

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of Accusation
Against:

ZHEN QING CAO, L.AC.
1300 North Indian Canyon Drive
Palm Springs, California 92262,

Acupuncture License No. AC-11785,

Respondent.

Case No. 1A-2008-162

OAH No. 2009101569

PROPOSED DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, on March 9, 2010, at Los Angeles. Complainant was represented by Margaret Jaramilla Phe, Deputy Attorney General. Respondent was not present or represented at the hearing.

Oral and documentary evidence having been received and the matter submitted for decision, the Administrative Law Judge finds as follows:

FACTUAL FINDINGS

1. On August 25, 2009, the Accusation, Case No. 1A-2009-162, was made and filed by complainant Janelle Wedge in her official capacity as Executive Officer, Acupuncture Board, Department of Consumer Affairs, State of California (Acupuncture Board).

2. On April 11, 2007, the Acupuncture Board issued acupuncture license no. AC-11785 to Zhen Qing Cao (respondent). Said license expires on October 31, 2010, unless renewed, and is currently in full force and effect. Respondent's current address of record is 608 – 610 East Live Oak Avenue, Arcadia, California 91006.

3. (A) On August 25, 2009, respondent was served by certified mail with the Accusation, Statement to Respondent, Request for Discovery, two blank Notices of Defense,

and copies of required Government Code sections at her address of record pursuant to Government Code sections 11505 and 11507.6.

(B) On October 7, 2009, respondent filed a Notice of Defense under Government Code section 11506, acknowledging receipt of the Accusation and requesting a hearing to permit her to present a defense to the charges contained in the Accusation. On the Notice of Defense, respondent listed her mailing address as 4366 ½ Tyler Avenue, El Monte, California 91731.

(C) On November 12, 2009, respondent was served by regular mail with a Notice of Hearing at the address that she provided on her Notice of Defense pursuant to Government Code section 11509. The hearing was scheduled for March 9, 2010, at the Office of Administrative Hearings, 320 West Fourth Street, Los Angeles, California 90013.

(D) On March 8, 2010, respondent filed a letter, requesting a continuance of the hearing because her son was ill and she had to depart for Harbing, China, as an emergency. She attached a copy of a receipt for purchase of an airline ticket.¹

(E) On March 8, 2010, the Presiding Administrative Law Judge of the Office of Administrative Hearings denied respondent's continuance request and informed the parties of the denial and that the hearing would proceed as scheduled on the next day.

(F) On March 9, 2010, respondent failed to appear at the noticed hearing and was deemed in default of the proceeding. Complainant then elected to proceed with the administrative hearing and to present evidence on the Accusation pursuant to Government Code section 11520, subdivision (a).

4. (A) Before she was licensed, on June 20, 2000, before the Superior Court of California, County of Los Angeles, Glendale Courthouse, in *People v. Zhen Qing Cao*, Case No. 0GL02035, respondent was convicted on her plea of nolo contendere of solicitation of prostitution in violation of Penal Code section 647, subdivision (b), a misdemeanor and crime not necessarily involving moral turpitude.

(B) As a result of her plea, imposition of sentence was suspended, and respondent was placed on summary probation for three years on condition that she pay \$945 in fines and restitution fees, obey all laws and orders of the court, and complete testing and education in AIDS.

(C) On November 20, 2000, respondent submitted to the court proof of having completed the testing and educational course in AIDS and paid the fines and fees of \$945.

¹ Respondent's request for continuance is hereby marked as Exhibit 1-A and admitted into evidence as a jurisdictional document.

5. (A) On April 18, 2003, respondent filed an Application for Examination and Licensure with the Acupuncture Board in order to take the acupuncture licensing examination. In her application, respondent indicated that she received her education in Oriental Medicine from Heilong Jiang University of Traditional Chinese Medicine and her training in acupuncture at Dongguk Roral University. She stated that she had been licensed to practice acupuncture or Oriental medicine in another state or country but did not list any state or country in her application.

