

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ROBIN LI JACOBI, L.Ac,

Acupuncture License No. AC 7732

Respondent.

Case No. 1A-2010-219

OAH No. 2011090402

PROPOSED DECISION

Administrative Law Judge Dianna L. Albin, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on February 2, 2012.

Catherine E. Santillan, Senior Legal Analyst, represented complainant.

Respondent Robin Li Jacobi was present and represented himself.

The matter was submitted on February 2, 2012.

FACTUAL FINDINGS

1. Janelle Wedge made this First Amended Accusation in her official capacity as the Executive Officer of the Acupuncture Board of California and not otherwise.

2. On February 22, 2001, the Acupuncture Board of California issued Acupuncture License Number AC 7732 to respondent Robin Li Jacobi. The license is current and valid until February 29, 2012, at which time the license will expire unless renewed.

Convictions

3. On August 22, 2006,¹ in the County of Santa Cruz, respondent was convicted on his plea of guilty of a violation of Vehicle Code section 14601, subdivision (a) (driving on a suspended license), a misdemeanor. Imposition of sentence was suspended and respondent was placed on probation for 36 months. The terms and conditions of probation included the

¹ The accusation incorrectly identifies the date of conviction as October 6, 2006.

following. Respondent was to pay fines, fees and restitution in the amount of approximately \$1,500. Unless properly licensed, respondent was not to operate a vehicle. Respondent was to enroll in a residential treatment program for substance abuse. Respondent's August 22, 2006 conviction is substantially related by the facts and circumstances of this incident, to the qualifications, functions and duties of an acupuncturist.

4. The facts and circumstances of the August 22, 2006 conviction are that on August 2, 2006, Santa Cruz police officer Jones was conducting a follow up investigation regarding a hit-and-run accident involving respondent. On August 2, 2006, Officer Jones performed a traffic stop of respondent, who was operating a vehicle on a suspended license. During this stop, respondent was in possession of crack cocaine and paraphernalia.

5. On October 10, 2006, in the County of Santa Cruz, respondent was convicted on his plea of guilty of violations of Health and Safety Code section 11350, subdivision (a) (possession of a controlled substance), a felony, and a violation of Vehicle Code section 14601, subdivision (a) (driving on a suspended license) with one prior, a misdemeanor. Imposition of sentence was suspended and respondent was placed on probation for 36 months on the following terms and conditions. Respondent was ordered to serve 120 days in jail or, in the alternative, enroll and complete a live-in substance abuse rehabilitation facility. Respondent was to pay fines, fees and restitution of approximately \$1,200 and to abstain from the use of alcohol or controlled substances. Respondent was required to register with local law enforcement pursuant to Health and Safety Code section 11590 (drug offender registry). Respondent was to be on probation related to these convictions until October 10, 2009.

6. Respondent's October 10, 2006 convictions are substantially related by the facts and circumstances of this incident, to the qualifications, functions and duties of an acupuncturist.

7. The facts and circumstances of the October 10, 2006 conviction are that on September 8, 2006, respondent was operating a vehicle on a suspended license. During the traffic stop it was determined that respondent was in possession of cocaine and drug paraphernalia.

8. On February 7, 2011, respondent was convicted in the County of Santa Cruz on his plea of nolo contendere of a violation of Health and Safety Code section 11550, subdivision (a) (under the influence of a controlled substance, to wit, cocaine and opiates), a misdemeanor. Imposition of sentence was suspended and respondent was placed on formal probation for 36 months. The terms and conditions of probation included that respondent pay fines and fees of approximately \$1,100, that he attend five Alcoholic Anonymous (AA) or Narcotic Anonymous (NA) meetings per week until the time that he entered and completed a Proposition 36 program. Respondent was required to abstain from the use of controlled substances and alcohol. Probation related to this conviction extended until February 7, 2014. On July 22, 2011, respondent admitted a probation violation and his probation was terminated unsuccessfully.

9. Respondent's February 7, 2011 conviction is substantially related to the qualifications, functions and duties of an acupuncturist.

10. The facts and circumstances of respondent's February 7, 2011 conviction are that on December 10, 2010, respondent was operating his vehicle under the influence of a controlled substance. Toxicology screening revealed that respondent tested positive for cocaine, benzodiazepines, marijuana, and opiates.

11. On July 22, 2011, respondent was convicted in the County of Santa Cruz on his plea of nolo contendere of a violation of Health and Safety Code section 11358 (cultivating marijuana), a felony. Imposition of sentence was suspended and respondent was placed on formal probation for 36 months. The terms and conditions of respondent's probation included that he serve 90 days in jail, that he pay fines, fees and restitution in the amount of approximately \$500, and that he register with local law enforcement pursuant to Health and Safety Code section 11590 (drug offender registry). Respondent remains on probation until July 22, 2014.

12. Respondent's July 22, 2011 conviction is substantially related to the qualifications, functions and duties of an acupuncturist.

13. The facts and circumstances of respondent's July 22, 2011 conviction are that on May 23, 2011, respondent was growing marijuana for sale at a home in Santa Cruz, California. At the time of respondent's arrest, police observed several plastic tubs containing several pounds of marijuana buds in respondent's bedroom.

Dishonest act

14. On June 9, 2010, respondent completed an acupuncture network application for the American Specialty Health (ASH) Plans to become a contracted and credentialed acupuncture provider with ASH. Respondent attested to the truth and accuracy of the information provided in the ASH application.

