BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for Reinstatement of Surrendered License of: PILL HAN, Petitioner.	Case No. 1A-2018-21 OAH No. 2018090292

DECISION

This matter was heard before a quorum of the Acupuncture Board on October 25, 2018, in Berkeley, California. Karen Reichmann, Administrative Law Judge, State of California, Office of Administrative Hearings, presided.

Petitioner Pill Han (Petitioner) was present and was self-represented. A Korean-language interpreter provided assistance throughout the hearing.

Mary Cain-Simon, Supervising Deputy Attorney General, represented the Department of Justice, Office of the Attorney General.

FACTUAL FINDINGS

1. On September 29, 2011, the Acupuncture Board (Board) issued Acupuncturist License No. AC 14493 to Petitioner Pill Han.

2. As described below, Petitioner's license was voluntarily surrendered pursuant to a Stipulated Surrender of License and Order, which became effective on December 18, 2015. On February 7, 2018, the Board received Petitioner's petition for reinstatement of her surrendered license. This hearing followed.

3. On February 24, 2015, the Executive Officer of the Board Terri Thornfinnson issued an accusation against Petitioner, alleging four causes for discipline as follows: First, gross negligence in her care and treatment of her patient in violation of Business and Professions Code section 4955.2, subdivision (a).[1] Second, repeated acts of negligence in the practice of acupuncture in violation of Section 4955.2, subdivision (b). Third, altered records with fraudulent intent in violation of Section 4955.1, subdivisions (b) and (d). Fourth, failure to maintain adequate and accurate treatment records in violation of Section 4955.1, subdivision (e) and California Code of Regulations, Title 16, section 1399.453. The underlying circumstances of the accusation stemmed from Petitioner's treatment of a patient in or about March 2012. The accusation alleged that Petitioner's treatment of this patient constituted an extreme departure

[1] All further statutory references are to the Business and Professions Code unless otherwise indicated.

from the standard of care in her choice of acupuncture point, depth and angle of insertion, speed of insertion, and judgment to insert a needle into the patient's twitching eye. Petitioner failed to maintain records of her treatment of the patient. Petitioner purchased a malpractice insurance policy after treating the patient, and encouraged the patient to submit a fraudulent claim alleging that the treatment occurred on a date after the policy became effective. The patient suffered hemorrhaging and permanent loss of right peripheral vision.

4. At the hearing held on October 25, 2018, Petitioner explained that the events occurred not long after she became licensed. She was reluctant to treat the patient's eye, but relented to pressure from the patient and the patient's family. Petitioner disputed the patient's claim that the needle was in place for 30 minutes and insisted that it was only there for five minutes. Petitioner insisted that she placed the needle properly. She believes the injury was caused when the patient's eye twitched and displaced the needle.

Petitioner acknowledged that the patient was injured as a result of the treatment, but disputed the patient's assertion that the treatment rendered her blind in the affected eye. She explained her attempt to submit a false insurance claim as her response to the patient's unreasonable demand for one million dollars. Petitioner's testimony regarding the incident was self-serving and lacking in empathy for the patient. When asked if she had paid any restitution to the victim, Petitioner stated that she did not remember. Later, she testified that she reached out to the victim, but the family rejected her attempts.

5. Petitioner complained of receiving anonymous threatening text messages from someone she believes is aligned with the family of the patient. She also believes that the patient or her family falsely reported to the Board that she has performed acupuncture while her license has been revoked. She strenuously denied having engaged in any activities requiring a license after her license was revoked.

6. Petitioner stated that she travelled to Korea to study "chi therapy" after she lost her license. When asked why she has not attended any continuing education classes to address the deficiencies in her skills, she said that she was not aware of where she could go to further her knowledge. In a letter written in connection with her petition, Petitioner wrote:

> I have since changed my approach to patient treatment and/or care by observing and talking with other professionals. I have been working part-time as an assistant in an Acupuncture clinic performing Administrative work only. This experience gave me a better understanding of the whole insurance claims process and stressed the importance of keeping records and/or notes for all patients. . . . When I visited Korea, I attended an acupuncture course that not only improved my needle insertion technique but also made me consider the comfort of my patient at all times during treatment.

Petitioner submitted no evidence to corroborate her claims of having studied in Korea.

