



January 6, 2014

Dong Hyun Chang
315 Regal Oak Court
Thousand Oaks, CA 91320

Re: In the Matter of the Petition for Reinstatement of a Surrendered License
Case No. PRRL-1A-2013-133

Dear Mr. Chang:

Enclosed is a copy of the **Decision** of the Board in the matter of your Petition for Reinstatement of your surrendered license. The effective date of the Decision is February 5, 2014.

Please be advised, you may petition the Board for reinstatement of your acupuncture license no sooner than one (1) year from the effective date of this Decision.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Terri Thorfinnson".

TERRI THORFINNSON
Executive Officer

Enclosures

cc: Michael Valentine, DAG, DOJ
Robert McKim Bell, SDAG, DOJ
Jerry Smilowitz, ALJ, OAH
Rizza Gonzales, Esq., Century Law Group LLP

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for
Reinstatement of Surrendered Acupuncture
License of:

DONG HYUN CHANG,

Respondent.

Case No. PRRL-1A-2013-133

OAH No. 2013071008

DECISION

On November 14, 2013, in Los Angeles, California, pursuant to Government Code section 11522, this matter was heard before a quorum of the Acupuncture Board (Board). The Board members present for the hearing were Michael Shi, Chair, Kitman Chan, Vice Chair, Hildegard Aguinaldo, Francisco Hsieh, Jeannie Kang, and Jamie Zamora. Administrative Law Judge Jerry Smilowitz, Office of Administrative Hearings, State of California, presided over the hearing.

Deputy Attorney General Michael Valentine appeared on behalf of the People of the State of California.

Dong Hyun Chang (Petitioner) was present and was represented by his attorney, Rizza Gonzales.

Immediately following the hearing, the Board convened in closed session to deliberate on the Petition, and reached a Decision on the same date.

FACTUAL FINDINGS

1. On December 29, 1983, the Board (then-designated as the Acupuncture Committee) issued Acupuncture Certificate No. AC-2244 to Petitioner.

First Accusation

2. On October 8, 1993, the Executive Officer of the Acupuncture Committee filed an Accusation against Petitioner alleging that, in November of 1983, Petitioner had paid

\$5,000 to others for the advance receipt of answers to the November 13, 1983 State Acupuncture written examination and the December 11, 1983 State Acupuncture practical examination, and used the answers to take and complete those examinations with passing scores, thereby fraudulently qualifying for a license. On June 1994, Petitioner entered into a Stipulation for Settlement, wherein he admitted the allegations in the Accusation. The Acupuncture Committee adopted this Stipulation as its Decision and Order. Petitioner was placed on probation for a period of 18 months, under terms and conditions that required him to apply for and undertake the State Acupuncture "practical/clinical" examination, obey all laws, and pay \$250 to the Committee for reimbursement of its costs of investigation and prosecution.

Second Accusation

3. Almost exactly four years from the issuance of the first Accusation, on October 9, 1997, the Executive Officer of the Acupuncture Committee issued another Accusation. It alleged that, on March 28, 1996, Petitioner pled nolo contendere to, and was subsequently convicted of, insurance fraud in Los Angeles County Superior Court. The details were that Petitioner conspired with the owner of a small gardening business for the owner's employees to become involved in a non-injury vehicular traffic accident. As part of the agreement, Petitioner submitted bills for health care services rendered to two individuals who had been in the vehicle at the time of the accident, but who had suffered no injuries and were not treated by Petitioner. A hearing on this Accusation¹ was held before an administrative law judge who found that Petitioner was "less than forthcoming at the hearing about the facts and circumstances of the conviction." The proposed decision was not adopted by the Acupuncture Committee. In its Decision and Order, the Acupuncture Committee revoked Petitioner's license, then stayed the revocation while placing Petitioner on probation for seven years, with an actual suspension of six months. Terms and conditions of the probation included a prohibition on accepting personal injury litigation referrals and undertaking personal injury litigation consultations. Further, Petitioner was ordered to complete a specific course titled "Ethics in the Workplace" within the first year of probation. That Decision and Order became effective on January 28, 1999.

4. Petitioner attended a class entitled "Ethics" in the Fall of 1999 at a local community college. He completed the course and received an "A" grade. (Exh. I.)

