

BEFORE THE  
ACUPUNCTURE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues  
Against:

SOON AE YOON,

Respondent.

Case No. 1A-2016-138

OAH No. 2017120519

**ORDER OF DECISION**


**DECISION**

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Acupuncture Board as its Decision in the above-entitled matter.

This Decision shall become effective on August 24, 2018.

IT IS SO ORDERED this 27th day of July, 2018.

By: \_\_\_\_\_

  
Amy Matecki, MD, L.Ac.,  
President  
California Acupuncture Board

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**PROPOSED DECISION**

Matthew Goldsby, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on June 11-12, 2018, at Los Angeles, California.

Wendy Widlus, Deputy Attorney General, appeared and represented complainant Benjamin Bodea, Executive Officer of the Acupuncture Board (Board).

David Paek, Attorney at Law, appeared and represented respondent Soon Ae Yoon, who was present throughout the hearing.

The parties submitted the matter for decision on June 12, 2018.

**FACTUAL FINDINGS**

*Jurisdictional Facts*

1. On April 5, 2016, respondent completed and filed an Application for Acupuncture License (Application). Respondent disclosed that she had two prior misdemeanor convictions in 2012 that were dismissed pursuant to Penal Code section 1203.4, and that she was charged with a violation of Penal Code section 647, subdivision (b), in 2015, describing the disposition as “mistrial – defendant discharged.” (Ex. 8, p. 129.) Respondent furnished court records relating to these disclosures of her criminal record.

2. On October 13, 2017, while acting in his official capacity, complainant filed a Statement of Issues against respondent, requesting that a hearing be held and a decision rendered on the issue of whether the Application should be denied.

3. The Application is now pending, and no license has been issued pursuant to the Application.

#### *Conviction*

4. On May 16, 2016, after filing the Application, respondent entered a plea of nolo contendere and was convicted of practicing massage therapy without a permit in violation of Los Angeles Municipal Code section 103.205, a misdemeanor. (*People v. Soon* (Super. Ct. Los Angeles County, 2016, No. 6VW00887).) The court suspended imposition of sentence, authorized a reduction of the charge to an infraction if respondent applied for a valid license, and placed respondent on summary probation for 24 months. The court ordered respondent to pay fines and fees in the total amount of \$230, not to associate with and stay away from the location of the arrest, and to obey all laws and orders of the court.

5. The conviction was based on the following facts and circumstances. An undercover officer, working under assignment with the North Hollywood Vice Unit of the Los Angeles Police Department, entered a massage business and was greeted by respondent. After the officer requested a massage, respondent led the officer to a room and instructed him to undress and lie on the table. After removing all clothing but his undershirt and his shorts, the officer covered himself with a towel and lay on the table. Respondent returned to the room and began to give the officer a massage. After approximately three minutes, two other officers entered the business wearing raid jackets and bearing police badges. The officers found no permit for massage therapy. Respondent was the only therapist observed in the location and was detained without incident.

6. On May 16, 2018, respondent filed a petition to expunge the conviction pursuant to Penal Code section 1203.4. (Ex. C.) The petition is pending.

#### *Unprofessional Conduct*

7. On April 3, 2012, after a trial and jury verdict, respondent was convicted of soliciting another for prostitution in violation of Penal Code section 647, subdivision (b), and practicing massage therapy without a permit in violation of Los Angeles Municipal Code section 103.205, both misdemeanors. (*People v. Soon* (Super. Ct. Los Angeles County, 2012, No. 1PY 07174).) The court suspended imposition of sentence as to both counts and placed respondent on summary probation for 24 months. On April 23, 2014, the court set aside the verdict and dismissed the case pursuant to Penal Code section 1203.4

8. The 2012 conviction was based on the following facts and circumstances, as reflected in a police report. On December 22, 2011 an undercover officer entered a massage business, having observed the business on illicit adult websites known for illegal massage and prostitution promotion. The undercover officer entered the business and paid \$50 in advance for a massage. He was then led to an unmarked room which was equipped with a massage table, towels, sheets, and massage lotions. Respondent entered the room and, without knowing the officer was acting in his law enforcement capacity, began to administer a massage.

9. The officer reported the following conversation with respondent, referred to in the report as “deft-2:”

Ofcr: That’s a nice top you’re wearing! You look good in it.

Deft-2: Thanks. You like it (at that time deft-2 moved away from the massage table and pulled her shirt up, exposing her black bra. Deft-2 then lifted her bra, exposing her breast)?

Ofcr: I can see you know I’m not here for the massage. Is that included?

Deft-2: No it’s (deft-2 raised four fingers, indicating \$40).

Ofcr: Okay, \$40. But what does that get me?

Deft-2: This (deft-2 closed her fist and made an up and down motion - s/v for manual masturbation).

