

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

In the Matter of the Petition to Revoke Probation Against:

Wu Ying, L.Ac.,

Acupuncturist License No. AC 16095,

Respondent.

Agency Case No. D1-2016-291

OAH No. 2023090413

DECISION

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

This Decision shall become effective on August 17, 2024 .

IT IS SO ORDERED this 18th day of July 2024.

By: Original Signature on File
FOR THE ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS

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PROPOSED DECISION

Howard W. Cohen, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter by videoconference on May 6 and 7, 2024.

Marsha E. Barr-Fernandez, Deputy Attorney General, represented petitioner Benjamin Bodea, Executive Officer, Acupuncture Board (Board). Stephen J. Thomas, Attorney at Law, represented respondent Wu Ying, L.Ac., who was present.

Oral and documentary evidence was received. The record was held open to allow petitioner to file a closing brief by May 17, respondent to file a closing brief by

May 31, and petitioner to file a reply closing brief by June 7, 2024. Petitioner's closing brief and reply closing brief were marked for identification as exhibits 42 and 43, respectively. Respondent's closing brief was marked for identification as exhibit DD. Respondent filed objections to evidence; the objections are marked for identification as exhibit CC. Except to the extent the ALJ ruled otherwise at hearing, the objections are overruled.

The record was closed and the matter was submitted for decision on June 7, 2024.

FACTUAL FINDINGS

Parties and Jurisdiction

1. On April 30, 2014, the Board issued Acupuncturist License no. AC 16095 to respondent. The license was in full force and effect at all times relevant and is scheduled to expire on June 30, 2025. The license is currently subject to probation. (See Factual Findings 3-6.)

2. Petitioner brought the Petition in his official capacity. Respondent timely submitted a Notice of Defense.

Respondent's Disciplinary History

3. In a license discipline matter entitled, *In the Matter of the Accusation Against Wu Ying, L.Ac.*, case number 1A-2016-291, the Board issued a Decision and Order on April 24, 2023, effective May 24, 2023 (2023 Decision), adopting a Stipulated Settlement and Disciplinary Order (2023 Stipulation).

4. In the 2023 Stipulation, respondent admitted that “the charges and allegations in Accusation No. 1A-2016-291, if proven at hearing, constitute a cause for imposing discipline upon his Acupuncturist License.” (Ex. 1, pp. A12-A13.) Respondent agreed “that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation and that those charges constitute cause for discipline. Respondent hereby gives up his right to contest that cause for discipline exists based on those charges.” (*Id.* at p. A13.) “Respondent agrees that his Acupuncturist License is subject to discipline and he agrees to be bound by the Board’s probationary terms as set forth in the Disciplinary Order below.” (*Ibid.*)

5. The disciplinary order issued in the 2023 Decision placed respondent on three years’ probation on various terms and conditions. Of relevance here, Probation Condition 2 provides:

Respondent must provide certified transcripts of all courses completed at Alhambra Medical University, Alhambra, California, through December 31, 2012, in a sealed envelope to the Acupuncture Board of California by close of business February 15, 2023, for the Board’s review.

Determination as to whether Respondent’s certified course transcripts demonstrate successful completion of all courses required to satisfy the Board’s licensure requirements during his attendance at Alhambra Medical University, Alhambra, California, through December 31, 2012, is solely within the Board’s discretion.

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The Board's determination that Respondent failed to successfully complete all courses required to satisfy the Board's licensure requirements during his attendance at Alhambra Medical University, Alhambra, California, through December 31, 2012, will result in immediate revocation of Respondent's Acupuncturist License.

The Board's determination that Respondent successfully completed all courses required to satisfy the Board's licensure requirements during his attendance at Alhambra Medical University, Alhambra, California, through December 31, 2012, will result in Respondent being placed on probation for three (3) years on the following terms and conditions

(Ex. 1, p. A14.)

6. Probation Condition 14 provides that the Board may, after a hearing, revoke probation and carry out the disciplinary order of license revocation for any violation of probation. (Ex. 1, p. A17.) Probation Condition 16 provides that, if the Board files a petition to revoke probation, should respondent ever reapply for a license or petition for reinstatement of a license, "all of the charges in the Accusation No. 1A-2016-291 shall be deemed to be true, correct, and fully admitted by Respondent"

(Ibid.)