Third Accusation/Petition to Revoke Probation

5. On September 13, 2004, Petitioner pled guilty to, and was subsequently convicted of, mail fraud, in violation of 18 United States Code section 141, a felony. The facts and circumstances underlying this plea are that, during 2003, Petitioner was a licensed and practicing doctor of chiropractic medicine for a medical office. Petitioner would receive patient referrals from a law office that represented claimants alleging injuries as a result of

¹ *In the Matter of the Accusation Against Dong Hyun Chang, Acupuncturist License number AC 2244, Case No. D-1A-95-57035, OAH Case No. L-1997120328.*

automobile collisions. On behalf of their clients, the law office filed, processed, and negotiated claims against insurance companies. Petitioner and the law office's administrator entered into an agreement under which Petitioner would pay a kickback to the administrator for each patient referred by the law office to Petitioner. The amount of the kickback was based on a percentage of the insurance settlement payable to Petitioner for chiropractic services he rendered. As support for the claims submitted by the law office, Petitioner prepared false and fraudulent medical bills wherein he stated that he had performed chiropractic services for patients when Petitioner knew that the patients had not received all of the chiropractic services listed on the bill. The chiropractic bill and report also failed to disclose that a pre-determined percentage of the bill would be paid to the law office as a kickback. The documented actual losses to insurance companies was relatively small-- approximately \$8,000.

6. At the time of this conviction, Petitioner was still on probation from the last Accusation issued against him. On September 26, 2005, the Executive Director of the Acupuncture Board issued an Accusation and Petition to Revoke Probation. The Accusation part of the pleading alleged that Petitioner had been convicted of a crime substantially related to the practice of acupuncture, and that he had committed dishonest or corrupt acts. The stated grounds for revoking probation were that he failed to obey all laws, and specifically violated the probation grant that prohibited him from accepting any personal injury litigation referral and undertaking any personal injury litigation consultation.

7. Rather than contest the Accusation/Petition, Petitioner entered into a Stipulated Surrender (Stipulation) of License and Order wherein he admitted the truth of the charges and allegations in the Accusation/Petition, and surrendered his license. The Board adopted the Stipulation as its Decision on March 23, 2006. This Decision became effective on April 23, 2006. Petitioner could not petition the Board for reinstatement of his license for a period of three years from the effective date of the decision.

First Petition for Reinstatement of Surrendered License

8. Petitioner filed a form Petition for Penalty Relief dated June 2, 2009. He submitted some character references which largely described his work as an acupuncturist rather than documenting a change of attitude on his part. In denying his Petition for Reinstatement of his Surrendered License following a hearing conducted by an administrative law judge,² the Board found that Petitioner had failed to meet his burden of establishing that he had been rehabilitated and that he would not pose a risk to the public if his license were reinstated. In making this finding, the Board reasoned that while Petitioner testified he was sorry for the mistakes he had made, his answers to questions about his convictions were evasive and confusing, and he did not accept full responsibility for his

² *In the Matter of the Petition for Reinstatement of Surrendered Acupuncture License of Dong Hyun Chang*, Case No. PRRL-1A-2013-133, OAH No. 2013071008.

wrongdoing. Further, he had not engaged in any rehabilitative efforts. He did not seek treatment or counseling, and had not performed any community service. The petition was denied.

Second Petition for Reinstatement of Surrendered License

9. Petitioner filed another Petition for Reinstatement on January 27, 2011. One of those who submitted a character reference letter noted that Petitioner was a very honest person. A second observed that Petitioner had a hard time after he lost his license. Petitioner's Narrative Statement explained that he entered into the Stipulated Surrender because his actions warranted discipline, and he regretted the mistakes he had made. He stated that he had worked very hard to keep current with acupuncture practices and procedures. To help him deal with his behaviors, he saw a clinical psychologist.

10. His sessions with Judith R. Cohn, Ph.D., commenced on October 25, 2010, and lasted four months. In her declaration, Dr. Cohn concluded that Petitioner had trouble expressing himself in usual ways, but over time, she sensed that he felt humiliated and recognized his wrongdoing, which appeared to devastate him. He clearly wanted to stay far away from any problematic situations. Dr. Cohn continued that, while Petitioner had not volunteered for public service, he did complete a course in ethics at Pierce College. She recommended that Petitioner be supervised to ensure that no further wrongdoing would occur, and that he participate in group or personal therapy.

11. Notwithstanding Dr. Cohn's mention of the ethics course, Petitioner did not submit a certificate or other evidence of completion of the course.

