspiracy, he paid \$5,000 for the answers to

¹ The Acupuncture Committee was redesignated as the Acupuncture Board.

the 1983 written and practical acupuncture examinations, which he used to take and pass those examinations and obtain his license. Pursuant to the Stipulated Settlement, petitioner was placed on probation for 18 months. In addition, he agreed that he would take the practical/clinical acupuncture examination.

3. On October 9, 1997, the Executive Officer of the Acupuncture Committee issued an Accusation (Second Accusation). On March 25, 1998, a hearing on the Second Accusation was held before an administrative law judge of the Office of Administrative Hearings. On April 13, 1998, the administrative law judge issued a proposed decision. On May 28, 1998, the Acupuncture Committee issued an Order of Nonadoption of the administrative law judge's proposed decision. On December 29, 1998, the Acupuncture Committee adopted a Decision After Nonadoption, which became effective on January 28, 1999.

In the Decision After Nonadoption, the Acupuncture Committee adopted the administrative law judge's proposed decision as its decision, but modified the order set forth in the proposed decision. The Acupuncture Committee found that: (1) petitioner, as part of a conspiracy, submitted reports and bills to an insurer regarding two individuals that he had never met or treated; (2) on March 28, 1996, in the Los Angeles County Superior Court, petitioner was convicted, on a plea of nolo contendere, of two counts of violating Penal Code section 550, subdivision (a)(1), filing fraudulent insurance claims; and (3) at the March 25, 1998 hearing, petitioner's testimony was "less than candid" about the facts and circumstances surrounding his conviction.

Pursuant to the Decision After Nonadoption, petitioner's license was revoked, but the revocation was stayed and petitioner was suspended for six months and placed on probation for seven years subject to various terms and conditions, including that, during probation, petitioner was prohibited from accepting personal injury litigation referrals and from undertaking personal injury litigation consultations.

4. On September 26, 2005, the Executive Office of the Board issued an Accusation and Petition to Revoke Probation (Third Accusation) against petitioner. On January 30, 2006, petitioner entered into a Stipulated Surrender of License and Order (Stipulated Surrender), which was adopted by the Board as its decision and order on March 23, 2006, effective April 23, 2006. In the Stipulated Surrender, petitioner admitted the truth of all the charges and allegations set forth in the Third Accusation, including that: (1) in 2003 and 2004, petitioner, who was then also licensed as a chiropractor, had an agreement with a law office administrator pursuant to which petitioner agreed that, in exchange for the law office referring patients to him, he would pay the law office a "kickback" from any insurance payments he received for providing chiropractic care to the referred patients; (2) petitioner prepared false and fraudulent medical bills for a patient referred by the law office, which included charges for services that petitioner did not provide; and (3) on September 13, 2004, in the United States District Court, petitioner pled guilty to violating 18 United States Code section 1341, mail fraud, a felony.

5. Petitioner filed a Petition for Penalty Relief (Petition) dated June 2, 2009. In his Petition, petitioner included a letter from Tea Ho King, Yag Jun – Dong Bang, Inc., Herb and Acupuncture Supply. Mr. King has known petitioner for “a long time” and believes that petitioner is a “very good acupuncturist.”

6. Petitioner’s Petition also included a letter from Seung Nam Chung, L.Ac. Mr. Chung has been a licensed acupuncturist for more than 20 years. He was petitioner’s classmate in Acupuncture University. In his letter, Mr. Chung describes petitioner as “very hard working and helpful to all his colleagues.” According to Mr. Chung, petitioner was “dedicated in serving his community with volunteer works and small acupuncture research projects.” Mr. Chung believes that petitioner is a “great acupuncturist” and that it would be “a great asset to have [petitioner] back in our acupuncture community.”

7. In his Narrative Statement included with his Petition, petitioner stated that he “made a big mistake when [he] filed a fraudulent claim on a personal injury case” and that he felt “sorry.” He also stated that, during the three years since he surrendered his license, he has “worked very hard to keep up with [his] studies.” There is no information included in petitioner’s Petition that, during the three years since his license was suspended, he engaged in any rehabilitation or that he took any classes or courses relating to acupuncture.

8. At the hearing, petitioner submitted a written statement and testified. In his written statement, he expressed a desire to “study more about the old methods” for providing acupuncture care to patients.

9. During his testimony, petitioner stated that he was “sorry” for the “mistakes” he had made. He described his training as a veterinarian, chiropractor, and acupuncturist. Although he was previously licensed by the Chiropractic Board, his chiropractic license has been revoked.

10. Even though petitioner stated he was sorry for his mistakes, his answers to questions about his convictions were evasive and confusing. Moreover, he did not accept full responsibility for his wrongdoing.

11. Petitioner admitted that he has not engaged in any rehabilitative efforts since he surrendered his license. He has not provided any community service or sought any treatment or counseling.

12. As set forth in Business and Professions Code section 4928.1, protection of the public is the highest priority of the Board in exercising its licensing, regulatory, and disciplinary functions. The public interest in regulating acupuncture through licensing statutes is to make certain that the privileges granted under an acupuncture license are not exercised in contravention of the law, to ensure that the regulated activity remains upright and honest, and to require and maintain professional standards of conduct on the part of licensees.

13. To obtain the reinstatement of his license, petitioner had the burden of establishing that he has been rehabilitated and that he does not pose a risk to the public interest, safety or welfare. Petitioner did not meet this burden. He did not provide any evidence of rehabilitation. He did not demonstrate that he would not pose a risk to the public if his license were reinstated. While he was licensed, petitioner engaged in serious misconduct involving fraudulent conspiracies and dishonesty. There were three accusations filed against him for this misconduct. When he committed the criminal acts described in the Third Accusation, he was still on probation for the criminal wrongdoing set forth in the Second Accusation. The evidence submitted in this matter establishes that it would be contrary to the public interest, safety and welfare to reinstate petitioner's license.


LEGAL CONCLUSIONS

As set forth in Finding 13, at hearing, petitioner failed to meet his burden of establishing that he has been rehabilitated and that he would not pose a risk to the public if his license were reinstated. It would, therefore, be contrary to the public interest, safety and welfare to reinstate petitioner's license. (Bus. & Prof. Code, § 4928.1; Gov. Code, § 11522.)

ORDER

The petition of petitioner Dong Hyun Chang for reinstatement of his surrendered license is DENIED.

DATED: DEC 15 2009


ROBERT BREWER
Chair
Acupuncture Board