

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

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

BEAU B. KIM,

Petitioner.

Case No. PRRL-1A-2016-147

OAH No. 2017060429

DECISION

This matter was heard on August 4, 2017, before a quorum of the Acupuncture Board (Board), Department of Consumer Affairs, State of California, in Sacramento, California. Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, presided.

John S. Gatschet, Deputy Attorney General, appeared pursuant to Government Code section 11522.

Attorney Dale J. Park of the Law Offices of Dale J. Park represented petitioner Beau B. Kim, who was present throughout the hearing.

Evidence was received, the record was closed, and the matter was submitted for decision on August 4, 2017.

FACTUAL FINDINGS

Prior Licensure by the Board

1. On September 30, 1994, the Board issued Acupuncture License Number AC 5000 to petitioner. In January 2009, the Board issued petitioner an administrative citation for inappropriate advertising (using the word "cure" in an advertisement) and using wooden needles. Petitioner agreed to remove the advertisement from circulation and stop using wooden needles. He also paid a \$1,000 administrative fine.

2. On November 9, 2011¹, the Executive Officer of the Board filed an Accusation seeking to discipline petitioner's license for committing gross negligence, engaging in false or misleading advertising, failing to follow infection control guidelines established by the Board, failing to immediately refer a patient to a physician for medical treatment, and engaging in repeated negligent acts. The factual bases for discipline arose out of his treatment of patients M.O.K. and J.W.

3. Petitioner stipulated to the truth of each of the allegations in the Accusation. Specifically, he admitted:

M.O.K. described the treatments by [petitioner] as "very painful" and involving "poking and pressing her inner eye lids [*sic*] with a small wooden stick." M.O.K. stated that on March 31, 2009, [petitioner] "hit" her inner eye lids [*sic*] with a small wooden stick. She also stated that on April 10, 2009, [petitioner] "hit" M.O.K. with a needle in her left cornea. M.O.K. developed an infection following these treatments. On June 6, 2009, M.O.K. independently and not at [petitioner's] recommendation sought treatment at the Cerritos Eye Medical Center for "an infection of the cornea of her left eye." Upon examination it was determined by the Cerritos Eye Medical Center that M.O.K.'s injury to her left cornea was "consistent with injuries that occurred anytime within one (1) month to a year previous."

4. Petitioner further conceded:

From July 16, 2009 [*sic*] through September 9, 2009, J.W. underwent 18 treatments and procedures from [petitioner]. During all of these visits, [petitioner] used a small wooden stick which he inserted in J.W.'s upper eyelids. After several of the treatments performed by [petitioner], J.W. would complain of extreme and prolonged pain in his eyes. Each time, [petitioner] would again advise J.W. not to use a prescription eye drops and to only use [petitioner's] "special water" eye drops. The 18 procedures did not correct J.W.'s chronic dry eyes, as guaranteed by [petitioner].

5. On January 23, 2013, the Board issued a Decision revoking petitioner's license, effective February 22, 2013.

¹ The Decision and Order dated January 23, 2013, relating to Case No. 1A-2009-144 and OAH No. 2012020040, mistakenly lists the Accusation file date as June 22, 2009.

Petition for Reinstatement

6. On April 27, 2016, petitioner signed a Petition for Penalty Relief seeking reinstatement of his revoked license. He included a narrative statement, in which he explained the following:

I did not realize the graveness of my conduct as an acupuncturist even at the time of my license revocation Proceedings. I was arrogant and blinded by my ego. As you see [*sic*] my license number (AC 5000), I was one of the early licensees. Many of the present acupuncturists came out after me. As such, I was overly confident in my method which was not really proven. I guess the hearing officers noticed that. Having three years of thoughts and reflections on my conduct, now I realize that I had done very dangerous things. Ironically, the revocation of my license, the regrets, pains and anxiety resulting from the loss of my license have been nutrition for my whole life. Now I can truly look at things from the view point [*sic*] of the patients. A patient can ruin his/her health due to some negligent or reckless treatment or handling of an acupuncturist. Looking back, I did truly risky things to my patients, again blinded by my ego and groundless confidence in my method. Now, of course, I stay away from acupuncture.

Petitioner's Testimony at Hearing

7. Petitioner explained he supported himself financially after losing his license by operating a hotel gift shop in Santa Ana, California, from approximately April 2013 through November 2014. He has not worked since November 2014, but received financial support from his mother and relied on his savings in Korea.

