

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for
Reinstatement of a Revoked License of:

JE WAN WHON,

Petitioner.

Case No. PRRL-1A-2011-117

OAH No. 2011070875

DECISION

This matter was heard before a quorum of the Acupuncture Board (Board)¹ in Sacramento, California on August 25, 2011. Administrative Law Judge Linda A. Cabatic, State of California, Office of Administrative Hearings, presided over the hearing.

Maura Faust, Deputy Attorney General, represented the Attorney General's Office, pursuant to Government Code section 11522.

Petitioner Je Wan Whon was present and represented himself.

Evidence was received, and the matter was submitted for decision on August 25, 2011.

FACTUAL FINDINGS

1. On or about June 2, 1986, the Board issued Acupuncturist License Number AC2825 to petitioner.
2. On or about May 1, 2006, an Accusation was served upon petitioner, seeking to suspend or revoke respondent's license. On or about July 12, 2006, the Accusation was returned unclaimed.

¹ Board members present for the hearing were Robert Brewer, Chair; Charles Kim, Vice Chair; Nancy Carroll, Frank He, An York Lee and Paul Weisman.

3. Since the Accusation was returned unclaimed, on September 5, 2006, the Board issued a Default Decision and Order which revoked petitioner's Acupuncturist License, effective October 5, 2006.

4. The basis for the Accusation and Default Decision and Order stemmed from petitioner's conviction on a plea of guilty to the charge of Healthcare Fraud, a Class C felony, in violation of 18 U.S.C. section 1347. Judgment was imposed on December 14, 2004, Petitioner was sentenced to five months imprisonment, and ordered to pay a fine of \$3,000. He was prohibited from possessing a firearm and/or dangerous weapon, and from billing any government jurisdictional office for rendered acupuncture service in the future.

5. The facts giving rise to this conviction are as follows. Petitioner was an acupuncturist and a Medi-Cal provider. The Medi-Cal Program is a federal and state funded program. Petitioner's license had expired and was invalid as of December 2002 because petitioner did not take the required continuing education courses. Petitioner, however, continued to provide acupuncturist services without a valid license from approximately January 1, 2003, to approximately June 30, 2004. In addition, he falsely billed the Medi-Cal Program for services when no services were in fact provided.

6. In a letter to the Board filed with his Petition for Reinstatement, petitioner stated that he regrets and is sorry that he committed fraudulent activities. He has not been able to work and is dependent on his children for financial support. He stated that he has been very active in rehabilitation activities which will prevent him from committing similar activities again. These activities include volunteering at his church on a weekly basis, teaching acupuncture classes for seniors; visiting sick members of his church every Wednesday; singing in his church choir; and participating in three medical missions. He concluded his letter by stating that he will check his billing statements carefully to ensure the same mistakes do not happen.

With his Petition for Reinstatement, petitioner included copies of Certificates of Completion for continuing education in 2010 in Jung-An Acupuncture Innotechnic Hyeon-Ga method approach in treatment of scoliosis, New treatment of allergic rhinitis and asthma, and Clinical Sa-Am Acupuncture.

7. Petitioner also submitted letters of recommendations from Hee W. Jung, who stated that petitioner is honest and a person of integrity, and Jean Fu, who thinks petitioner is a caring and wonderful healer. At the hearing, however, the Deputy Attorney General stated that she contacted both of petitioner's references and neither one of them were aware of petitioner's prior conviction. Petitioner did not mention his prior conviction to them, but stated he thought they were aware of it.

8. At the hearing, petitioner stated he was a minister with the All Nations Church before he committed the crime and still holds that position. He would like to have his license reinstated because he needs money for his missionary work and to pay for his living expenses. Petitioner did not seek counseling as a result of his crime, but realized it was

wrong since he is a minister. He promised himself it would never happen again. When asked if he attempted to have the crime expunged, petitioner stated he received the decision and thought it was over.

9. Petitioner did not participate in any ethics courses and provided no letters of recommendation from any members of his church.

LEGAL CONCLUSIONS

1. Business and Professions Code section 4928.1, states:

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 other interests sought to be promoted, the protection of the public shall be paramount.

2. Business and Professions Code section 4960.5, which contains the provisions of law dealing with reinstatement of licenses for acupuncturists, provides, in pertinent part:

(a) A person whose license or registration has been revoked, suspended or surrendered, or who has been placed on probation, may petition the board for reinstatement or modification of penalty, including modification or termination of probation, after a period of not less than the following minimum periods has elapsed from the effective date of the decision ordering that disciplinary action:

(1) At least three years for reinstatement of a license revoked or surrendered.

[¶ . . . ¶]

(b) The board may require an examination for that reinstatement.

(c) Notwithstanding Section 489, a person whose application for a license or registration has been denied by the board, for violations of Division 1.5 (commencing with Section 475) of this chapter, may reapply to the board for a license or registration only after a period of three years has elapsed from the date of the denial.

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

The Board will consider the following criteria of rehabilitation:

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.

4. In a proceeding for the restoration of a revoked license, the burden at all times rests on the petitioner to prove that he has rehabilitated himself and is entitled to have his license restored, and not on the board to prove to the contrary. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) It goes without saying that the pertinent issues in the inquiry are petitioner's activities since revocation of his license and his present qualifications, ability and learning. (*Ibid.*) Statutes relating to licensed professions seek to maintain integrity and high standards, and preserve public confidence in holders of professional licenses. (*Clerci v. Dept. of Motor Vehicles* (1990) 224 Cal.App.3d 1016.)

5. Petitioner was convicted of a felony, namely healthcare fraud, six years ago. He was sentenced to five months imprisonment and ordered to pay a fine of \$3,000. (Findings 4 and 5.) No evidence was submitted to indicate compliance with any terms of parole, probation, restitution or any other sanctions lawfully imposed against petitioner. (Finding 8.)

6. Petitioner seeks reinstatement because he has read books, participated in continuing education classes, and needs money for missionary work. (Findings 6 and 8.) While he stated he has been very active in rehabilitation activities, there is no evidence that petitioner has taken any ethics courses or participated in psychological counseling to recognize and understand that committing healthcare fraud was wrong and provide some reassurance that it will not occur again. When asked specifically about his rehabilitation activities, petitioner responded that he made promises to himself, read books, participated in

continuing education, visited sick members of his church, and participated in the choir. While commendable, these activities are insufficient to prove that he has rehabilitated himself and is entitled to have his license restored. (Findings 6 and 8; Legal Conclusions 1, 2 and 3.) Moreover, not telling the people who wrote letters of recommendation about his prior conviction and stating at the hearing that he thought they knew about it is tantamount to deception. (Finding 7; Legal Conclusion 2.)

7. 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. (Legal Conclusion 1.)

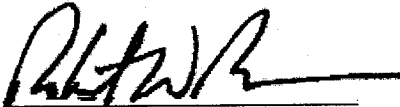
8. Petitioner had the burden of establishing that he has been rehabilitated and that he does not pose a risk to the public interest, safety or welfare. Petitioner did not meet this burden. Petitioner's testimony was not credible. He has not taken responsibility for his actions. He did not provide sufficient evidence of rehabilitation. Petitioner committed a felony involving Medi-Cal fraud upon the federal government. He did not disclose his prior convictions to the persons writing letters of recommendation on his behalf. He has not taken any ethics courses or obtain any counseling. 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 Conclusion 1.)

ORDER

The Petition for Reinstatement filed by petitioner Je Wan Whon is DENIED.

This decision shall become effective on the 28 day of October, 2011.

Dated: SEP 28 2011

By: 
ROBERT BREWER
Board Chair
California Acupuncture Board