

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

In the Matter of the Accusation)	Case No.: 1A-2008-135
Against:)	OAH No.: 2009070536
)	
KISOO SONG, L.AC.)	
2316 ARTESIA BLVD., #E)	
REDONDO BEACH, CA 90278)	
)	
Acupuncture License No. AC 7495)	
Respondent.)	
_____)	

DECISION AND ORDER

The attached Decision After Non-Adoption is hereby adopted by the California Acupuncture Board as its Decision in the above-entitled matter.

This Decision shall become effective on SEP 23 2010.

IT IS SO ORDERED AUG 24 2010.



Robert Brewer, Chair
Acupuncture Board
Department of Consumer Affairs
State of California

**BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
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**In the Matter of the Accusation Against:
KISOO SONG**

2316 Artesia Blvd., #E
Redondo Beach, CA 90278

Acupuncture License No. AC7495,

Case No. 1A-2008-135

OAH No. 2009070536

Respondent.

DECISION AFTER NON-ADOPTION

Administrative Law Judge Julie Cabos-Owen, State of California, Office of Administrative Hearings, heard this matter in Los Angeles, California on November 12, 2009, and March 17, 2010. Complainant, Janelle Wedge, Executive Officer of the Acupuncture Board, Department of Consumer Affairs, State of California, was represented by Richard D. Marino, Deputy Attorney General, California Department of Justice. Respondent, Kisoo Song, was represented by Craig Lytle, Attorney at Law.

The proposed decision of the Administrative Law Judge was submitted to the Board on May 6, 2010. After due consideration thereof, the Board declined to adopt said proposed decision and thereafter on May 13, 2010 issued a Notice of Non-Adoption of Proposed Decision.

Written argument having been received from Richard D. Marino, Deputy Attorney General, and Craig Lytle, Attorney at Law, and the entire record, including the transcript of said hearing having been read and considered, the Board, pursuant to Section 11517 of the Government Code, hereby makes the following decision:

FACTUAL FINDINGS

1. On June 22, 2009, Complainant, Janelle Wedge, filed the Accusation while acting in her official capacity as the Executive Officer of the Acupuncture Board (Board), Department of Consumer Affairs, State of California.
2. On September 25, 2000, the Board issued Acupuncture License No. AC7495 to Respondent. The license was in full force and effect at all relevant times, and was scheduled to expire on November 30, 2009, unless renewed. The evidence did not establish whether the license was renewed. However, if the license was not renewed, the Board retains jurisdiction over this matter pursuant to Business and Professions Code section 118, subdivision (b).

3. On April 16, 2008, in the Superior Court of the State of California, County of Los Angeles, Case Number 7SY10811, Respondent was convicted, on his plea of nolo contendere, of violating Penal Code section 243.4, subdivision (e)(1) (sexual battery), a misdemeanor.

4. As a result of his conviction, Respondent was placed on summary probation for 36 months and ordered to pay fines and fees totaling \$1,235.00.

5. By way of his plea of nolo contendere to, and conviction of, violating Penal Code section 243.4, subdivision (e)(1), Respondent is guilty of the crime of sexual battery. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449 (holding that “[r]egardless of the various motives which may have impelled the plea, the conviction which was based thereon stands as conclusive evidence of appellant’s guilt of the offense charged.”)) Therefore, on September 1, 2007, Respondent was guilty of “touch[ing] an intimate part of [Patient M.S.,] ... against the will of [M.S.,] ... for the specific purpose of sexual arousal, sexual gratification, or sexual abuse.”¹

6(a). Respondent was allowed to provide testimony to establish the facts and circumstances underlying the conviction in order to assist the Board in formulating the level of discipline to be imposed, but not to refute that the crime was committed. (See, *Arneson v. Fox* (1980) 28 Cal.3d 440.)

6(b). The facts and circumstances surrounding the conviction are as follows: During the treatment of M.S., Respondent asked him to remove his underwear prior to administering a back massage while M.S. was lying face down. After the back massage, Respondent asked M.S. to lie face up while he administered acupuncture. He did not think this would be a problem, since M.S. was a male patient. The acupuncture was to be administered to M.S.’s head, feet, hands, and around the inner thigh area. Part of the treatment involved massaging the patient’s inner thighs.

6(c). Respondent denied that the purpose of any part of the treatment was for his sexual arousal. However, the fact that his touching of M.S. was “for the specific purpose of sexual arousal [or] sexual gratification” cannot now be contradicted, since this was one of the elements of Respondent’s crime. (See Factual Finding 5 and footnote 1.)

