

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

YULIN WU, L.Ac,

Acupuncture License No. AC 9250

Respondent.

Case No. 1A-2009-148

OAH No. 2011010746

PROPOSED DECISION

Administrative Law Judge Ruth S. Astle, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on June 1, 2011.

Lynne K. Dombrowski, Deputy Attorney General, represented complainant.

Respondent was present and was not represented by counsel.

The matter was submitted on June 1, 2011.

FACTUAL FINDINGS

1. Janelle Wedge made this accusation in her official capacity as the Executive Officer of the Acupuncture Board of California and not otherwise.
2. On October 1, 2003, the Acupuncture Board of California issued Acupuncture License Number AC 9250 to Yulin Wu (respondent). The certificate is renewed and current to November 30, 2012.
3. On March 9, 2005, respondent submitted to the Board a registration of place of practice for four locations: 1. East Bay Acupuncture & Acupressure, 22316 Main Street, Hayward, CA 94541; 2. Hayward Health Center, 30048 Mission Blvd., #131, Hayward, CA 94544; 3. 638 Broadway Street, San Francisco, CA 93134; and 4. 3373 Mission Street, San Francisco, CA 94110.
4. On November 28, 2005, respondent sent a letter to the Board stating that he was currently working at only one location, Hayward Health Center, 30048 Mission Blvd., #131, Hayward, CA 94544.

5. On June 21, 2006, officers with the City of Hayward police department conducted an undercover operation at respondent's business, China Health Center, located at 22316 Main Street, Hayward, CA. This location was issued a business license by the City of Hayward, on February 9, 2006, to operate an acupuncturist's office and respondent was listed as the business owner.

6. The Hayward police officers were acting on information received from several citizens and other sources regarding possible prostitution activity occurring at the location listed in Finding 5, above. During the undercover operation, a police officer presented himself at that location and requested a massage, which one of the women present began to provide. The undercover officer was recognized as a police officer. The back-up officers made an emergency entrance into the establishment. They had to force open the front door, which was locked from the inside, when no one responded to their banging on the door to gain entry.

7. Respondent was present at the time and identified himself as the owner of the business. The officers surveyed the premises and found no acupuncture needles or other equipment or devices associated with acupuncture. They did find leaflets and advertisements promoting massage services at that location. There were no acupuncture patient records or signs advertising or listing acupuncture services. This location was being operated as a massage parlor. Respondent indicated that he kept all of his acupuncture supplies in a carrying case and took it from place to place.

8. On July 6, 2006, a criminal complaint was filed in the Alameda County Superior Court against respondent and three female employees for operating a massage business without permits.

9. On April 18, 2007, respondent pled no contest and was found guilty of a violation of Penal Code section 415 (disturbing the peace) and he was ordered to pay a \$200 fine. All three female employees were convicted of the same offense and ordered to pay a \$200 fine.

10. On January 15, 2008, officers with the City of Hayward police department conducted an undercover operation at respondent's business located at 30048 Mission Blvd., #131, Hayward, CA. This address was issued a business license by the City of Hayward, on April 5, 2004, to operate as an acupuncturist's office and respondent was listed as the business owner.

11. The Hayward police officers had received information from an anonymous citizen regarding prostitution activity taking place at this location. During the undercover operation, an undercover officer went into the establishment and negotiated a half hour massage for \$35 from an Asian female who later identified herself as "Lisa." Partway through the massage, she proposed performing a sexual act for extra money and accepted

payment from the officer. The officer gave the pre-designated arrest signal and arresting officers entered the business.

12. The police officers surveyed the business premises and found no acupuncture needles or other equipment or devices associated with acupuncture. There were no acupuncture patient records and no medical reference books or literature. The sign posed by the front desk advertised massage services and listed prices. The obvious function of the business was to provide massages.

13. One of the employees told officers that respondent was the owner. A photocopy of respondent's acupuncture license certificate from the board was on the premises. The original license certificate was not found.

14. On January 17, 2008, respondent was interviewed by a police officer, with the assistance of a Chinese translator. Respondent said that his patient medical records were in San Francisco. He claimed ignorance that he was violating a city ordinance by providing massages. He also claimed ignorance that prostitution activity was taking place at his business.

15. On February 11, 2008, a criminal complaint was filed in Alameda County Superior Court against respondent and the female employee. Respondent was charged with a violation of Hayward Municipal Code 6-10.03 (A)(1) (operating a massage establishment without a permit). The female employee was charged with a violation of Penal Code section 647, subdivision (b) (engaging in prostitution) and a violation of Hayward Municipal Code 6-10.03 (B) (functioning as a massage therapy technician without a permit).

16. On April 28, 2008, the female employee pled no contest and was found guilty of a violation of Hayward Municipal Code 6-10.03 (B) (functioning as a massage therapy technician without a permit). She was placed on 36-months court probation upon terms and conditions including an order to take an AIDS test, and to pay a \$500 fine.