12. Petitioner presented proof that he had been allowed to withdraw his plea of guilty on the earlier state criminal charge, with the court then dismissing the complaint under Penal Code section 1203.4, and that he had obtained a Satisfaction of Judgment in his federal criminal case. Nonetheless, the Board, in its Decision and Order of November 9, 2011,³ while noting that Petitioner had taken steps in the right direction, determined that he did not demonstrate that he had undertaken specific rehabilitation efforts designed to prevent future acts of fraud or dishonesty, or taken any real steps to prevent any relapse or reoccurrence. The Board found that the letter writers did not show they had knowledge of Petitioner's offenses or provide support for his claim of having been rehabilitated. There was no corroboration of his statement that he had taken an ethics course. Contrary to Dr. Cohn's recommendation, the Board felt that Petitioner should not have to be supervised. He needed to continue his therapy. Finally, there was again no showing of involvement in community, church or other programs. The petition was denied.

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³ *In the Matter of the Petition for Reinstatement of Surrendered Acupuncture License of Dong Hyun Chang*, Case No. PRRL-1A-2011-93, OAH No. 2011070874.

Third Petition for Reinstatement of Surrendered License

13. The instant matter is Petitioner's third attempt to have his license reinstated. The Petition for Penalty Relief was filed on October 29, 2013. Petitioner submitted a number of exhibits. These include his Narrative Statement (Exh. A), in which Petitioner stated that he recognized his actions warranted discipline. He expressed his regret and remorse. Trying to keep up with current practices and procedures, he has engaged in his own personal study. Through his attendance at acupuncture seminars, he had accumulated 72 hours of continuing education hours. Should he regain his license, he hopes to focus his practice on providing patient-centered courses of treatment, especially for those who are unable to afford other treatment. He has devoted over 181 hours of his free time since the denial of his last petition to volunteer work at the Conejo Valley Botanic Gardens. To prevent repetition of his past mistakes, he continues to see Dr. Cohn, and has joined a self-help group offered through a mental health clinic.

14. Petitioner again points to his completion of a semester long course in ethics at Pierce College. One of his character references, TaeHo Kim, had earlier provided a letter of recommendation on behalf of Petitioner. Mr. Kim has known Petitioner for many years in both a personal and professional capacity. He largely reiterated (Exh. B) what Petitioner had put in his Narrative Statement. In part, Mr. Kim states, "By completing a college level course in ethics he has gained insight to the nature of his actions."

15. Dr. Cohn, in a declaration dated May 8, 2012 (Exh. D), which was intended for review by the Board of Chiropractic Examiners in deciding whether to reinstate Petitioner's chiropractic license, again provides a largely positive view, emphasizing that Petitioner has recognized the extent of his wrongdoing, and appears devastated by his prior dishonest choices, adding that his behavior has caused him much pain and humiliation. A good step forward for Dr. Cohn, as for others, is Petitioner's completion of a "a course in Ethics at Pierce College. He claims it was very informative."

16. In his letter (Exh. E), dated May 8, 2012, Pastor John C. Powell also addresses his comments to the Board of Chiropractic Examiners. Pastor Powell has known Petitioner since 2002. He notes that Petitioner has a good reputation, both professional, and among neighbors and peers, and has always been straightforward, honest, and exhibiting a high standard of ethics, integrity, and character. He believes that Petitioner has "been very broken and humbled by this whole incident." Because this character reference does not mention the conviction in 2005 for mail fraud, and refers only to an "incident," it is given little weight.

17. Petitioner presented several certificates of completion for continuing education sessions offered for both chiropractic and acupuncturist training. (Exh. F). One, for a day-long chiropractic seminar, showed that he had completed a two-hour session on ethics and law. He is also a member of two acupuncture associations.

18. For the first time in any of the proceedings described herein, Petitioner submitted his transcripts from Pierce College, which showed that he had taken and completed an Ethics course in 1999. (Factual Finding 4.)

19. In his testimony before the Board, Petitioner explained that he had surrendered his license because he had done wrong. His acts had tarnished his reputation, placed a financial burden on his family, and caused harm to society. These acts were "ethically wrong." As proof of his rehabilitation, he pointed to the ethics course he took and completed. He no longer sees Dr. Cohn, having put a hold on his visits until he obtains more money. A coin-operated laundry he owned had closed, and his main financial support was from Social Security benefits. However, he still attends group therapy regularly once a month. He performs community service at a botanical garden, doing maintenance work 4-5 hours a week. Petitioner vows that he will resist bad temptations, help people in need, and be very careful in his insurance billings. Acupuncture is his true love.