7. Petitioner submitted two letters written by licensed acupuncturists. Jason Jonghwa Lee, LA.c., Ph.D., wrote that he has known Petitioner for five years. Dr. Lee wrote that he is aware that Petitioner's license has been "suspended" but believes it to be the result of a misunderstanding between Petitioner and a patient. He does not appear to be fully aware of the nature of Petitioner's misconduct and believes it to have been merely a "conflict" with a patient. Dr. Lee also attributes Petitioner's license discipline to miscommunication with the Board due to Petitioner's poor English language skills.

Dr. Lee wrote that Petitioner has suffered personally and financially due to the loss of her license. He added that Petitioner is highly regarded as a hand therapist and that she formerly worked in his office twice a week providing hand massage. Dr. Lee added that Petitioner is a sincere Christian and serves the poor and sick. He supports the reinstatement of her license and believes that she will use her license to improve the health of the community.

Hyungwook Chae wrote that he has known Petitioner for 10 years. Petitioner has worked part-time as his office assistant for two years. Chae has taught Petitioner office procedures and she has taken initiative in implementing them. Petitioner has been a positive influence on office morale and patient relations. Chae described Petitioner as detail-oriented, humble and efficient. He supports reinstatement of her license, but does not mention the reason for her loss of licensure in his letter.

Little weight can be afforded to these two letters, in light of the fact that the authors do not appear to be aware of the severity of the incident which resulted in Petitioner losing her license.

8. Petitioner's husband, Samuel Yoon, testified at hearing. He believes that Petitioner is remorseful, has learned from her mistakes, and will improve her practice if her license is reinstated.

9. Prior to licensure, Petitioner incurred two criminal convictions. In 2006, Petitioner was convicted in the Falls Church General District Court, Virginia, pursuant to her plea of guilty, of one count of "petit larceny <$5 from a person (pick pocket)," a misdemeanor. The facts and circumstances were not established at hearing.

In 2009, Petitioner was convicted in the Superior Court of California, County of Los Angeles, of a misdemeanor violation of Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol content of 0.08 percent or greater). The facts and circumstances of the offense were not established at hearing. On April 23, 2012, the Superior Court dismissed the conviction pursuant to Penal Code section 1203.4.

10. Petitioner desires to return to the practice of acupuncture, which she described as her "passion." She believes strongly in acupuncture, having also benefited from it as a patient.

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LEGAL CONCLUSIONS

1. Business and Professions Code section 4928.1 provides:

> Protection of the public shall be the highest priority for the Acupuncture 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 shall be paramount.

2. California Code of Regulations, title 16, section 1399.469, incorporates the Board's Disciplinary Guidelines by reference. With respect to petitions for reinstatement, page 12 of the Guidelines provide that:

> The board will consider the following criteria of rehabilitation:
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> 1. Nature and severity of the act(s) or offense(s).
>
> 2. Total criminal record.
>
> 3. The time that has elapsed since commission of the act(s) or offense(s).
>
> 4. Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person.
>
> 5. If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the **Penal Code**.
>
> 6. Evidence, if any, of rehabilitation submitted by the licensee or registration holder. (*emphasis contained in original text*).

3. In a proceeding for the restoration of a revoked license, the burden of proof is on the petitioner to prove that she is rehabilitated and is entitled to have her license reinstated. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) A petitioner seeking reinstatement of a surrendered and/or revoked license must present strong proof of rehabilitation, and the showing must be sufficient to overcome the former adverse determination. The standard of proof is clear and convincing evidence. (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d. 308, 315-316.).

4. Petitioner did not meet her burden of establishing fitness for licensure. She has not undergone sufficient training to address the deficiencies in her skills, even though a patient was severely injured by her poor technique. She does not fully acknowledge her misconduct, did not express remorse for the victim whom she blames for the injury, and continues to minimize

the injury her actions caused. Petitioner failed to present clear and convincing evidence that she is sufficiently rehabilitated to warrant reinstatement of her license.

Accordingly, there is hereby issued the following:

ORDER

The petition for reinstatement of surrendered license filed by Pill Han is **DENIED**.

This Decision shall become effective on February 22, 2019.

DATED: January 24, 2019

AMY MATECKI, M.D., L.Ac., President
California Acupuncture Board