

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-2011-93

OAH No. 2011070874

DECISION

This matter was heard before a quorum of the Acupuncture Board (Board)¹ in Sacramento, California on August 25, 2011. Administrative Law Judge Linda A. Cabatic, State of California, Office of Administrative Hearings, presided over the hearing.

Maura Faust, Deputy Attorney General, represented the Attorney General's Office, pursuant to Government Code section 11522.

Dong Hyun Chang (petitioner) was present and was represented by his attorney, Edward Lear.

The record was held open to allow petitioner to submit evidence of the expungement of his conviction. On September 6, 2010, petitioner faxed copies of several documents, which have been collectively marked as Exhibit 4. The documents consist of a letter written by petitioner dated August 26, 2011, to his attorney, explaining that the criminal case involved the Chiropractic Board. Petitioner stated that

The case is not necessarily to be expunged because that is not the criminal case that is only the license case. [sic] My criminal lawyer said that we do not need to expunge the license case because the case is not recorded in the State or Federal Court.

Other documents submitted by petitioner include a copy of a letter dated June 21, 2006, to petitioner from Leticia Medina, Financial Litigation Analyst, which provides a copy of the Satisfaction of Judgment filed with the United States District Court and a Release of

¹ Board members present for the hearing were Robert Brewer, Chair; Charles Kim, Vice Chair; Nancy Carroll, Frank He, An York Lee and Paul Weisman.

Lien in the case of *U.S. v. Dong Hyun Chang*, U.S. District Court for the Central District of California, Case No. CR 04-466-CAS. Also submitted was a letter dated January 25, 2006, from Deputy Attorney General Chris Leong to petitioner regarding the Stipulation for Surrender of his license in the case of *In the Matter of the Accusation/Petition to Revoke Probation Against: Dong Hyun Chang, L.A.C.*, OAH No. L 2005120360, and five pages of documents that appear to relate to the Release of Lien. Since the documents provided by petitioner are not certified copies, the documents were admitted as administrative hearsay. The matter was submitted for decision on September 8, 2011.

FACTUAL FINDINGS

1. On December 29, 1983, Acupuncture Certificate No. AC-2244 was issued to petitioner.

2. On October 8, 1993, the Executive Officer of the Acupuncture Committee² issued an Accusation (First Accusation) against petitioner. On May 13, 1994, petitioner entered into a Stipulation for Settlement (Stipulated Settlement), which was adopted by the Acupuncture Committee as its decision and order on June 27, 1994. In the Stipulated Settlement, petitioner admitted that, as part of a conspiracy, he paid \$5,000 for the answers to the 1983 written and practical acupuncture examinations, which he used to take and pass those examinations and obtain his license. Pursuant to the Stipulated Settlement, petitioner was placed on probation for 18 months. In addition, he agreed that he would take the practical/clinical acupuncture examination.

3. On October 9, 1997, the Executive Officer of the Acupuncture Committee issued an Accusation (Second Accusation). On March 25, 1998, a hearing on the Second Accusation was held before an administrative law judge of the Office of Administrative Hearings. On April 13, 1998, the administrative law judge issued a proposed decision. On May 28, 1998, the Acupuncture Committee issued an Order of Nonadoption of the administrative law judge's proposed decision. On December 29, 1998, the Acupuncture Committee adopted a Decision After Nonadoption, which became effective on January 28, 1999.

In the Decision After Nonadoption, the Acupuncture Committee adopted the administrative law judge's proposed decision as its decision, but modified the order set forth in the proposed decision. The Acupuncture Committee found that: (1) petitioner, as part of a conspiracy, submitted reports and bills to an insurer regarding two individuals that he had never met or treated; (2) on March 28, 1996, in the Los Angeles County Superior Court, petitioner was convicted, on a plea of nolo contendere, of two counts of violating Penal Code section 550, subdivision (a)(1), filing fraudulent insurance claims; and (3) at the March 25, 1998 hearing, petitioner's testimony was "less than candid" about the facts and circumstances surrounding his conviction.

² The Acupuncture Committee was redesignated as the Acupuncture Board.