Ofcr: \$40 for a hand job (s/v for manual masturbation)?

Deft-2: Yes (nodding her head up and down). You want?

Ofcr: How about a blow job (s/v for oral copulation)?

Deft-2: Oh no. We can’t do that here. The manager will be mad, maybe fire us. He says it’s okay for only this (deft-2 closed her fist and made an up and down motion).

Ofcr: Actually I can do that at home. Maybe next time we can do more?

At that time [the officer] got up from the massage table and began to get dressed. [He] then gave deft-2 [a] \$20 bill as a tip for the massage. Deft-2 then exited the room as [the officer] continued getting dressed.

(Ex. 5, p. 0066)

10. On May 7, 2012, respondent entered a guilty plea and was convicted of practicing massage therapy without a permit in violation of Los Angeles Municipal Code section 103.205, an infraction. (*People v. Soon* (Super. Ct. Los Angeles County, 2017, No. 2PY01400).) The court ordered respondent to pay fines totaling \$490. On August 13, 2013, the court set aside the plea and dismissed the case pursuant to Penal Code section 1203.4

11. On November 20, 2015, respondent entered a plea of not guilty to charges based on allegations that she solicited prostitution in violation of Penal Code section 647, subdivision (b). On March 4, 2016, after a jury trial, the court found that the jury was “hopelessly deadlocked,” declared a mistrial, dismissed the case, and discharged respondent. (Ex. 7, p. 0122.)

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### *Mitigation and Rehabilitation*

12. Respondent immigrated to the United States when she was 30 years old in 2004. After her arrival, she met her husband, and they had two children together. Respondent devoted her time to being a housewife and mother while her husband “borrowed money [they] couldn’t afford to pay back and started an advertising agency.” (Ex. B.) After “a little over a year the business failed, leaving only debts.” (*Id.*)

13. In July 2009, “unable to overcome the pressures of his failure and the constant harassment of his debt collectors [and] local loan sharks,” respondent’s husband committed suicide. In her written statement to the Board, respondent explained: “When I received the call from his work about his death, I felt as if I was hit with a sledgehammer on the top of my head. I collapsed and my life came crashing down.” (Ex. B.) Respondent was shocked and considered suicide herself, but “could not do it when [she] looked into the eyes of [her] children.” (*Id.*)

14. Respondent was left alone to provide for a four-year-old son and a one-month-old daughter, and to repay the business debts. Respondent did not speak English<sup>1</sup> and had limited work experience.

15. Respondent first worked as a housecleaner, but was burdened by having to bring her children with her to the work site. Moreover, because she failed to get medical care following delivery of her daughter, respondent developed a medical condition that caused swelling in her hands and feet and paralysis and numbness in her hands. Accordingly, her efforts to make money as a housecleaner were unsuccessful.

16. Respondent found work in a restaurant as a waitress, but her hand condition caused her to drop and break dishes. She was discharged for failure to perform to the satisfaction of the employer.

17. Respondent worked in a hair salon as an assistant where she was allowed to bring her children. However, respondent was unable to function in the air-conditioning. She developed a cough and flu-like symptoms, and was unable to continue working in the salon.

18. In her written statement to the Board, respondent explained her financial hardship as follows:

I did everything to save money. I did not put diapers on my daughter when she was at home and I watered down her formula when I fed her so it would last longer. I bought old and wilted vegetables at half price. I skipped meals and would eat less so my children could eat. Even then, it was difficult for me to

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<sup>1</sup> Throughout the hearing, a Korean-English interpreter provided language services to respondent.

make ends meet, to put food on the table. In the end, we were kicked out of our home because I could not pay the rent.

(Ex. B.)

19. After respondent was evicted from her residence, an acquaintance offered to allow respondent to sleep in her living room until she could find another place to live. In August 2011, another acquaintance offered respondent work in a massage parlor. Respondent explained, “The work wasn’t too hard and there was no air conditioning . . . to hurt my joints and many customers were very generous with tips even though I wasn’t very good at giving massages.” (Ex. B.)

20. At the time, respondent had not yet assimilated to American culture, and she did not have knowledge about the laws of prostitution. She testified that she believed prostitution was “if you have sex outside,” taken to mean what is commonly referred to as “street walking.” In her written statement to the Board, respondent described her reaction to being convicted for soliciting prostitution as follows:

I was shocked, frightened and ashamed. It was a terribly difficult time for me. I felt so alone. I went home, grabbed my kids and hugged them tight and close without looking at them but I still felt utterly alone.

I was full of regret, shame and blame. I wondered how my life had come to this and I blamed God. I asked Him why is [He] doing this to me; why He wants to destroy me and my family; why He was making me and my kids suffer so much. I asked Him to just strike me dead it was a crime to try to survive. I had nothing to lose.

(Ex. B.)