(B) Question No. 17 of the Application for Examination and Licensure asked, "Have you ever been convicted of, or pled nolo contendere to any offense, misdemeanor or felony in any state, the United States, or a foreign country." If an applicant has any convictions, the applicant was required to explain any conviction on a separate sheet of paper.

(C) In response to Question No. 17, respondent marked and answered, "No." Respondent certified under penalty of perjury that all of her statements in the application were true in every respect. However, respondent's answer to Question No. 17 that she had no convictions to disclose was untrue and false and she knew that her answer was untrue and false.

6. (A) On April 1, 2004, respondent filed an Application Update for Examination and Licensure with the Acupuncture Board. Question No. 13 in said application asked, "Have you ever been convicted of, or pled nolo contendere to any offense, misdemeanor or felony in any state, the United States, or a foreign country." In response to Question No. 13, respondent marked and answered, "No." Respondent certified under penalty of perjury that all of her statements in the application were true in every respect. However, respondent's answer to Question No. 13 that she had no conviction was untrue and false and she knew her answer was untrue and false.

(B) On an undetermined date after November 20, 2004, respondent filed an Application Update for Examination and Licensure with the Acupuncture Board. Question No. 13 in said application asked, "Have you ever been convicted of, or pled nolo contendere to any offense, misdemeanor or felony in any state, the United States, or a foreign country." In response to Question No. 13, respondent marked and answered, "No." Respondent certified under penalty of perjury that all of her statements in the application were true in every respect. However, respondent's answer to Question No. 13 that she had no conviction was untrue and false and she knew her answer was untrue and false.

(C) On April 11, 2005, respondent filed an Application Update for Examination and Licensure with the Acupuncture Board. Question No. 13 in said application asked, "Have you ever been convicted of, or pled nolo contendere to any offense, misdemeanor or felony in any state, the United States, or a foreign country." In response to Question No. 13, respondent marked and answered, "No." Respondent certified under penalty of perjury that all of her statements in the application were true in every respect.

However, respondent's answer to Question No. 13 that she had no conviction was untrue and false and she knew her answer was untrue and false.

(D) On December 8, 2005, respondent filed an Application Update for Examination and Licensure with the Acupuncture Board. Question No. 13 in said application asked, "Have you ever been convicted of, or pled nolo contendere to any offense, misdemeanor or felony in any state, the United States, or a foreign country." In response to Question No. 13, respondent marked and answered, "No." Respondent certified under penalty of perjury that all of her statements in the application were true in every respect. However, respondent's answer to Question No. 13 that she had no conviction was untrue and false and she knew that her answer was untrue and false and she knew that her answer was untrue and false.

(E) On July 3, 2006, respondent filed an Application Update for Examination and Licensure with the Acupuncture Board. Question No. 13 in said application asked, "Have you ever been convicted of, or pled nolo contendere to any offense, misdemeanor or felony in any state, the United States, or a foreign country." In response to Question No. 13, respondent marked and answered, "No." Respondent certified under penalty of perjury that all of her statements in the application were true in every respect. However, respondent's answer to Question No. 13 that she had no conviction to disclose was untrue and false and she knew that her answer was untrue and false.

7. On October 13, 2006, the Superior Court granted respondent's Petition under Penal Code section 1203.4 and ordered that her plea be set aside and vacated, a plea of not guilty be entered, and dismissed the criminal complaint in Case No. 0GL02035. In granting the expungement petition, the court advised respondent that she was required to disclose the conviction in response to any direct question in any questionnaire or application for licensure by any state or local agency.

8. On November 20, 2006, respondent filed an Application Update for Examination and Licensure with the Acupuncture Board. Question No. 13 in said application asked, "Have you ever been convicted of, or pled nolo contendere to any offense, misdemeanor or felony in any state, the United States, or a foreign country." Said application further advised that any conviction that had been set aside and dismissed under Penal Code section 1203.4 was required to be listed. In response to Question No. 13, respondent marked and answered, "No." Respondent certified under penalty of perjury that all of her statements in the application were true in every respect. However, respondent's answer to Question No. 13 that she had no conviction to disclose was untrue and false and she knew that her answer was untrue and false.