7. Respondent’s conviction is substantially related to the qualifications,

¹ Penal Code section 243.4 provides, in pertinent part:

[¶] ... [¶]

(e)(1) Any person who touches an intimate part of another person, if the touching is against the will of the person touched, and is for the specific purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of misdemeanor sexual battery...

[¶] ... [¶]

(g) As used in this section, the following terms have the following meanings:

(1) “Intimate part” means the sexual organ, anus, groin, or buttocks of any person, and the breast of a female.

functions and duties of an acupuncturist in that it involved an act which occurred during Respondent's treatment of a patient.

8. Respondent's conviction did not involve any fraudulent act.

9. Respondent is 54 years old. He has been married for 28 years and has a 26-year-old daughter who is attending medical school. Respondent moved to the United States from his native Korea in 1997, and thereafter became licensed as an acupuncturist. He is employed as an acupuncture instructor at Dongguk-Royal University. He is also the Academic Dean and a professor for the School of Oriental Medicine at Stanton University. Respondent runs a clinical practice, which he started in 2000. He has authored an acupuncture book, which was published in Korean in 2005 and is used as a text by Korean students. He has also authored a book in English regarding Oriental Medicine diagnoses and acupuncture, which he expects to be published soon. He presently sees an average of four to six patients per week in the clinical setting, spending more time on his administrative duties and working on his new book.

10. Respondent has no record of prior discipline against his license.

11. Respondent is scheduled to remain on criminal probation until April 2011.

12. Since his conviction, Respondent has enacted a clinic policy which avoids the exposure of patients' genitals. The patients are given short pants or a gown to cover up.

13. Complainant submitted evidence of the following costs of investigation and prosecution of this matter:

(a) The investigator from the Division of Investigation (DOI), Department of Consumer Affairs, assigned by the Board to investigate this case, prepared and executed a declaration, documenting the time he billed for this case. The declaration stated that, for the fiscal year 2008-2009, he spent 19.50 hours at a rate of \$152.00 per hour, for a total investigation cost of \$2,964.00. Paragraph 4 of his declaration specified his tasks as follows:

The total time I spent working on this case to date consisted of the following activities:

A. 14.00 Hours of Investigation which included:

- (1) Review and preparation of assignment upon receipt.
- (2) Communicating with client agency personnel.
- (3) Contacting and interviewing witness(es) and the subject.
- (4) Research.
- (5) Preparing correspondence and/or declarations.
- (6) Collecting, organizing and evaluating documentation and other physical evidence.

B. 2.00 Hours of Travel which included time traveling to and from the locations necessary to conduct the activities set forth above.

C. 3.50 Hours of Report Preparation which included case file organization, preparing attachments, editing and preparing and transmitting final report.

(b) The Deputy Attorney General submitted a declaration and attached billing statement, documenting the time he billed for this case. The declaration and attached billing statement indicated that, for the fiscal year 2008-2009, he billed .50 hours @ \$158 (subtotal \$79), and for the fiscal year 2009-2010, he billed 6.00 hours @ \$170 (subtotal \$1,020). The total Attorney General costs billed to the Board were \$1,099.00.

14. There was no evidence that any of the costs were unreasonable.

15. The evidence established that Complainant incurred total costs of \$4,063.00 in the investigation and prosecution of this matter, all of which were reasonable.

LEGAL CONCLUSIONS

1. Cause exists to revoke or suspend Respondent's acupuncture license, pursuant to Business and Professions Code section 4955, subdivision (b), on the grounds that Respondent has been convicted of a crime substantially related to the qualifications, functions and duties of an acupuncturist, as set forth in Factual Findings 3, 5, 6 and 7.

2. Cause does not exist to revoke or suspend Respondent's acupuncture license, pursuant to Business and Professions Code section 4955.1, subdivision (b) and (c), because Complainant did not establish that Respondent was guilty of committing a fraudulent act, as set forth in Factual Findings 3, 5, 6, 7 and 8.

3. Pursuant to Business and Professions Code section 4959, Complainant is entitled To recover reasonable costs of investigation and prosecution of this matter in the amount of \$4,063.00, as set forth in Factual Findings 13, 14 and 15.

