

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
FROM THE COMMISSIONER OF COMMERCE, COMMUNITY AND ECONOMIC
DEVELOPMENT**

In the Matter of)
)
Love Jung) OAH No. 10-0634-ACU
) Agency No. 2010-0011112
_____)

**ORDER GRANTING MOTION FOR SUMMARY ADJUDICATION
AND FINAL CEASE AND DESIST ORDER**

I. Introduction and Procedural Background

The Division of Corporation, Business and Professional Licensing issued a temporary cease and desist order (TC&DO) dated December 21, 2010 directing the respondent, Love Jung, immediately cease and desist from the unlicensed practice of acupuncture. Mr. Jung filed a notice of defense and requested a hearing. The matter was referred to the Office of Administrative Hearings. A case planning conference was scheduled. Mr. Jung was not prepared and the conference was rescheduled.

The notice of rescheduled case planning conference was mailed by first class mail to the address provided by Mr. Jung and was not returned as unclaimed or undeliverable. At the appointed time, Mr. Jung was called at the phone number he provided. The person who answered denied knowing Mr. Jung. The rescheduled conference proceeded without Mr. Jung's participation. Gayle Horetski, Assistant Attorney General for the division, participated telephonically. The division stated it would be filing a Motion for Summary Adjudication. An Order Setting Deadline for Dispositive Motion was issued. This order set the date by which the division was to file its dispositive motion and informed Mr. Jung that he had 15 days from the date of service to file his opposition, if any.

The division timely filed its Motion for Summary Adjudication. Mr. Jung did not file an opposition or otherwise participate further in this matter. Accordingly, the matter is ripe for decision.

II. Facts

Mr. Jung is a cab driver in Bethel, Alaska.¹ He is a licensed acupuncturist in California.² On November 16, 2010, Mr. Jung performed acupuncture on a passenger in his cab. The passenger complained to the Bethel police who contacted the division. Mr. Jung admits that he

¹ Agency Record (AR) at 10.

did perform acupuncture without a license on November 16, 2010.³ The division filed a TC&DO on December 21, 2010. On January 3, 2011 Mr. Jung plead guilty to AS 08.06.010, Practice of Acupuncture Without a License, a class B misdemeanor.⁴ Mr. Young was convicted and fined \$400.

III. Discussion

Summary adjudication in an administrative proceeding is the equivalent of summary judgment in a court proceeding.⁵ It is a means of resolving disputes without a hearing when the central underlying facts are not in contention, but only the legal implications of those facts. If facts that are undisputed establish that one side or the other must prevail, the evidentiary hearing is not required.⁶ In evaluating a Motion for Summary Adjudication, if there is any room for differing interpretations, all facts are to be viewed, and inferences drawn, in the light most favorable to the party against whom judgment may be granted.⁷

Under AS 08.01.087(b)(1), if it appears to the Commissioner of Commerce, Community and Economic Development that “a person has engaged in or is about to engage in an act or practice in violation of a provision of . . . [AS 08] . . . dealing with an occupation . . . listed in AS 08.01.010, the commissioner may, if the commissioner considers it in the public interest, . . . issue an order directing the person to stop the act or practice.” The regulation of acupuncturists is listed at AS 08.01.010(2). “A person may not practice acupuncture without a license.”⁸ By requiring licensure before a person may engage in the practice of acupuncture, it follows that the legislature believes licensure is necessary to protect the public interest. Mr. Jung, admitted he performed acupuncture without a license. There is no indication that he will not do so again. Therefore, it would be in the public interest for the Commissioner of Commerce, Community and Economic Development to issue a cease and desist order.

IV. Conclusion

The temporary cease and desist order issued December 21, 2010 shall be sustained and made permanent.

² AR at 20.

³ AR at 5, 20, 24.

⁴ AR at 21.

⁵ See, e.g., *Schikora v. State, Dept. of Revenue*, 7 P.3d 938, 940-41, 946 (Alaska 2000).

⁶ See *Smith v. State of Alaska*, 790 P.2d 1352, 1353 (Alaska 1990); 2 Davis & Pierce, *Administrative Law Treatise* § 9.5 at 54 (3d ed. 1994).

⁷ *Samaniego v. City of Kodiak*, 2 P.3d 78, 82-83 (Alaska 2000).

⁸ AS 08.06.010.

V. Final Cease and Desist Order

The temporary cease and desist order issued in Case No. 2010-001112 on December 21, 2010 is made permanent as set forth below:

1. Based upon evidence presented, Love Jung is determined to have violated AS 08.06.010.
2. Pursuant to AS 08.01.087(b)(1), Love Jung is ordered to cease and desist from performing activities requiring a license under AS 08.06 unless he first becomes a licensed acupuncturist in the State of Alaska.
3. If Love Jung fails to comply with this order, the Alaska Department of Commerce, Community and Economic Development may seek an injunction in Superior Court to enforce this cease and desist order pursuant to AS 08.01.087(b)(2). Pursuant to AS 08.06.090, violation of AS 08.06 may be prosecuted as a class B misdemeanor.

DATED this 4th day of March, 2011.

By: *Signed* _____
Rebecca L. Pauli
Administrative Law Judge

Adoption

The Commissioner of Commerce, Community & Economic Development or his delegee adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 18th day of April, 2011.

By: Signed
Signature
Susan K. Bell
Name
Commissioner
Title

[This document has been modified to conform to technical standards for publication.]