17. On July 1, 2008, respondent pled no contest and was found guilty of a violation of Hayward Municipal Code 6-10.03 (A)(1) (operating a massage establishment without a permit). Respondent was sentenced to two years court probation, one day county jail with credit for time served and ordered to pay a fine of \$120.

18. On March 14, 2009, the Sacramento County Sheriff's Department conducted an undercover operation for suspected prostitution activity at Rainbow Massage, located at 9651 Folsom Blvd., Sacramento, CA. Rainbow CMT (certified massage therapy) at 9651 Folsom Blvd. was solely owned by respondent and was registered as a licensed massage establishment with the City and County of Sacramento since at least October 2007.

19. During the undercover operation, two officers entered the establishment and each of the officers negotiated a massage. The employees performing the massage exposed their bare breasts to the officers and each made an agreement for a sex act with an officer in

exchange for money. Arresting officers entered the establishment and found a locked door separating the waiting area from the rest of the business. They arrested two female employees for solicitation for prostitution and other related violations.

20. Video surveillance cameras and a video monitor were found on the business premises. Each massage room door, as well as the hallway door, had an operating door lock on it, in violation of Sacramento County Code section 4.36.090J.

21. The police tried to contact respondent, the owner, by calling the telephone number listed on the special business license. Respondent's daughter answered the telephone and said that the telephone number was her cellphone. She told the police that her father, respondent, does not speak English and that she translates for him. She said that "Lisa" was the manager of Rainbow Massage and that Lisa "just use my dad's license." Respondent's daughter acts as interpreter for respondent and talks to Lisa by telephone and in person for him. When respondent and his daughter visit the business, Lisa will not let her in the back of the business but will let respondent in the back. Lisa sends money to respondent by mail, in the form of a cashiers check or personal check.

22. On April 9, 2009, a criminal complaint was filed in Sacramento County Superior Court against two female employees at Rainbow Massage, charging one with a violation of Penal Code section 315 and eight counts of violating the Sacramento County Code and one with Penal Code section 647, subdivision (b) and three counts of violating the Sacramento County Code. On May 7, 2009, a criminal complaint was filed against respondent in Sacramento County Superior Court charging eight counts of violating the Sacramento County Code. On August 11, 2009, respondent pled no contest and was found guilty of a violation of the Sacramento County Code section 4.36.100 (willfully and unlawfully acting as a massage practitioner or massage establishment manager without a valid special business license). Respondent was sentenced to three years informal probation, fined \$100, and given 30 days of county jail time that was stayed pending successful completion of PES Choices III.

23. Respondent's conduct constitutes unprofessional conduct in three separate instances for conviction of a crime and violations of law and local ordinance by an employee or person working under respondent's professional license and business permit.

24. Respondent did not present any evidence of rehabilitation. He claims he did not realize what was going on at the different locations, but he acknowledges that he was being paid monthly by Rainbow Massage and not providing any acupuncture services. He indicated that he does not have the money to pay any cost recovery, but did not present any specific evidence of his income or personal financial condition.

25. The board has requested \$16,992.50 in cost recovery. This case involves three incidents that are serious, but were proven through police action and convictions. The

reasonable cost of prosecution and investigation of this matter is \$5,000¹. If and when respondent's license is reinstated, the board can make arrangements for a monthly payment plan.

LEGAL CONCLUSIONS

1. By reason of the matters set forth in Findings 5 through 9 and 23, cause for disciplinary action exists pursuant to Business and Professions Code section 4955, subdivision (b), (d) and (j) (unprofessional conduct: conviction of a crime/violation of law).

2. By reason of the matters set forth in Findings 10 through 17 and 23, cause for disciplinary action exists pursuant to Business and Professions Code section 4955, subdivision (b), (d) and (j) (unprofessional conduct: conviction of a crime/violation of law).

3. By reason of the matters set forth in Findings 18 through 22 and 23, cause for disciplinary action exists pursuant to Business and Professions Code section 4955, subdivision (b), (d) and (j) (unprofessional conduct: conviction of a crime/violation of law).

4. The matters set forth in Finding 24 were considered in making the following order. Respondent did not demonstrate rehabilitation.

5. Cost recovery in the amount of \$5,000 is reasonable pursuant to Business and Professions Code sections 4959 and 125.3.

ORDER

1. Acupuncture License No. AC 9250 issued to respondent Yulin Wu is revoked pursuant to Legal Conclusions 1, 2, and 3, separately and jointly.

2. Respondent is ordered to pay \$5,000 in cost recovery if and when his license is restored. If his license is restored the board can make arrangements for a monthly payment plan.

DATED: 6/17/11

Ruth S. Astle

RUTH S. ASTLE
Administrative Law Judge
Office of Administrative Hearings

¹ See *Zuckerman v. Chiropractic Examiners* (2002) 29 Cal.4th 32)