

COPY

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

In the Matter of the Petition for Reinstatement:)	Case No. 1A-2008-71
of:)	
) OAH No. 2009010481
JUNG HO KANG)	
386 S. Burnside Ave., No. 34-9K)	
Los Angeles, CA 90036)	
)
)
Petitioner.)	
_____)	

DECISION AND ORDER

The attached Decision is hereby adopted by the California Acupuncture Board, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on APR 17 2009.

It is so ORDERED MAR 18 2009.



Adam Burke, Ph.D., MPH, L.Ac. 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 Petition for
Reinstatement of:

JUNG HO KANG
Los Angeles, California

Petitioner.

Case No. 1A-2008-71

OAH No. 2009010481

DECISION

This matter was heard before the Acupuncture Board on February 19, 2009, in San Francisco, California. Board members present and participating were Adam Burke, Ph.D., L.Ac., Chairperson; Robert Brewer; Kenny G. Cherng, L.Ac.; Charles J. Kim; and Larry Yee. Nancy L. Rasmussen, Administrative Law Judge, State of California, Office of Administrative Hearings, presided.

David Chan, Deputy Attorney General, represented the Office of the Attorney General.

Petitioner Jung Ho Kang appeared and represented himself.

FACTUAL FINDINGS

1. On April 24, 2002, the Acupuncture Board issued License No. AC-8427 to petitioner Jung Ho Kang.

2. On July 27, 2004, the board issued a default decision and order revoking petitioner's license effective August 27, 2004. The disciplinary action was based on allegations in the accusation that petitioner failed to register with the board his place of practice; aided and abetted or knowingly allowed another person to use his license; aided and abetted the violation of a law or local ordinance; committed a fraudulent or dishonest act; and engaged in acts of unprofessional conduct.

3. Petitioner filed with the board a petition dated December 15, 2007, seeking reinstatement of his revoked license.

4. Petitioner's licensure as an acupuncturist in April 2002 followed years of study and financial sacrifice and fulfilled the dream he had when he came to the United States from his native Korea. In May 2002, petitioner was seeking a job as an acupuncturist when he responded to a newspaper advertisement from the Artesia Health Therapy Center in Long Beach. Following an interview, petitioner agreed to work at the clinic for one week before a decision was made on whether he would become a permanent employee. Petitioner worked for three days at the clinic, providing acupuncture treatment to a couple of patients each day. When he arrived at the clinic on the fourth day, petitioner was met by law enforcement officers who told him the clinic was under investigation as a massage parlor. After he answered some questions and showed the officers his driver's license and pocket acupuncture license, petitioner was instructed to leave the premises. Sometime later, he was summoned for additional questioning, and petitioner cooperated by providing information about his involvement with the Artesia Health Therapy Center. Petitioner's license had never been posted at the clinic, and he did not know the person whose business license was on the wall. He was unaware that he was required to notify the board of his business address.

5. After his short tenure at the Artesia Health Therapy Center, petitioner's practice of acupuncture was limited to treating relatives and members of his church. He also volunteered his services at the Nanoom Christian Fellowship drug treatment facility for youth. At some point, petitioner started talking to the M.R. New Life Acupuncture & Herb Clinic about subleasing a space. Although he never finalized the sublease and never worked there, petitioner had business cards printed that listed this clinic as his business address. (The phone number on the card was petitioner's cell phone number.)

6. In June 2004, petitioner moved temporarily to Delaware, where his immigration sponsor was located, leaving his family behind in Los Angeles. From July 2004 to March 2005, he worked for Mountaire Farms of Delaware, Inc. Petitioner did not learn of the accusation (filed May 26, 2004) or the board's default decision until long after his license had been revoked. He "nearly fainted with despair" when he discovered that his license was revoked and he could not petition for reinstatement for three years.

7. After petitioner returned to Los Angeles in April 2005, he went into the food service business. In September 2005, petitioner passed an examination to become a certified professional food manager and his wife opened the Myung Dong Restaurant. Petitioner works in his wife's restaurant, but he plans to leave that work and practice acupuncture if the board reinstates his license. He has talked to a clinic where Eastern and Western medicine is practiced and hopes to be hired there as an acupuncturist.