15. Page 10, Question 4 of the ASH application states, "Have you even been convicted of, or pled nolo contendere (no contest), or are you currently under investigation for a misdemeanor, felony, or moral or ethical crime?" Respondent answered this question, "No."

16. ASH accepted respondent as a provider of acupuncture services pursuant to the provider services agreement. Pursuant to the terms of the service agreement, respondent was to notify ASH within 48 hours of any criminal convictions. Respondent failed to disclose his 2006 criminal convictions on his application. He also failed to notify ASH within 48 hours of his 2011 criminal convictions.

Respondent's evidence

17. Respondent states that he accepts responsibility for his conduct. Respondent explained that he was experiencing difficult personal problems in 2006 that included a divorce and the relocation of his family and turned to drugs during this time. Respondent completed a 60 day residential recovery program in February of 2007, but was unable to maintain his sobriety. Respondent sustained an injury to his leg for which he received opiate prescriptions as well as medical marijuana. Respondent has not used marijuana since February of 2011. Respondent received treatment from Sobriety Works in Aptos, California in 2010 and 2011. He does not believe he has a substance abuse problem, but attends one to three AA or NA meetings per week. Respondent also works with a sponsor. On July 22, 2011, respondent was admitted into the work-release program to serve his confinement.

18 Several character letters were submitted at hearing by respondent. Two letters were from respondent's patients attesting to the benefit received from respondent's treatments. These letters did not make reference to respondent's criminal history.

19 Respondent has made progress toward his sobriety and getting his life back on track, however at this time, the evidence does not establish that respondent is rehabilitated. Under the current circumstances, it would no be consistent with the public health, safety and welfare to allow respondent to maintain his license.

Costs

20. The Board has incurred legal fees in the investigation and prosecution of this matter in the amount of \$7,377.50. In the absence of any evidence or argument to the contrary, these incurred costs are found to be reasonable.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 118(b), expiration of a license does not deprive the Board of its authority to institute or continue a disciplinary action or to discipline the license.

2. Pursuant to Business and Professions Code section 4955, the Board may discipline a license of any acupuncturist if he is guilty of unprofessional conduct. Unprofessional conduct includes using or possessing any controlled substance or dangerous drug to an extent or in a manner dangerous to himself or to any other person, or to the public, and to an extent that it impairs his ability to engage in the practice of acupuncture with safety to the public. (Bus. & Prof. Code § 4955, subd. (a).)

By reason of the matters set forth in Findings 3 through 13, cause for disciplinary action exists pursuant to Business and Professions Code section 4955, subdivision (a) (unprofessional conduct: use of a controlled substance in a manner dangerous to himself or to any other person).

3. Pursuant to Business and Professions Code sections 4955, subdivision (b), and 4956, the Board may discipline a license of any acupuncturist if he is convicted of a crime that is substantially related to the qualifications, functions, or duties of an acupuncturist. (Bus. & Prof. Code §§ 4955, subd. (b), & 4956.)

By reason of the matters set forth in Findings 3 through 13, cause for disciplinary action exists pursuant to Business and Professions Code sections 4955, subdivision (b), and 4956 (unprofessional conduct: conviction of a substantially related crime/violation of law).

4. Pursuant to Business and Professions Code section 4955.1, subdivision (b), the Board may discipline an acupuncturist's license if he is guilty of committing a fraudulent or dishonest act as an acupuncturist. Respondent's denial of his criminal convictions when he applied to become an ASH provider constituted a dishonest act. This was further compounded by respondent's further failure to disclose his 2011 convictions within 48 hours. By reason of the matters set forth in Findings 14 through 16, cause for disciplinary action exists pursuant to Business and Professions Code section 4955.1, subdivision (b), (committing a fraudulent or dishonest act as an acupuncturist).

Costs

5. As set forth in Finding 20, it was established that Complainant incurred \$7,377.50 in actual costs in connection with its investigation and enforcement of this matter.

6. In *Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth the standards by which a licensing board must exercise its discretion to reduce or eliminate cost awards to ensure that it does not deter licensees with potentially meritorious claims from exercising their right to an administrative hearing. The court held that a licensing board may not assess the full costs of investigation and prosecution when a licensee, who has committed some misconduct, has used the hearing process to obtain a dismissal of other charges or a reduction in the severity of the discipline imposed. (*Zuckerman, supra*, 29 Cal.4th at p. 45.) The Bureau must consider the licensee's "subjective good faith belief" in the merits of the licensee's position and whether the licensee has raised a "colorable challenge" to the proposed discipline. The Bureau must consider whether the licensee will be "financially able to make later payments." Lastly, the Bureau may not assess full costs of investigation and enforcement when it has conducted a disproportionately large investigation to prove that the licensee engaged in "relatively innocuous misconduct." (*Ibid.*) The *Zuckerman* factors have been considered.

7. Respondent did not establish a basis for a reduction of the costs sought. Consequently, a cost recovery in the amount of \$7,377.50 is reasonable pursuant to Business and Professions Code sections 4959 and 125.3.

ORDER

1. Acupuncture License No. AC 7732 to respondent Robin Li Jacobi is revoked.
2. Respondent is ordered to pay \$7,377.50 in cost recovery prior to restoration of his license.

DATED: March 5/2012



DIANNA L. ALBINI
Administrative Law Judge
Office of Administrative Hearings