4. By way of his plea and conviction, Respondent is guilty of the crime of sexual battery, which is a serious offense. The seriousness of the crime is compounded by the fact that it occurred during the course and scope of acupuncture treatment. However, Respondent has been practicing acupuncture for nearly 10 years, without any prior discipline, and he has made changes to his clinical practice to ensure that the offense does not recur. Given the facts of this case, outright revocation would be overly harsh and punitive and is therefore unjustified. A properly conditioned probationary period is more appropriate and should serve to adequately protect the public health, safety, welfare and interest. However, Respondent should be separated from his practice for a brief time to afford him the opportunity to contemplate the seriousness of his violation. This separation time should also allow him to examine his plan for the future and to determine if he can implement any additional safeguards to avoid recurrence and to ensure strict compliance with the laws and rules governing the practice of acupuncture.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Acupuncture License No. AC 7495, issued to Respondent, Kisoo Song, is revoked. However, the revocation is stayed for a period of five years, and Respondent is placed on probation under the following terms and conditions:

1. Actual Suspension

As part of the probation, Respondent is suspended from the practice of acupuncture for 30 days beginning with the effective date of this decision.

2. Obey All Laws

Respondent shall obey all federal, state and local laws and all regulations governing the practice of acupuncture in California. A full and detailed account of any and all violations of law shall be reported by Respondent to the Board in writing within 72 hours of occurrence.

3. Quarterly Reports

Respondent 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.

4. Surveillance Program

Respondent shall comply with the Board's probation surveillance program and shall, upon reasonable notice, report to the assigned investigative district office. Respondent shall contact the assigned probation surveillance monitor regarding any questions specific to the probation order. Respondent shall not have any unsolicited or unapproved contact with (1) victims or complainants associated with the case; (2) Board members or members of its staff; or (3) persons serving the Board as expert examiners.

5. Interview with the Board or Its Designee

Respondent shall appear in person for interviews with the Board or its designee upon request at various intervals and with reasonable notice.

6. Change of Employment

Respondent 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.

7. Tolling for Out-of-State Practice or Residence

In the event Respondent should leave California to reside or to practice outside the State, Respondent 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.

8. Employment and Supervision of Trainees

Respondent shall not employ or supervise or apply to employ or supervise acupuncture trainees in a clinical setting during the course of this probation. Respondent shall terminate any such supervisorial relationship in existence on or before the effective date of this probation.

9. Cost Recovery

Respondent shall pay to the Board its costs of investigation and enforcement in the amount of \$4,063.00. However, Respondent may make payments in installments upon written request to, and written approval by, the Board.

10. Violation of Probation

If Respondent violates probation in any respect, the Board may, after giving Respondent notice and the opportunity to be heard, revoke probation and carry out the disciplinary order that was stated. If an accusation or petition to revoke probation is filed against Respondent 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 Respondent.

11. Completion of Probation

Upon successful completion of probation, Respondent's license will be fully restored.

DATED: August 24, 2010



ROBERT BREWER
President
Acupuncture Board

DECLARATION OF SERVICE BY MAIL

In the Matter of the Accusation filed Against:

KISOO SONG

Case No. 1A-2008-135

I, the undersigned, declare that I am over 18 years of age and not a party to the within cause; my business address is 444 N. 3rd Street, Suite 260, Sacramento, CA 95811-0228. I served a true copy of the attached:

DECISION AFTER NON-ADOPTION

by certified/regular mail on each of the following, by placing same in an envelope(s) addressed (respectively) as follows:

NAME and ADDRESS

CERTIFIED MAIL NO.

Kisoo Song L.Ac.
2316 Artesia Blvd., #E
Redondo Beach, CA 90278

7009 1410 0002 2164 0689

Craig M. Lytle, Attorney at Law
Law Offices of Craig M. Lytle
2316 Artesia Blvd., #F
Redondo Beach, CA 90278

regular mail

Richard D. Marino, Deputy Attorney General
California Department of Justice
Office of the Attorney General/HQE
300 S. Spring St., Ste. 1702
Los Angeles, CA 90013

regular mail

Julie Cabos-Owen, Administrative Law Judge
Office of Administrative Hearings
General Jurisdiction Division
320 West Fourth St., Ste. 630
Los Angeles, CA 90013

regular mail

Each said envelope was, on August 24, 2010, sealed and deposited in the U.S. mail at Sacramento, California, the county in which I am employed, with the postage thereon fully prepaid for an attempt at service.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 24, 2010 at Sacramento, California.



DECLARANT