

BEFORE THE
CALIFORNIA ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for Penalty
Relief (Reinstatement) of:

ZION YU,
Former Acupuncture Certificate No. AC-84

OAH No. 2010030983

Petitioner.

DECISION

On May 6, 2010, a quorum of the California Acupuncture Board heard this matter in Sacramento, California. Administrative Law Judge JoAnn Irwin Eshelman, Office of Administrative Hearings, State of California, presided at the hearing.

Deputy Attorney General Robert C. Miller represented the Office of the Attorney General, State of California.

Leo D. Kohn, attorney at law, represented Zion Yu, who was present.

Oral and documentary evidence were received. The matter was submitted for decision on May 6, 2010.

FACTUAL FINDINGS

Procedural Matters

1. On October 25, 1976, the Acupuncture Examining Committee (Committee) of the Division of Allied Health Professions issued Zion Yu (petitioner) acupuncture certificate number AC-84 (certificate). The Committee was the predecessor to the California Acupuncture Board (Board).

2. On September 25, 1986, petitioner entered into a stipulated settlement with the Committee, and admitted to serious sexual misconduct while he was administering acupuncture treatment to one female patient in 1978 and another in 1982. By Decision in Case No. D-3482, effective February 23, 1987, the Committee revoked petitioner's

certificate for unprofessional conduct, as set forth in the stipulated settlement. The Committee stayed the revocation and placed petitioner on probation for seven (7) years subject to several conditions as follows.

- 1) Completion of a psychiatric or psychological evaluation to determine if psychotherapy would reduce the likelihood of further sexual misconduct by petitioner. The psychiatrist or psychologist completing the evaluation was to be approved by the Committee;
- 2) Psychotherapy throughout the probationary period by a Committee-approved therapist, if the evaluator concluded that such treatment would reduce the likelihood of repeat sexual misconduct by petitioner. The psychotherapist was to submit quarterly progress reports to the Committee;
- 3) Prohibition from engaging in solo practice. Petitioner to submit for Committee approval a plan of practice limited to a supervised, structured environment, with direct supervision and oversight by another acupuncturist. Petitioner to have a third party present at all times when examining and treating female patients; and
- 4) Submission by petitioner of declarations, under penalty of perjury, confirming that he has complied with all conditions of probation.

3. On February 23, 1989, the Committee filed a Petition to Revoke Probation. By Decision in Case No. D-3911, effective September 25, 1990, the Committee terminated probation, set aside the stay, and revoked petitioner's certificate. In that Decision, the Committee found that petitioner violated probation by:

- 1) Selecting a clinical psychologist who had not been approved by the Committee and who was petitioner's former patient for eight years;
- 2) Delaying the initiation of therapy and then ceasing treatment after one year without informing the Committee;
- 3) Failing to inform his therapist of the requirement for quarterly written progress reports, such that none were submitted;
- 4) Continuing solo practice, and moving a significant portion of the practice from his office into his home;
- 5) Never supplying the Committee with a plan of practice;
- 6) Selecting a recent licensee as his supervisor without prior approval by the Committee; and

7) Never filing quarterly compliance reports with the Committee.

4. On July 25, 2001, petitioner filed a Petition for Penalty Relief [Reinstatement] with the Board. By Decision in Case No. K-1A-1990-4984, effective May 22, 2002, the Board denied that petition, finding that petitioner had shown insufficient evidence of rehabilitation. The Board noted that, "to consider any future request for reinstatement, Petitioner should at a minimum seek psychotherapy and a psychological evaluation. Petitioner should also submit to the Board any reports written by health professionals conducting the evaluation and therapy."

5. On December 31, 2009, petitioner filed his second and current Petition for Penalty Relief [Reinstatement] with the Board. In a written statement, petitioner explained that his current application differs from the previous one because he has "engaged in an *in depth* course of therapy" [emphasis in original] and is now in "a happy and stable marriage." He stated that he is attending Sex Addicts Anonymous meetings and is no longer using marijuana. Petitioner expressed confidence that he would not re-offend and plans to reenter the profession by practicing in a geriatric setting.

Criminal Convictions

6. On September 21, 1992, in the Municipal Court of California, County of Los Angeles, petitioner was convicted, upon his plea of guilty, of two violations of Business and Professions Code section 4935, practicing acupuncture without a license, both misdemeanors. The details of these two offenses and of the sentence imposed by the court are unknown.