Pursuant to the Decision After Nonadoption, petitioner's license was revoked, but the revocation was stayed and petitioner was suspended for six months and placed on probation for seven years subject to various terms and conditions, including that, during probation, petitioner was prohibited from accepting personal injury litigation referrals and from undertaking personal injury litigation consultations.

4. On September 26, 2005, the Executive Office of the Board issued an Accusation and Petition to Revoke Probation (Third Accusation) against petitioner. On January 30, 2006, petitioner entered into a Stipulated Surrender of License and Order (Stipulated Surrender), which was adopted by the Board as its decision and order on March 23, 2006, effective April 23, 2006. In the Stipulated Surrender, petitioner admitted the truth of all the charges and allegations set forth in the Third Accusation, including that: (1) in 2003 and 2004, petitioner, who was then also licensed as a chiropractor, had an agreement with a law office administrator pursuant to which petitioner agreed that, in exchange for the law office referring patients to him, he would pay the law office a "kickback" from any insurance payments he received for providing chiropractic care to the referred patients; (2) petitioner prepared false and fraudulent medical bills for a patient referred by the law office, which included charges for services that petitioner did not provide; and (3) on September 13, 2004, in the United States District Court, petitioner pled guilty to violating 18 United States Code section 1341, mail fraud, a felony.

5. Petitioner filed a Petition for Penalty Relief (First Petition) dated June 2, 2009. On December 15, 2009, the Board denied petitioner's First Petition finding that petitioner failed to meet his burden of establishing that he was rehabilitated and would not pose a risk to the public if his license were reinstated.

6. On or about January 27, 2011, petitioner filed the instant Petition for Reinstatement. Included with his petition were letters of recommendation from Eun Hee Moon L.Ac., who stated that petitioner is a very hard worker and an incredibly honest person; and a letter from Tea Ho Kim, who stated that petitioner had a hard time after he lost his license. Mr. Kim believes that petitioner studies hard and could be an excellent acupuncturist.

7. In petitioner's narrative statement, he explained that he entered into the Stipulated Surrender because his actions warranted discipline. He owns and operates a coin laundry facility. He regrets the mistakes he has made and is remorseful. Petitioner believes that he has been rehabilitated. He has worked very hard to keep current with acupuncturist practices and procedures. He has sought the assistance of a clinical psychologist to address his behaviors.

8. Petitioner submitted with his petition, a declaration from Judith R. Cohn, dated February 28, 2011. Dr. Cohn is the clinical psychologist who began seeing petitioner on October 25, 2010. Dr. Cohn states:

... When asked if he was 'sorry,' I believe it was all he could do to understand what was asked. He does not appear to have access within himself to the ways other people might express themselves. However, over time, I began to sense the truth of his humiliation and the recognition of his wrongdoing. He appeared devastated by his prior dishonest choices. His determination to stay far away from any situations that might become problematic was clear. He maintains he only wants to practice his acupuncture. . .

Although he has not volunteered for public service, he did complete a course in ethics at Pierce College. However, by far the most convincing argument that Dr. Chang would not pose a risk or danger to the public is his attitude. When asked about his past misconduct and dishonesty, he visibly "shrinks." He says his behavior has caused him such pain and humiliation that he could never allow such temptation in his life again. . .

If petitioner's license is reinstated, Dr. Cohn recommends that petitioner be supervised to ensure no future wrongdoing occurs. Dr. Cohn also recommended group therapy, continued personal therapy, and medication.

9. Petitioner submitted certificates of completion for a course in Jung-An Acupuncture Innotechnic from the AKAMAC Education Center in September 2010, and HWA Acupuncture Therapy also in September 2010. While Dr. Cohn stated that petitioner took an ethics course at Pierce College, petitioner did not submit a certificate or other evidence of completion of this course.

10. At the hearing, petitioner stated he understands what he did was wrong. He saw Dr. Cohn for four months, but she released him and he is not currently under her care. He asserted that he has learned that what he did was wrong and he will not follow bad advice in the future. He wants to serve his community by practicing what he loves. His plan, if he is reinstated, is to regain tranquility through meditation and prayer, and start his practice based upon his clients and his community. Petitioner wants to take care of seniors in his community but cannot do so without a license.

LEGAL CONCLUSIONS

1. 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.

