

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

In the Matter of the Petition for Penalty Relief by:

YU-TAI FU, Petitioner

Case No. 1A-2023-73

OAH No. 2024050047

DECISION

This matter was heard before a quorum of the Acupuncture Board (Board), on August 8, 2024, in Sacramento, California. Marcie Larson, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), presided at the hearing.

Aaron Lent, Deputy Attorney General, represented the Attorney General of the State of California pursuant to Government Code section 11522.

Joanna Sheridan, Attorney at Law, represented petitioner Yu-Tai Fu, who was present at the hearing and assisted by Margaret Chin and Kitty Shek, who provided Chinese language interpreter services throughout the hearing.

Evidence was received, the record closed, and the matter submitted for decision on August 8, 2024.

FACTUAL FINDINGS

Background and Procedural History

1. On July 3, 2002, the Board issued Acupuncture License No. AC 8506, to petitioner. His license was revoked effective December 15, 2012.

ACCUSATION

2. On August 17, 2011, complainant Janelle Wedge, a former Executive Officer of the Board, signed and thereafter issued an Accusation against petitioner seeking to discipline his license for sexual misconduct, gross negligence, repeated acts of negligence, incompetence, and unprofessional conduct in violation of Business and Professions Code sections 726; 4995, subdivision (d); 4955.1, subdivision (c); and 4955.2, subdivisions (a), (b) and (c). Generally, complainant alleged that on October 2, 2009, when treating a 34-year-old female patient, petitioner removed the patient's underwear, massaged her thighs, repeatedly rubbed her vaginal area, and repeatedly inserted his fingers inside her vagina.

3. Petitioner filed a Notice of Defense to the Accusation, and the matter was heard before an ALJ of the OAH pursuant to Government Code section 11500 et seq. On July 2, 2012, the ALJ issued a proposed decision revoking petitioner's license. The ALJ found that the patient gave "candid and credible testimony" that established the allegations in the Accusation. In contrast, petitioner's testimony "lacked credibility and candor." Petitioner was ordered to pay the Board's investigation and prosecution costs of \$13,165. Effective December 15, 2012, the Board adopted the Proposed Decision. Petitioner paid the Board's costs.

CITATIONS

4. On July 21, 2014, petitioner was issued a Citation and Order of Abatement (2014 Citation) for engaging in the practice of acupuncture without a valid license, a violation of Business and Professions Code section 4935. The Board determined during an undercover investigation that petitioner was providing acupuncture services. Petitioner was ordered to pay the Board \$2,000 and to cease and desist from practicing acupuncture without a license. Petitioner paid the \$2,000 fine.

5. On December 11, 2017, petitioner was issued a Citation and Order of Abatement (2017 Citation) for engaging in the practice of acupuncture without a valid license, a violation of Business and Professions Code section 4935. The Board determined during a joint investigation with the San Francisco Department of Public Health (SFDPH), that petitioner was providing acupuncture services at his place of business. Petitioner was ordered to pay the Board \$5,000 and to cease and desist from practicing acupuncture without a license. Petitioner paid the \$5,000 fine. As a result of the investigation, petitioner was also cited by SFDPH for operating a massage business without a license.

Petition for Reinstatement

6. On June 7, 2023, petitioner signed and thereafter submitted to the Board a Petition for Penalty Relief – Reinstatement of Revoked License (Petition). In support of his Petition, petitioner submitted a written statement, proof of continuing education, a letter from his treating therapist, a psychological evaluation performed by Eddie Chiu, Ph.D., proof of volunteer services, and letters of support. Dr. Chiu and three character witnesses also testified at hearing.

7. In his written statement and during his testimony, petitioner denied he engaged in any misconduct towards his patient. Petitioner testified that the patient had taken cold medicine the day of her treatment, which may have affected her memory. He also contended that the patient could have “dreamed” that the events occurred.