7. On July 6, 2005, in the Superior Court of California, County of Orange, petitioner was convicted, upon his plea of guilty, of two violations of Business and Professions Code section 4935, subdivision (a)(1), practicing acupuncture without a license, and one violation of Penal Code section 240, assault, all misdemeanors. The court suspended imposition of sentence and placed petitioner on informal probation for three years. The court ordered petitioner to stay away from two victims, to register as a sex offender pursuant to Penal Code section 290, to pay various fines, fees and assessments, and to not practice acupuncture during the period of probation or without a valid state license.

The superior court subsequently revoked petitioner's probation on October 16, 2006, for his failure to pay a fine. On March 8, 2007, petitioner admitted the probation violation and his probation was reinstated on the same terms and conditions as previously ordered. On November 25, 2008, the court closed petitioner's case because his term of probation had expired. On January 6, 2009, the court granted petitioner's request, pursuant to Penal Code section 1203.4, and expunged his three 2005 convictions.

8. The criminal offenses which resulted in petitioner's 2005 convictions occurred on September 28, 2003 and October 11, 2003. The details of those offenses are unknown.

9. Petitioner is not currently under a grant of probation in any superior court.

Rehabilitation

10. At hearing, petitioner testified that he realized he needed help and knew his actions were "out of control" when he committed the criminal offenses in 2003. He believes that he has been doing better since that time. He has been involved in church activities and met his wife at church in 2007. They married in September 2009. Petitioner's wife is an acupuncturist and a nurse, and will be involved in his practice if his certificate is reinstated. Petitioner feels he has been given a second chance and stated he would not destroy this marriage by engaging in further sexual misconduct with patients.

Petitioner testified that he attended Twelve-Step program meetings for Sex Addicts Anonymous once a week for six months in 2008. This testimony contradicted his written statement to the Board, dated December 31, 2009, in which he claimed to be currently attending "SA meetings (Sex Anonymous)" and undermined petitioner's credibility. It is unlikely that such a significant difference in time frame was the result of memory lapse. More likely it shows that petitioner is willing to distort information in order to achieve his goal of reinstatement. Distortion of this sort is another form of ethical lapse, indicating that petitioner has not achieved significant rehabilitation.

Petitioner acknowledged that he was a habitual user of marijuana until 2002 and then a less frequent user for four more years until 2006, when he stopped. He has never attended a Twelve-Step group for substance abusers. He is adamant that he is not going to use marijuana again and that he does not want to be "a slave to addiction."

Petitioner admitted that he continued to practice acupuncture in his home until 2005, even though he had criminal convictions for practicing without a license. He claims to understand that this was wrong, but "could not refuse help to people who asked." Petitioner is no longer practicing acupuncture; he supports himself by teaching yoga and chi gong, an exercise program. Petitioner is 62 years old. He is involved in continuing education through his private efforts and not through a school.

11. Petitioner's lawyer introduced him to a psychiatrist, Dr. Rodney D. Collins, approximately three years ago. Petitioner acknowledged that Dr. Collins was not Board approved, and that he never did a forensic examination nor had contact with petitioner's family members or ex-wife during therapy. Petitioner attended therapy sessions with Dr. Collins anywhere from once a week to once a month, depending on petitioner's financial situation. Dr. Collins recently referred petitioner to Dr. Omar Minwalla, a licensed psychologist with the Institute for Sexual Health, for a "good evaluation" and, in petitioner's words, "to take me to a deeper level."

By letter dated October 22, 2009, Dr. Collins confirmed that petitioner has been under his care since May 12, 2006, for insight-oriented psychotherapy and cognitive-behavioral psychotherapy.¹ He wrote that petitioner has “maintained his sobriety [since July 2006] ... from an almost daily pattern marijuana use ... and has attended Sex Addicts Anonymous meetings to address sexual impulsivity and addiction.” Dr. Collins mischaracterized petitioner’s sexual misconduct with patients as occurring “after the divorce from his first wife,” suggesting that it was somehow related to the end of petitioner’s marriage and/or lack of a marital partner. On cross examination, petitioner corrected this misstatement, confirming that his misconduct occurred during the marriage. Considering this mischaracterization and the absence of any meaningful information about petitioner’s actual treatment and progress, Dr. Collin’s letter was given little weight.