7. In the underlying Accusation in case no. 1A-2016-291, the executive officer for the Board charged that respondent obtained his license by fraud and engaged in dishonest and corrupt acts. The Accusation included allegations that

respondent was not qualified to take the California Acupuncture Licensing Examination (CALE) before seeking licensure in February 2014 because (a) although he attended Alhambra Medical University (AMU) in Alhambra, California, he did not finish the Board-approved educational and training program at AMU; (b) his application for licensure included false information and forged documents; and (c) he did not cooperate with a Board investigation.

Petition to Revoke Probation

8. Petitioner alleged two causes to revoke probation: (a) failure to submit certified transcripts demonstrating successful completion of all requirements for licensure, and (b) violation of probation. Petitioner based both causes for revocation solely on allegations that respondent failed to comply with Probation Condition 2. Petitioner argues that, but for respondent misrepresenting that he had completed the AMU program when he applied to take the CALE, the Board would not have permitted respondent to take the CALE or granted respondent an acupuncture license.

9. On June 28, 2023, the Board wrote to respondent that probation condition 2 required respondent to provide sealed official transcripts of his education and training directly from AMU by no later than February 15, 2023.

10. The Board received official sealed transcripts from AMU on February 6, 2023, showing that respondent had not completed the Board-approved education and training program at AMU and had not graduated from AMU. (Ex. 8.)

11. The Board received a declaration from respondent on February 9, 2023, disputing the accuracy of the sealed transcripts that AMU provided to the Board. The Board allowed respondent until July 23, 2023, to submit corrected sealed official transcripts from AMU for the Board's review. The Board informed respondent that his

failure to do so would result in the Board evaluating respondent's education and training using the transcript the Board received from AMU on February 6, 2023.

12. On July 19, 2023, respondent's counsel wrote to the Board advising that respondent had no further documentation or information to submit.

13. On July 25, 2023, the Board wrote respondent that it was making a finding based on the transcripts it received from AMU on February 6, 2023, because respondent wrote that further documentation would not be forthcoming. The Board found "the official transcripts do not demonstrate a completion of all required courses to meet licensure requirements. Therefore, you are in violation of [probation condition 2]." (Ex. 11, p. A102.)

14. The next day, on July 26, 2023, the Board wrote to respondent that it determined respondent did not meet the minimum qualifications to take the California Acupuncture Licensing Examination (CALE) due to his failure to complete the required curriculum. The Board informed respondent that the sealed official transcript from AMU that the Board received on February 6, 2023, reflected neither a graduation date nor respondent's completion of the minimum of 950 hours in clinical instruction, as required under California Code of Regulations, title 16, section 1399.434, subdivision (h). (Ex. 12.)

Additional Evidence

15. Respondent has not been the subject of any consumer complaints and has practiced as a licensed acupuncturist without incident for 10 years. In China, respondent trained extensively with his father and grandfather, practitioners of traditional Chinese medicine. Respondent did not receive any formal training in acupuncture at any university in China before immigrating to the United States in

1993. He practiced massage in California until being admitted to AMU in 2009.

Respondent has a deep respect for traditional Chinese medicine, considers himself a skilled practitioner of acupuncture, and believes his record shows he poses no threat to the public.

16. Respondent testified that he only entered the 2023 Stipulation because he believed AMU would send the Board records showing he had completed the acupuncture education and training program and had graduated. He claims that AMU did not send a correct version of the records because he refused to pay Jianyuan Jiang, the AMU Academic Dean, a \$20,000 bribe in 2009 to waive required courses and issue respondent a graduation certificate. Respondent did not adequately explain why, even though he did not pay the allegedly demanded bribe, the dean allowed respondent to continue in the AMU program and register for clinical hours. Respondent admitted that he did not receive a certificate of graduation; he testified he feared that the dean would try to extort money from him if he requested one. Nevertheless, in a declaration respondent submitted to the Board, respondent misleadingly wrote that he "achieved graduation [from AMU] on October 10, 2013." (Ex. 9, p. A95.) He explained at hearing that he knew he had not graduated but he felt he should have because he completed the courses required to graduate.

17. At this hearing, petitioner introduced a good deal of testimony and documentary evidence to support allegations the Board's executive officer brought in the Accusation in case no. 1A-2016-291. Respondent attempted to rebut that evidence. But at issue here is whether the Board may revoke respondent's probation because he violated probation condition 2. Evidence not tending to prove or disprove the petition's allegations is not relevant to this matter. The allegations in the original Accusation were already determined in the 2023 Decision; evidence pertaining to

those allegations, rather than to the allegations in the petition, will not be considered here.