8. After losing his license, petitioner furthered his education in traditional Western and Oriental folk remedies and herbs for the maintenance and improvement of general health. As of March 27, 2016, he has completed 68 hours of continuing education offered by South Baylo University Alumni Association and the Love of Acupuncture Asian Medicine Association.

9. Additionally, petitioner completed an eight-week training course for performing medical missionary work in the Middle East through InterCP, a non-denominational, overseas mission organization whose vision is for the rapid evangelization of unreached groups of people living in the Middle East. He explained at hearing that his "dream" is to perform medical missions in the Middle East. He has been told licensure is required to participate in the missions, and that is why he is seeking reinstatement.

10. Regarding the conduct that led to revocation of licensure, petitioner reiterated that he was “too confident” and “too arrogant” in his treatment of patients, even though his treatment methods had not yet been proven. He has had more than four years to reflect upon his attitude and conduct, and explained he now understands what he did wrong. When asked to articulate specifically what he had done wrong, he explained he did not learn of M.O.K.’s injury to her left eye until he received a letter from her attorney approximately one month after he last treated M.O.K. Additionally, petitioner denied ever treating J.W. He explained that while he provided an initial diagnosis for J.W., J.W. refused to allow petitioner to treat him and instead received treatment from petitioner’s associate.

Summary

11. Petitioner’s stipulation to the truth of the allegations in the Accusation conclusively established the factual and legal bases for the Board’s revocation of his license. In particular, it was conclusively established that petitioner treated M.O.K. and J.W. It was also conclusively established that he knew his treatment of M.O.K. resulted in a complication that warranted an immediate referral for medical treatment, but no such referral was made. While petitioner explained he has had more than four years to reflect upon and change the attitude that led to revocation of his license, his explanations that he did not learn M.O.K. had suffered a complication from treatment until one month after treatment had concluded and he did not treat J.W. established he has not undergone a sufficient change in attitude to demonstrate he is once again capable of performing acupuncture in a manner consistent with public health, safety, and welfare. Therefore, petitioner’s petition should be denied.

LEGAL CONCLUSIONS

Applicable Burden/Standard of Proof

1. Petitioner has the burden of proving his entitlement to reinstatement of licensure, and he must do so by clear and convincing evidence. (*In re Menna* (1995) 11 Cal.4th 975, 986.) “The courts have defined clear and convincing evidence as evidence which is so clear as to leave no substantial doubt and as sufficiently strong to command the unhesitating assent of every reasonable mind. [Citations.] It has been said that a preponderance calls for probability, while clear and convincing proof demands a *high probability* [citations].” (*In re Terry D.* (1978) 83 Cal.App.3d 890, 899; italics original.)

Applicable Law

2. “A stipulation is conclusive with respect to the matters covered by it, unless the court, for good cause shown, later permits its abandonment or withdrawal.” (*Harris v. Spinali Auto Sales, Inc.* (1966) 240 Cal.App.2d 447, 452.) “A court should not set aside a stipulation regularly made except after a clear showing of error or unfairness.” (*Id.*, at p. 453.) While not evidence, a stipulation can be relied upon as proof of a fact. (*Id.*, at pp. 452-453.) In fact, a party generally cannot introduce evidence contrary to a stipulation. (*Id.*, at p. 453; see, Evid. Code, §§ 210 [“‘Relevant evidence’ means evidence . . . having any tendency

in reason to prove or disprove any disputed fact that is of consequence to the determination of the action”]; 350 [“No evidence is admissible except relevant evidence”].)

3. Business and Professions Code section 4960.5, subdivision (a)(1), allows a person whose license has been revoked to petition the Board for reinstatement after three years have elapsed since the effective date of the decision revoking the license. Government Code section 11522 requires the Board to give notice of the filing of a petition for reinstatement to the Attorney General’s Office, and further provides that the Attorney General and the person seeking reinstatement may present oral or written argument to the Board.

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

Conclusion

5. Petitioner did not establish by clear and convincing evidence that he is entitled to reinstatement of his license for the reasons explained in Factual Findings 10 and 11. Therefore, his petition for reinstatement of revoked license is denied.

ORDER

The Petition for Reinstatement of Revoked License of Beau B. Kim is DENIED.

This Decision shall become effective on November 15, 2017.

IT IS SO ORDERED this 16th day of October, 2017.



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