8. After the revocation of his license, petitioner operated a massage business, so he was able to continue to treat his patients. He worked with a licensed acupuncturist who provided acupuncture services. Petitioner was not aware he could not conduct any services related to acupuncture. After he received the 2014 Citation, he continued to provide massage services. In 2017, he was issued the 2017 Citation and was cited by SFDPH for operating a massage business without a license. Petitioner explained that the 2017 Citation was because he “failed to change the name of [his] business on [his] answering machine and had not cleaned out old or leftover acupuncture needles.” Petitioner contends that his conduct was a result of “misunderstanding of business rules and regulations.”

9. Petitioner has not received any further citations from the Board or SFDPH. Petitioner has continued to provide massage services to his clients. He is writing a manual on tuina, the type of massage he provides, and acupuncture. Petitioner has also taken 100 credits of continuing acupuncture education, to stay up to date with the current practices. However, he did not complete any education in patient boundaries or ethics.

10. Petitioner is active in his community and volunteers his time with various organizations, including the Northern California Chinese Culture Athletic Foundation. He also donates to organizations that support the elderly. Additionally, petitioner has mentored and trained dozens of students who became licensed acupuncturist.

11. In 2016, petitioner began attending therapy with Yuhang “Ronald” Dang, Licensed Marriage and Family Therapist. Mr. Dang wrote a letter confirming that he treated petitioner in 2016, twice a week for nine months. During that time, petitioner was working on developing healthy coping skills. Petitioner informed Mr. Dang about the Accusation and revocation of his license. Petitioner denied any wrongdoing. Mr. Dang diagnosed petitioner with depression.

Petitioner saw Mr. Dang again in October 2022, when petitioner was preparing to file his Petition. Petitioner met with Mr. Dang five times in 2022, to demonstrate to the Board that he does not have any mental health issues. Petitioner also underwent a psychological evaluation with Dr. Chiu to likewise to prove to the Board that he is not a risk to the public.

12. Petitioner is 73 years old. He has lived in the United States for almost 30 years. He would like his license reinstated so that he can serve his community and “return to the practice that [he] love[s].” Petitioner explained that he has been “humbled by the revocation” of his license and he has learned to “ask for help” when he does not “understand local rules and customs.”

EVALUATION BY DR. CHIU

13. Dr. Chiu has been a licensed psychologist since 1988. He is not board-certified. He is also not certified in forensic or clinical psychology. Rather, he is a practicing psychologist and performs “cross cultural” psychological examinations. He has performed approximately 10 to 15 psychological examinations to determine whether an individual is likely to engage sexual misconduct.

14. In April and May 2023, Dr. Chiu performed a psychological evaluation of petitioner, to evaluate his cognitive and mental health functioning, and to opine as to

whether petitioner is at risk for committing a sexual offense. Dr. Chiu prepared a report of his evaluation and testified at hearing.

15. As part of the evaluation, Dr. Chiu interviewed petitioner, performed a mental status examination, administered several tests including a cognitive assessment, the Minnesota Multiphasic Personality Inventory, 2nd Edition (MMP1-2), the Hopkins Symptoms Checklist-25, and the Static-99R, which is used to determine the risk of committing sexual offenses. Dr. Chiu also reviewed the transcript of the Accusation hearing which resulted in the revocation of petitioner's license and the Board's investigation report.

16. During the evaluation interview, petitioner repeatedly denied engaging in sexual misconduct with his patient. He explained to Dr. Chiu that the patient had a cold and looked "confused." Petitioner did not disclose to Dr. Chiu that he had been cited by the Board twice for practicing acupuncture without a license.

17. Dr. Chiu opined that based on the evaluation, the risk of petitioner "sexual offending in the future is none to very low." Part of his opinion was based on the results of the Static-99R. However, Dr. Chiu acknowledged that the Static-99R does not give a rating of "none." Rather, the lowest score that can be given is a "very low" risk of committing a sexual offense.

18. Dr. Chiu also acknowledged that the first step of rehabilitation is to take responsibility for misconduct. Petitioner did not admit to any misconduct. Additionally, Dr. Chiu was not aware that petitioner had been cited by the Board twice for engaging in the unlicensed practice of acupuncture. If Dr. Chiu had known this information, his opinions regarding petitioner's professionalism may have been affected.