Costs

18. The Board incurred the cost of providing two interpreters at hearing, \$2,000. Respondent agreed to pay half of that to the Board, \$1,000, which is deemed reasonable.

19. The Board's prosecution costs associated with this petition to revoke probation were \$25,667.50 through May 2, 2024. Those costs are not reasonable in view of the amount of time spent on testimony and documentary evidence not relevant to the allegations in the petition. Costs shall be reduced to \$13,000, an amount deemed reasonable.

20. Petitioner also estimated that the Board would incur additional prosecution costs of \$2,200 up to the commencement of hearing. A good faith estimate of costs may be used "where actual costs are unavailable." (Bus. & Prof. Code, 125.3.) Petitioner did not establish why he could not submit evidence of actual additional prosecution costs at hearing. Without such evidence, an award of anticipated costs must be, and is, disallowed.

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LEGAL CONCLUSIONS

Applicable Authority

1. Under the Acupuncture Licensure Act (Bus. & Prof. Code, § 4925 et seq.), the Board exercises licensing, regulatory, and disciplinary functions for acupuncturists. (See, e.g., Bus. & Prof. Code, §§ 4925, 4926, 4933, 4938, 4955.) In performing those functions, protection of the public “shall be the highest priority” for the Board. (Bus. & Prof. Code, § 4928.2.)

2. In a proceeding to revoke probation, the burden rests on petitioner to prove by a preponderance of the evidence that respondent has violated a probation term. (*Sandarg v. Dental Bd. of California* (2010) 184 Cal.App.4th 1434, 1442; Evid. Code §§ 115, 500.) A “preponderance of the evidence” is evidence that is likelier to be true than evidence opposed to it. (*Leslie G. v. Perry & Associates* (1996) 43 Cal.App.4th 472, 483.)

3. Cause exists to revoke respondent’s probation and remove the stay of revocation of his acupuncture license the Board imposed in the 2023 Decision, as alleged in the petition’s two causes to revoke probation. Petitioner established by a preponderance of the evidence that respondent violated probation condition 2, as set forth in Factual Findings 3 through 16. Respondent failed to cause to be sent to the Board sealed transcripts showing he successfully completed the AMU program and proof of graduation from AMU.

4. “In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Acupuncture Board shall consider the disciplinary guidelines entitled ‘Department of Consumer Affairs,

Acupuncture Board 'Disciplinary Guidelines' 1996' which are hereby incorporated by reference." (Cal. Code Regs., tit. 16, § 1399.469.) Those Disciplinary Guidelines provide that, in the event a licensee has procured a license by fraud or deceit, "[r]evocation is the only suitable penalty" where "the license would not have been issued but for the fraud or deception." (Disciplinary Guidelines, p. 8.)

5. Considering all relevant evidence, petitioner has established that respondent has failed to comply with probation condition 2, a probation condition to which respondent stipulated to allow him to try to overcome fraud and deceit allegations in the Accusation in case no. 1A-2016-291. Respondent testified about his grievances against AMU and its personnel. This testimony does not mitigate respondent's failure to comply with probation condition 2 and is beyond the scope of this administrative proceeding. Respondent did not present sufficient mitigation and rehabilitation evidence to overcome the petition to revoke in view of the Board's mandate to ensure public protection.

Costs


6. Respondent shall pay to the Board \$1,000, representing one-half of the cost of the interpreters used at hearing in accordance with respondent's stipulation at hearing and under the authority of Government Code section 11432.25, subdivision (a). (See Factual Finding 18.)

7. In the event respondent should meet the educational prerequisite for licensure and again apply to take the licensing examination, respondent shall be, as a condition precedent to taking the exam, required to pay the reasonable costs associated with this petition to revoke probation in the amount of \$13,000, as set forth in Factual Finding 19.

ORDER

The Petition to Revoke Probation is granted. The probation granted by the Board in Board Case No. 1A-2016-291 is revoked, the stay of revocation is set aside, and Acupuncturist License No. AC 16095, issued to Wu Ying, is revoked.

DATE: 06/27/2024


Howard W. Cohen (Jun 27, 2024 08:32 PDT)

HOWARD W. COHEN

Administrative Law Judge

Office of Administrative Hearings