2. Business and Professions Code section 4960.5, which contains the provisions of law dealing with reinstatement of licenses for acupuncturists, provides, in pertinent part:

(a) A person whose license or registration has been revoked, suspended or surrendered, or who has been placed on probation, may petition the board for reinstatement or modification of penalty, including modification or termination of probation, after a period of not less than the following minimum periods has elapsed from the effective date of the decision ordering that disciplinary action:

(1) At least three years for reinstatement of a license revoked or surrendered.

[¶ . . . ¶]

(b) The board may require an examination for that reinstatement.

(c) Notwithstanding Section 489, a person whose application for a license or registration has been denied by the board, for violations of Division 1.5 (commencing with Section 475) of this chapter, may reapply to the board for a license or registration only after a period of three years has elapsed from the date of the denial.

3. California Code of Regulations, title 16, section 1399.469, incorporates the Board's Disciplinary Guidelines by reference. With respect to petitions for reinstatement, these Guidelines provide that:

The Board will consider the following criteria of rehabilitation:

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 should have his license restored, and not on the board to prove to the contrary. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) It goes without saying that the pertinent issues in the inquiry are petitioner's activities since revocation of his license and his present qualifications, ability and learning. (*Ibid.*) Statutes relating to licensed professions seek to maintain integrity and high standards, and preserve public confidence in holders of professional licenses. (*Clerci v. Dept. of Motor Vehicles* (1990) 224 Cal.App.3d 1016.)

5. As set forth in Business and Professions Code section 4928.1, protection of the public is the highest priority of the Board in exercising its licensing, regulatory, and disciplinary functions. The public interest in regulating acupuncture through licensing statutes is to make certain that the privileges granted under an acupuncture license are not exercised in contravention of the law, to ensure that the regulated activity remains upright and honest, and to require and maintain professional standards of conduct on the part of licensees.

6. Petitioner engaged in serious misconduct involving fraudulent conspiracies and dishonesty. There were three accusations filed against him for this misconduct. When he committed the criminal acts described in the Third Accusation, he was still on probation for the criminal wrongdoing set forth in the Second Accusation.

It has been seven years since the commission of petitioner's last crime in 2004 and petitioner provided a copy of a Satisfied of Judgment in his federal case.

With respect to expungement, petitioner's testimony and submissions were confusing. With respect to the conspiracy offense committed in 1993, petitioner suffered a suspension and was placed on probation. Exhibit 3 is a copy of a minute order with a printing date of August 23, 2011, from the Municipal Court of California, County of Los Angeles, that shows petitioner's motion to expunge his conviction of insurance fraud in violation of Penal Code section 550, was granted on June 24, 1999, and his probation was previously terminated.

7. To obtain reinstatement of his license, petitioner had the burden of establishing that he has been rehabilitated and does not pose a risk to the public interest, safety or welfare. Petitioner did not meet this burden. Petitioner provided scant evidence of rehabilitation. The letters of recommendation do not show either that the writers had knowledge of petitioner's offenses or provide support for his rehabilitation. (Finding 6.) Dr. Cohn's declaration recommends supervision to ensure no future wrongdoing. If petitioner is in fact rehabilitated, however, he would not require supervision to ensure that no future wrongdoing

occurs. Petitioner stated he took an ethics course, but there was no certificate submitted to corroborate his statement. Petitioner is no longer seeing Dr. Cohn nor participating in group therapy or personal therapy, as she recommended. (Finding 7.) While petitioner may understand what he did wrong, there is no evidence to assure the Board that he would not reoffend. But for the declaration of Dr. Cohn, Petitioner provided no specific rehabilitation efforts, such as significant involvement in any community, church or other programs that would assist in his rehabilitation; no letters of recommendation from persons who were aware of petitioner's past crimes that attest to his change in attitude or behavior; no specific rehabilitation efforts designed to prevent future acts of fraud or dishonesty; and no real steps taken to prevent any relapse or reoccurrence. While petitioner has taken steps in the right direction, he did not demonstrate that he would not pose a risk to the public if his license were reinstated.

ORDER

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

Dated: NOV 09 2011

By: 
ROBERT BREWER
Chair
Acupuncture Board