

COPY

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

In the Matter of the Petition for Termination:)	Case No. 1A-2002-28
of Probation of:)	
) OAH No. 2009010483
CHEOL KIM)	
18711 Chapel Lane)	
Huntington Beach, CA 92646)	
)
Acupuncture License No. AC-4917)	
)
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

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DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for Termination
of Probation of:

CHEOL KIM
Huntington Beach, California

Acupuncture License No. AC-4917

Petitioner.

Case No. 1A-2002-28

OAH No. 2009010483

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.

Lawrence Mercer, Deputy Attorney General, represented the Office of the Attorney General.

Mary E. Work, Attorney at Law, represented petitioner Cheol Kim, who was present.

FACTUAL FINDINGS

1. On September 7, 1994, the Acupuncture Board issued License No. AC-4917 to petitioner Cheol Kim.

2. Effective April 15, 2006, following an administrative hearing, the board revoked petitioner's license, but stayed the revocation and placed petitioner on probation for five years. Conditions of probation include an actual suspension of 30 days, completion of at least 20 semester units or 30 quarter units of coursework in specified areas, payment of \$7,395.50 in cost recovery, and a practice monitor. Petitioner must notify all current and potential patients that the confidentiality of their records will be affected by the requirement that the practice monitor have access to patient records. Disciplinary action was based on petitioner's gross negligence, repeated negligent acts, and unprofessional conduct in the

treatment of patient L.Y. in September 2000. L.Y. contacted petitioner by telephone, and he made a diagnosis and prescribed an herbal mixture without physically examining her. Petitioner mailed the prescribed mixture to L.Y. without providing dosage instructions or including written dosage instructions with the package. When L.Y. experienced negative effects from the herbal mixture, petitioner failed to take appropriate action.

3. Petitioner's five-year term of probation is scheduled to end April 15, 2011. Petitioner filed with the board a petition dated May 30, 2008, seeking early termination of probation.

4. Petitioner is in full compliance with the conditions of his probation, having paid the full cost recovery and completed the required coursework at South Baylo University. His probation monitor, Senior Investigator Larry Moore, recently wrote a letter stating that petitioner "is one of the most cooperative probationers I have had to monitor."

5. Petitioner is not currently practicing acupuncture. In fact, his only practice since 2002 was during his coursework at South Baylo University. During the winter quarter of 2007, petitioner worked for 20 hours with South Baylo professor Pia Melen, L.Ac., and she served as his practice monitor. Petitioner worked for 40 hours with South Baylo professor Leigh Caldwell, L.Ac., and she served as his practice monitor. Petitioner notified each patient that his probation might affect their treatment and the confidentiality of their records. This was not an impediment to his practice at a teaching institution, but petitioner has found that the notification requirement is a major impediment to working in the private sector. Finding a practice monitor is also a problem, since the monitor is not allowed to have a prior business, professional, personal or other relationship with petitioner. Because of the difficulty of meeting the practice monitor condition of probation, petitioner has not practiced acupuncture since his work at South Baylo and is now seeking termination of his probation. (The conditions of petitioner's probation do not require him to engage in the practice of acupuncture.)

6. Petitioner has held a real estate salesperson license since 1985, and he is currently working in the real estate field. Because of the downturn in the real estate market, however, petitioner would like to resume work as an acupuncturist.

7. Petitioner asserts that he learned his lesson about what he did wrong in the treatment of L.Y. and would never diagnose or treat another patient over the phone or otherwise deviate from the standard of practice as an acupuncturist. He submitted letters from Pia Melen and two other licensed acupuncturists attesting to his remorse for his professional lapses and his readiness to resume the practice of acupuncture.

LEGAL CONCLUSIONS

1. Although petitioner has been on probation for almost three years of his five-year term, his practice of acupuncture during that time consists of only the 60 hours he

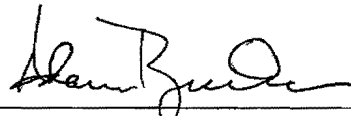
worked at South Baylo University. With such a limited amount of work in the profession, it is difficult to judge how petitioner will function as an acupuncturist in the long term. It is therefore not in the public interest to end his probation at this time. However, the public can be adequately protected without requiring petitioner to have a practice monitor during the remainder of his probation. Eliminating this requirement should enable petitioner to resume the practice of acupuncture.

2. Petitioner has not established cause for early termination of his probation, but he has established cause for modification of the conditions of probation to eliminate the practice monitor requirement.

ORDER

1. The petition of Cheol Kim for termination of probation is denied.
2. The probation of Cheol Kim is modified to delete condition 11 (practice monitor). All other conditions of probation remain the same.¹

DATED: MAR 18 2009



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

¹ Those conditions of probation that petitioner has satisfied, i.e., license suspension, payment of cost recovery and completion of coursework, remain satisfied.