21. Respondent’s mother came from China to help raise the children, and respondent “started [her] studies in oriental medicine again even though it was very late for [her] age . . .” (Ex. B.) Respondent received governmental food subsidies, and continued to struggle financially.

22. In 2015, respondent returned to work at a massage parlor while preparing for the examination to obtain an acupuncture license. Respondent knew that a massage therapy license was required for her employment, and “felt wrong” and “blamed other people” for her circumstance. However, she testified that she was motivated by her financial hardship, and that she “did not think it was that serious” to provide massage without a license.

23. Respondent was arrested and convicted as described in Factual Findings 4-6. Respondent testified, “I realize it was me who was at fault . . . and so I don’t blame others.”

She described the sought-after license as “a very special thing for my life [that] became my hope.”

24. Respondent took and passed the examination for an acupuncture license. If given a license, respondent intends to help those in despair and provide them with hope.

25. At hearing, respondent present nine character reference letters in support of the Application. Respondent did not furnish intimate details of the cause of her husband’s death to each writer, which included a licensed treating acupuncturist and the dean of her acupuncture school. However, each writer acknowledged that respondent had a criminal record, and yet supported her Application in generally glowing terms.

#### *Costs*

26. In its prosecution of the Statement of Issues, complainant incurred actual costs in the sum of \$8,725 through June 6, 2018, and anticipated incurring additional costs thereafter in the amount of \$2,720. Complainant’s counsel requested the administrative law judge to award the Board the total amount of \$11,445, addressed below at Legal Conclusions 15-16.

### LEGAL CONCLUSIONS

1. In a hearing to determine whether a license should be granted or issued, the applicant must show compliance with the statutes and rules governing the license by producing proof at the hearing. (Gov. Code, § 11504; *Coffin v. Department of Alcoholic Beverage Control* (2006) 139 Cal.App.4th 471, 475) The standard of proof upon the applicant for a license is a preponderance of the evidence. (Evid. Code, § 115.)

2. The Board is a consumer protection agency with the primary mission of protecting consumers of acupuncture services from potentially harmful licensees. “Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.” (Bus. & Prof. Code, § 4928.1.)

3. The Board must issue a license to practice acupuncture to any person who makes an application and meets the statutory requirements. (Bus. & Prof. Code, § 4938, subd. (a).)

4. The Board has the authority to investigate and evaluate every applicant applying for a license to practice acupuncture and to make the final determination of the admission of the applicant to the examination, or for the issuance of a license, in conformance with the provisions of Acupuncture Licensure Act. (Bus. & Prof. Code, § 4944, subd. (a).)

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5. The Board may deny an application for an acupuncture license for the following reasons:

(A) If the applicant is guilty of unprofessional conduct. (Bus. & Prof. Code, § 4955.) Unprofessional conduct includes the conviction of a crime substantially related to the qualifications, functions, or duties of an acupuncturist. (Bus. & Prof. Code, § 4955, subd. (b).)

(B) If the applicant is guilty of committing a fraudulent act, including but not limited to committing any act involving “dishonesty or corruption” with respect to the qualifications, functions, or duties of an acupuncturist. (Bus. & Prof. Code, § 4955.1, subd. (c).)

6. Notwithstanding any other provisions of the Business and Professions Code, a person shall not be denied a license solely on the basis of a conviction that has been dismissed pursuant to Penal Code section 1203.4. (Bus. & Prof. Code, § 480, subd. (c).)

7. In this case, respondent was convicted of engaging in massage therapy without a valid license. The conviction of a crime involving unlicensed activity is substantially related to the qualifications, functions, or duties of an acupuncturist. Accordingly, cause exists to deny the Application because the substantially related conviction constitutes unprofessional conduct under Business and Professions Code section 4955, subdivision (b).

8. Complainant argued that the practice of acupuncture sustains damage by those using an acupuncture license as a front to operate prostitution businesses. Accordingly, the Board has a compelling interest to exercise its regulatory authority to prevent such illegitimate objectives. Respondent’s prior conviction for soliciting prostitution may not be considered as the sole basis for the denial of her Application because the conviction was dismissed pursuant to Penal Code section 1203.4. However, the evidence of soliciting prostitution constitutes “other acts or conduct” that warrant the denial of an acupuncture license under Business and Professions Code section 4955, subdivision (i).

9. Moreover, performing massage services to the public with the knowledge that a license is required for those services is dishonest conduct. Accordingly, cause exists to deny the Application under Business and Professions Code section 4955.1, subdivision (c), because respondent engaged in a fraudulent act.