CHARACTER WITNESSES AND LETTERS OF SUPPORT

19. Petitioner submitted many letters of support of patients and acupuncturists. The letters describe petitioner as professional and skilled. The authors state they are aware of the reason petitioner's license was revoked and indicated that petitioner has never engaged in any inappropriate conduct to their knowledge.

20. Additionally, Manli Ho, Cynthia Norcross Wilson, and Reverend Eileen Chung testified in support of petitioner at hearing. All the witnesses have known petitioner for over a decade. Ms. Ho and Ms. Wilson were patients of petitioner when he practiced acupuncture and have continued to seek massage treatment. Ms. Ho and Ms. Wilson describe petitioner as a gifted and caring healer. Both are aware of the circumstance surrounding the revocation of petitioner license. However, their opinions of petitioner have not changed.

21. Rev. Chung has also been treated by petitioner. She also serves as a spiritual counselor to petitioner. Petitioner told Rev. Chung about the Accusation and stated that he "did nothing wrong." Rev. Chung believes petitioner and supports the reinstatement of his license.

Analysis

22. Petitioner has the burden of establishing by clear and convincing evidence that his license should be reinstated. To do so, petitioner must present evidence that he has undergone sufficient rehabilitation since his license was disciplined to assure the Board he is no longer a risk to the public. California Code of Regulations, title 16, section 1399.469, incorporates the Board's Disciplinary Guidelines by reference. These Guidelines identify the following rehabilitation criteria the Board considers with evaluation a petition for reinstatement:

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.

23. Rehabilitation is a state of mind and the law looks with favor upon rewarding with the opportunity to serve one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Petitioner continues to deny he engaged in any sexual misconduct with his patient. He has not taken the first, essential step towards rehabilitation. Petitioner showed no remorse and demonstrated no insight into his conduct.

Additionally, after the revocation of his license, he repeatedly violated the Board's laws by engaging in the unlicensed practice of acupuncture. Petitioner's claim that he did not understand the Board laws is not credible. He was licensed in 2012, which required in part that he understand the Board laws. Petitioner also did not

complete any continuing education on the areas of patient boundaries and ethics, which are directly related to conduct which resulted in the revocation of his license.

24. While petitioner is commended for seeking therapy to deal with his depression in 2016, his treatment in 2022 was to appease the Board rather than gain insight into his repeated misconduct. Additionally, Dr. Chiu's opinion that the likelihood of petitioner engaging in sexual misconduct is "none to very low" is not supported because he failed to consider all the evidence of petitioner's misconduct in reaching his opinions.

25. When all the evidence is considered, petitioner failed to demonstrate by clear and convincing evidence sufficient rehabilitation to support the reinstatement of his license. Therefore, his Petition is denied.

LEGAL CONCLUSIONS

1. Business and Professions Code section 4928.1 provides:

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 the other interests sought to be promoted, the protection of the public shall be paramount.

2. Pursuant to Business and Professions Code section 4960.5, subdivision (a)(1), a person whose license has been revoked may petition the Board for license reinstatement three years after the effective date of the decision revoking his license.

Petitioner's license was revoked on December 15, 2012. Therefore, his Petition is timely.

3. In a proceeding for reinstatement of a license, the burden at all times is on the petitioner to establish rehabilitation. (See *Flanzer v. Bd. of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398, citing *Housman v. Bd. of Medical Examiners* (1948) 84 Cal.App.2d 308, 315.) The standard of proof is clear and convincing evidence to a reasonable certainty. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1091-1092; *Feinstein v. State Bar* (1952) 39 Cal.2d 541.)

3. The burden is on petitioner to demonstrate that he is sufficiently rehabilitated to justify reinstatement of his license. As set forth in the Factual Findings as a whole, petitioner failed to meet his burden of presenting sufficient evidence to establish that it would be consistent with public health, safety, and welfare to reinstate his license. Consequently, his petition is denied.

ORDER

The Petition for Penalty Relief - Reinstatement of Revoked License filed by petitioner Yu-Tai Fu, is hereby DENIED.

This decision shall become effective on September 28, 2024.

It is so ORDERED on August 29, 2024.

Original Signature on File

JOHN C. HARABEDIAN

Board President

Acupuncture Board