12. By undated letter, Dr. Minwalla confirmed that petitioner underwent “an initial assessment at The Institute for Sexual Health regarding his application for reinstatement.”² This assessment occurred on May 3, 2010, just three days before the hearing. Dr. Minwalla’s letter provided no information on the assessment other than a vague statement that, “Dr. Yu does demonstrate indicators in rehabilitation.” Given the lack of any reported results, the assessment was virtually meaningless and, therefore, was given little weight.

13. Petitioner submitted two letters of character reference from colleagues in his profession, Jennifer Waters and Dr. Lin Cheng Speer. Neither Ms. Waters nor Dr. Speer indicated that they knew the reason for petitioner’s certificate revocation and neither writer addressed the issue of petitioner’s rehabilitation. For these reasons, the letters were given little weight.

Evaluation

14. Petitioner’s testimony showed that he has achieved some limited insight into his sexual misconduct, but that he lacks understanding of the root causes of his addiction and has taken few significant steps to overcome it. Further, petitioner has not complied with the Board’s directives over the years, indicating that he has a serious and unaddressed problem with accepting and following the rules for practice. He has likewise failed to follow the law and was on court probation for criminal offenses related to his acupuncture practice until November 2008. Petitioner is registered as a sex offender under Penal Code section 290. For these reasons, it is apparent that petitioner has not achieved substantial rehabilitation and that the public would be at risk should he be allowed to return to the practice of acupuncture.

¹ This letter was received in evidence as administrative hearsay, pursuant to Government Code section 11513, subdivision (d).

² This letter was received in evidence as administrative hearsay, pursuant to Government Code section 11513, subdivision (d).

LEGAL CONCLUSIONS

1. Business and Professions Code section 4960.5 addresses license [certificate] reinstatement petitions for acupuncturists and provides:

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.

2. California Code of Regulations, title 16, section 1399.469, incorporates the Board's Disciplinary Guidelines by reference. The Guidelines section which addresses petitions for penalty relief provides 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.

3. Petitioner bears the burden of establishing that he is now fit to have his certificate reinstated. The Board has evaluated the evidence submitted by petitioner in the context of the criteria for reinstatement recited above. It has been nearly 20 years since petitioner's certificate was revoked for sexual misconduct and subsequent failure to comply with the Board's probationary terms. Petitioner has not yet completed a meaningful psychological evaluation or participated in regular, ongoing psychotherapy with a Board-approved therapist, as directed by the Board repeatedly. As set forth in Factual Findings 10 through 14, petitioner has failed to show that he has achieved substantial rehabilitation and that he is no longer a danger to the public. Cause does not exist for reinstatement of petitioner's certificate at this time.

For petitioner's certificate to be reinstated, he must demonstrate to the Board that he fully understands and has overcome the addictive behavior resulting in his sexual misconduct. Petitioner's registration as a sex offender must have been rescinded by the court. He must also demonstrate that he has followed society's rules and laws, and is ready to accept the Board's supervision in the future.

ORDER

The Petition for Reduction in Penalty [Reinstatement] filed by petitioner Zion Yu is DENIED.


DECISION

This Decision is hereby adopted by the California Acupuncture Board.

This Decision shall become effective on JUL 09 2010.

IT IS SO ORDERED.

DATED: JUN 09 2010



ROBERT BREWER
Board Chair
California Acupuncture Board

DECLARATION OF SERVICE BY MAIL

In the Matter of the Petition for Reinstatement filed by:

ZION YU

Case No. PRRL-1A-2010-55

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

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.

Zion Yu
1658 Camden Ave., Apt. 402
Los Angeles, CA 90025

7009 1410 0002 2164 0146

Leo D. Kohn
11620 Wilshire Blvd., Ste. 900-029
Los Angeles, CA 90025

regular mail

Robert C. Miller, Deputy Attorney General
California Department of Justice
Office of the Attorney General/HQE
1300 I Street, Ste. 125
Sacramento, CA 94244

regular mail

Gail M. Heppell, Supervising Deputy Attorney General
California Department of Justice
Office of the Attorney General/HQE
1300 I Street, Ste. 125
Sacramento, CA 94244

regular mail

JoAnn Irwin Eshelman, Administrative Law Judge
Office of Administrative Hearings
2349 Gateway Oaks Drive, Ste. 200
Sacramento, CA 95833

regular mail

Each said envelope was, on June 9, 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 June 9, 2010, at Sacramento, California.



DECLARANT