8. During the past two years, petitioner has taken bi-monthly continuing education courses offered by the Association of Korean Asian Medicine & Acupuncture. He has also studied acupuncture materials on his own.

9. Petitioner is involved with LOVE Mexico, a Christian organization that does missionary work in Mexico. He volunteered as a driver and cook during construction of a

church in Tijuana in 2007, and he hopes to provide acupuncture services in the group's medical program.

10. Petitioner submitted letters of support from two licensed acupuncturists who attended Samra University of Oriental Medicine with him. They attest to petitioner's dedication to his studies, his excellent clinical work and his desire to provide services to the less fortunate.

11. The loss of his acupuncture license had a profound effect on petitioner, and he has had a lot of time to reflect on what he should have done differently when he was licensed. He is committed to complying with the board's rules and fulfilling any requirements imposed upon him if his license is reinstated on a probationary basis.

LEGAL CONCLUSIONS

1. In view of petitioner's showing of substantial rehabilitation, the board is willing to reinstate his license on a probationary basis, under conditions that assure his competency and provide protection to the public. Since petitioner has not practiced acupuncture in many years, he must complete coursework in acupuncture techniques before he practices on patients outside a supervised clinical setting.

2. Cause for reinstatement of petitioner's license to practice acupuncture has been established, provided that petitioner shall be subject to terms and conditions of probation.

ORDER

The petition of Jung Ho Kang for reinstatement of his license to practice acupuncture is granted, and his license shall be reinstated on a probationary basis. The license probation shall be for a period of two years, during which time petitioner shall be subject to the following terms and conditions:

1. Coursework in Acupuncture Techniques: Petitioner shall take and successfully complete two (2) semester units or three (3) quarter units of coursework in acupuncture techniques. This coursework shall be at the graduate level at a school approved by the board. Classroom attendance must be specifically required. This coursework shall 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, petitioner shall submit a plan, for the board's prior approval, for meeting this coursework requirement. All costs of the coursework shall be borne by petitioner.

Petitioner shall not practice acupuncture on patients until he has successfully completed this coursework and has been so notified in writing by the board or

its designee, except that petitioner may practice on patients in a supervised clinical setting in connection with the coursework.


2. Other Education Courses: Petitioner shall take and successfully complete a one (1) continuing education unit course in ethics and a one (1) continuing education unit course in practice management. These courses shall be completed within the first year of probation and shall 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, petitioner shall submit a plan, for the board's prior approval, for meeting this education requirement. All costs of the courses shall be borne by petitioner.

3. Obey All Laws: Petitioner shall obey all federal, state and local laws and all regulations governing the practice of acupuncture in California. Petitioner shall report to the board in writing a full and detailed account of any and all violations of law within 72 hours of occurrence.
4. Quarterly Reports: Petitioner 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.
5. Surveillance Program: Petitioner shall comply with the board's probation surveillance program and shall, upon reasonable notice, report to the assigned investigative district office. Petitioner shall contact the assigned probation surveillance monitor regarding any questions specific to the probation order. Petitioner shall not have any unsolicited or unapproved contact with board members, members of the board's staff, or persons serving the board as expert examiners.
6. Interview with the Board or its Designee: Petitioner shall appear in person for interviews with the board or its designee upon request at various intervals and with reasonable notice.
7. Changes of Employment: Petitioner 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.
8. Tolling for Out-of-State Practice or Residence: In the event petitioner leaves California to reside or to practice outside the state, he 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.

9. Employment and Supervision of Trainees: Petitioner shall not employ or supervise or apply to employ or supervise acupuncture trainees during the period of this probation.
10. Violation of Probation: If petitioner violates probation in any respect, the board may, after giving petitioner notice and the opportunity to be heard, suspend or revoke the license. If an accusation or petition to revoke probation is filed against petitioner 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 petitioner.
11. Completion of Probation: Upon successful completion of probation, petitioner's license will be fully restored.

DATED: MAR 18 2009


ADAM BURKE, Ph.D., L.Ac.,
Chairperson
Acupuncture Board