9. Based on Findings 2 and 4 – 8 above, beginning on April 18, 2003, and on five subsequent occasions ending on November 20, 2006, respondent engaged in dishonest and unprofessional conduct by knowingly making untrue and false statements and omitting to disclose her 2000 prostitution conviction on her application to take the acupuncture licensing examination and on five application updates filed with the Acupuncture Board.

10. (A) On February 15, 2007, respondent submitted to the Acupuncture Board an Application for License for issuance of an original acupuncture license. Question No. 8 on said license application asked, "Have you ever been convicted of, or pled nolo contendere to any offense, misdemeanor or felony in any state, the United States, or a foreign country? **NOTE: You are required to list any conviction that as been set aside and Dismissed under Section 1203.4 Penal Code or under any other provision of law."**

(B) In response to Question No. 8 on her license application, respondent marked and answered, "No." Respondent certified under penalty of perjury that all of her statements in the license application were true in every respect. However, respondent's answer to Question No. 13 that she had no conviction was an untrue and false statement of a material fact, for, in fact, she had been convicted of solicitation of prostitution on or about July 19, 2000, as set forth in Finding 4 above.

11. (A) Based on Findings 2, 4 – 8, and 10 above, on or about February 15, 2007, respondent knowingly made a false statement of fact required to be revealed in the application for issuance of her acupuncture license.

(B) Based on Findings 2, 4 – 8, and 10 above, on or about February 15, 2007, respondent secured her acupuncture license by fraud, deceit, or knowing misrepresentation of a material fact, or by knowingly omitting to state a material fact.

12. (A) On November 13, 2007, before the Superior Court of California, County of Los Angeles, Van Nuys Courthouse, in *People v. Zhen Qing Cao*, Case No. 7PY01646, respondent was convicted on her plea of nolo contendere of solicitation of prostitution in violation of Penal Code section 647, subdivision (b), a misdemeanor and crime not necessarily involving moral turpitude. The crime of solicitation of prostitution is a crime substantially related to the qualifications, functions, or duties of a licensed acupuncturist.

(B) As a result of her plea, imposition of sentence was suspended and respondent was placed on summary probation for 24 months on condition that she serve 45 days in the county jail with credit for having served two days, pay a court assessment and restitution fine totaling \$120, submit to a blood test for AIDS or H.I.V., complete an educational class in AIDS, and obey all laws and orders of the court.

(C) On or about November 27, 2007, respondent filed a motion to stay execution of her jail sentence and to set aside her plea. On January 3, 2008, the prosecution filed an opposition to the motion. On March 4, 2008, the Superior Court denied respondent's motion to stay the execution of her jail sentence and to set aside her plea. In addition, the court denied her motion for house arrest in lieu of jail time and ordered that she be remanded into custody to serve her 45-day jail sentence.

(D) On July 2, 2008, respondent having failed to pay the court assessment and restitution fine totaling \$120, the Superior Court ordered that the case be forwarded to a collection agency and added a \$300 civil assessment fee to the balance owed.

13. The facts and circumstances of respondent's latest conviction for solicitation of prostitution were that, on March 21, 2007, officers of the Los Angeles Police Department conducted an undercover investigation for suspected prostitution and unlicensed massage activities at "Chen's Acupuncture" at 4531½ Van Nuys Boulevard, Van Nuys. At that time, respondent was operating and/or working at Chen's Acupuncture and holding herself out to the public as a licensed acupuncturist. An undercover vice officer entered the business premises of Chen's Acupuncture. He was greeted by respondent and asked her for a half-hour massage. Respondent stated the fee was \$40. She then took the undercover officer inside the business premises to a massage room, told him to take off his clothes and get comfortable, and left the massage room. The undercover officer removed his clothing, wrapped a towel around his torso, and lay down on a massage table. Respondent returned to the massage room and began massaging the undercover officer. When the undercover officer asked if he could receive better "treatment," respondent leaned over, rubbed her clothed breasts on his back, and asked if he was a cop. Eventually, and after further conversation, respondent solicited the undercover officer for an act of prostitution by offering to masturbate him for \$100.