10. The Board has adopted the “Department of Consumer Affairs, Acupuncture Board, ‘Disciplinary Guidelines’ 1996” (Guidelines) as an administrative regulation pursuant to the Administrative Procedure Act. (Cal. Code Regs., tit. 16, § 1399.469.) If at the time of hearing, an administrative law judge finds that the respondent is not capable of safe practice for any reason, “particularly . . . in cases of patient sexual abuse or bodily harm,” the Guidelines recommend outright revocation of the license, and inferably denial of an application for an acupuncture license. “In less egregious cases,” the Guidelines recommend a stayed revocation with probation pursuant to terms and conditions approved by the Board.



11. The evidence in this case does not establish that respondent is unsafe to practice. Because respondent has passed the required examinations, she has demonstrated that she is qualified to act as an acupuncturist. Although she engaged in the unlicensed practice of massage, the facts and circumstances of the conviction did not involve sexual abuse or bodily harm. Likewise, the police report relating to the solicitation of prostitution shows a dialog in which respondent agreed to give “a hand job” to an undercover officer, but she declined the officer’s requests for “a blow job” and no actual sexual activity took place. Notwithstanding all the public policy considerations argued by complainant about the laws prohibiting prostitution, there is no evidence that respondent caused any actual harm or sexual abuse to any patient.

12. Respondent’s personal history is compelling mitigating evidence. Although financial woes do not excuse dishonest or unlawful acts, the criminal justice system imposed appropriate punishment for respondent’s unlawful conduct. The purpose of this administrative proceeding is not to impose additional punishment, but rather to protect the public from dishonest, immoral, disreputable, or incompetent practitioners. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) The goal is the prevention of future harm and the improvement and rehabilitation of the licensee. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 772.) Respondent’s unlawful conduct, which is not to be condoned, arose only after she was confronted with extraordinary circumstances. The lack of any criminal record before her husband’s suicide indicates that respondent does not have an inherent dishonest or immoral character trait. If given the opportunity to improve her station in life, respondent credibly testified that she would have no impulse to repeat the unlawful conduct.

13. There is no evidence to show that respondent’s summary probation was extended, and respondent has taken action to expunge the conviction. Her prior convictions were based on conduct committed over six years ago and each prior conviction was dismissed pursuant to Penal Code section 1203.4. The evidence is sufficient to show that respondent is safe to practice and that the public will be adequately protected by standard probationary terms that will enable the Board to monitor respondent’s continuing rehabilitation.

14. The Board may request the administrative law judge, “under his or her proposed decision in resolution of a disciplinary proceeding before the board, to direct any licensee found guilty of unprofessional conduct to pay to the board a sum not to exceed actual and reasonable costs of the investigation and prosecution of the case.” (Bus. & Prof. Code, § 4959, subd. (a).)

15. The request for the recovery of \$11,455 in costs is denied on several grounds. First, this proposed decision does not resolve “a disciplinary proceeding” against “a licensee.” (Bus. & Prof. Code, § 4959, subd. (a).) The language of a statute is given its plain and ordinary meaning while considering each provision of the statute in context of the entire statutory scheme. (*DuBois v. Workers' Comp. Appeals Bd.* (1993) 5 Cal.4th 382; *Hall v. Court Reporters Bd.* (2002) 98 Cal.App.4th 633.) If the Legislature intended to allow the

Board to recover costs relating to its consideration and denial of a license to a prospective licensee, Business and Professions Code section 4959 would include language to that effect.

16. Second, the amount requested exceeds the actual and reasonable costs to prosecute a case based solely on court records that respondent furnished with the Application and in which complainant presented no witnesses at hearing. Assuming arguendo Business and Professions Code section 4959 applies to respondent, an agency must not assess costs of investigation and enforcement when to do so would unfairly penalize a respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty. (*Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32.) Respondent has demonstrated by compelling evidence that she has suffered substantial financial hardship in her recent past and that an award of costs would unfairly punish her for using the hearing process to seek a reduction in the severity of the outright denial of the Application.

## ORDER

The Application for Acupuncture License filed by respondent Soon Ae Yoon is granted. The Board shall issue an acupuncture license forthwith, and the license shall be immediately revoked; however, the revocation is stayed and respondent is placed on probation for a period of three years under the following terms and conditions:

**1. 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 the respondent to the Board in writing within 72 hours of occurrence.

**2. 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.

**3. 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.

**4. 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.

**5. Changes 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.

**6. 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.

**7. Employment and Supervision of Trainees.** Respondent shall not employ or supervise or apply to employ or supervise acupuncture trainees during the course of this probation. Respondent shall terminate any such supervisorial relationship in existence on the effective date of this probation.

**8. Cost Recovery.** Respondent shall not pay to the Board its costs of investigation and enforcement of the Statement of Issues.

**9. 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.

**10. Completion of Probation.** Upon successful completion of probation, respondent's license will be fully restored.

DATED: July 5, 2018

DocuSigned by:  
*Matthew Goldsby*  
MATTHEW GOLDSBY  
Administrative Law Judge  
Office of Administrative Hearings