20. Petitioner does not want to work with or under another acupuncturist. He would do so if the Board so ordered, but he prefers to work alone.

CONCLUSIONS OF LAW AND DISCUSSION

1. In light of Factual Findings 2-8, 12-15, and 18-20, cause exists to deny the Petition for Reinstatement of the surrendered license.

2. 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."

3. California Code of Regulations, title 16, section 1399.469 incorporates by reference the "Department of Consumer Affairs, Acupuncture Board, Disciplinary Guidelines' 1996." These Guidelines establish the criteria of rehabilitation which the Board considers in reviewing petitions for reinstatement and include:

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 therefore entitled to have his license restored. *Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398. Petitioner must bear in mind that as an applicant for reinstatement he "is not in the position of an untried newcomer, but a fallen licentiate." (*Ibid.*) "It is elementary that a person seeking restoration of a revoked license has no greater rights than a person seeking an original license." *Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 312. Moreover, it is reasonable, "that the person seeking reinstatement . . . should be required to present stronger proof of" his rehabilitation. *Housman, supra*, at p. 315.

5. The Guidelines note that the Board is not interested in retrying the original revocation case. Rather, its focus is on the extent of rehabilitation which a petitioner has undergone.

6. It has been over seven years since Petitioner entered into the Stipulation with the Board wherein he surrendered his license. Over that period of time, he has gradually provided proof of rehabilitation. He has engaged in sessions with a psychologist, and has regularly participated in group therapy. No longer under any criminal order, he donates a substantial amount of his time as a volunteer for a community botanical garden. Petitioner has actively pursued continuing education sessions. His latest statements show a heightened awareness of the wrongfulness of those acts which led to the loss of his license.

7. Throughout the various proceedings, Petitioner has repeatedly characterized his completion of an Ethics course as proof of his rehabilitation. His character references, including Dr. Cohn, his pastor, and an acupuncturist who knew Petitioner on both a personal and professional basis, identify this course as further proof that Respondent has changed his attitude and will no longer reoffend. However, Respondent finally produced a transcript of the course which established when it was taken. The impression given by Petitioner in all three of his reinstatement proceedings is that this course is an assurance that he has gained the necessary insight to change his ways. The course was completed in 1999, several years before his conviction of mail fraud. The date further showed that Petitioner did not voluntarily enroll in the class, but rather he took the course because he had been ordered by the Board to enroll in one.

8. The two earlier Decisions noted that Petitioner was less than forthcoming before the Board. Since this course was taken before, and not after, his conviction for mail fraud, it fails to show rehabilitation. Yet Petitioner sought to promote the course as further evidence that he would obey the law because he now fully understands his ethical obligations. Any such conclusion is completely undermined by the criminal conviction incurred by Petitioner after he had taken the course.

9. The Board urges Petitioner to re-engage with the profession of Acupuncture by volunteering at schools and associations. Further, the absence of a license does not preclude Petitioner from performing, or prescribing, any of the modalities listed in Business and Professions Code section 4937, subdivision (b). These include the use of Asian massage, acupressure, breathing techniques, exercise, heat, cold, magnets, nutrition, diet, herbs, plant, animal, and mineral products, and dietary supplements to promote, maintain, and restore health.

10. The acts committed by Petitioner which led to the Accusations being issued all involved serious lapses in ethical obligations. Petitioner should take additional ethics courses to demonstrate that he fully understands these obligations.

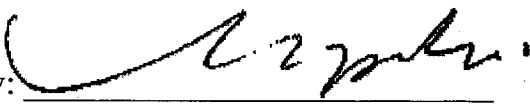
11. Petitioner stated his reluctance to work with a licensed acupuncturist. Doing so would provide some assurance that the risk to the public is diminished.

12. Petitioner has made progress. However, in light of the troubling acts he committed, Petitioner must present strong proof of rehabilitation. On this record, he has not met that high standard. He bore the burden of proving his rehabilitation by clear and convincing evidence to a reasonable certainty. Petitioner failed to sustain that burden.

ORDER

The Petition for Reinstatement of his Surrendered License filed by Dong Hyun Chang is denied.

Dated: **FEB 05 2014**

By: 
MICHAEL SHI, Chair
Acupuncture Board