14. Respondent having failed to appear at the noticed hearing, no evidence of rehabilitation or mitigation was presented in this matter.

15. No evidence was presented of the Acupuncture Board's costs of investigation and enforcement of this matter.

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Grounds exist to revoke or suspend respondent's acupuncture license for unprofessional conduct pursuant to Business and Professions Code section 498, in that respondent knowingly made a false statement of fact required to be revealed in her February 2007 application for issuance of an original acupuncture license by failing to disclose her 2000 conviction for solicitation of prostitution and thus secured her license by fraud, deceit, or knowing misrepresentation of a material fact or by knowingly omitting to state a material fact, as set forth in Findings 2, 4 – 8, and 10 – 11 above.

2. Grounds exist to revoke or suspend respondent's acupuncture license for unprofessional conduct pursuant to Business and Professions Code sections 480, subdivision (c), and 4955, subdivision (i), in that respondent made false statements in her application to take the licensing examination and in license application updates and thus engaged in

dishonest and unprofessional conduct that would have warranted the denial of her acupuncture license, as set forth in Findings 2 and 4 – 9 above.

3. Grounds exist to revoke or suspend respondent's acupuncture license for unprofessional conduct pursuant to Business and Professions section 4955, subdivision (b), in that, in November 2007, respondent was convicted of solicitation of prostitution, a crime substantially related to the qualifications, functions, or duties of a licensed acupuncturist, as set forth in Findings 12 – 13 above.

4. Grounds do not exist under Business and Professions Code section 125.3 to order respondent to pay the reasonable costs of investigation and enforcement in this matter inasmuch as no evidence was presented of the Acupuncture Board's costs, as set forth in Finding 15 above.

5. Discussion—Public health, safety, and welfare require the revocation of respondent's acupuncture license. First, she knowingly failed to disclose her 2000 conviction for solicitation of prostitution in her application for a license examination, in subsequent application updates, and in her application for issuance of an original acupuncture license. As such, respondent engaged in a pattern of dishonest conduct and deceit with the Acupuncture Board. Second, respondent was convicted for a second time in November 2007 of solicitation of prostitution, a crime substantially related to the qualifications, functions, or duties of a licensed acupuncturist. She committed her offense while holding herself out and working as a licensed acupuncturist.

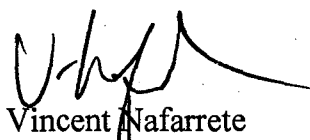
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WHEREFORE, the Administrative Law Judge makes the following Order:

ORDER

Acupuncture license no. AC-11785 and licensing rights previously issued by the Acupuncture Board, Department of Consumer Affairs, to respondent Zhen Qing Cao, L.AC., are revoked, based on Conclusions of Laws Nos. 1 – 3 and 5, jointly and for all.

Dated: April 6, 2010


Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings

DECLARATION OF SERVICE BY MAIL

In the Matter of the Accusation filed Against:

ZHEN QING CAO

Case No. 1A-2008-162

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 AND ORDER

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.

Zhen Qing Cao, L.Ac.
1300 North Indian Canyon Drive, #D
Palm Springs, CA 92262

7009 1410 0002 2164 0023

Zhen Qing Cao, L.Ac.
608 - 610 East Live Oak Ave.
Arcadia, CA 91006

regular mail

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

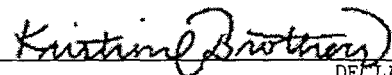
regular mail

Vincent Nafarrete, ALJ
Office of Administrative Hearings
General Jurisdiction Division
320 West Fourth St., Ste. 630
Los Angeles, CA 90013

regular mail

Each said envelope was, on May 17, 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 May 17, 2010 at Sacramento, California.



DECLARANT