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8 **BEFORE THE**  
9 **ACUPUNCTURE BOARD**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Petition to Revoke  
13 Probation Against:

Case No. D1-2015-67

14 **ANNA MARIE SURBER, L.AC.**  
15 **202 Central Ave.**  
**Capitola CA 95010**

PETITION TO REVOKE PROBATION

16 **Acupuncturist License No. AC 16948**

17 Respondent.

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19 Complainant alleges:

20 PARTIES

21 1. Benjamin Bodea (Complainant) brings this Petition to Revoke Probation solely in his  
22 official capacity as the Executive Officer of the Acupuncture Board, Department of Consumer  
23 Affairs.1. On or about February 22, 2016, the Acupuncture Board issued Acupuncturist License  
24 Number AC 16948 to ANNA MARIE SURBER, L.Ac. (Respondent). The Acupuncturist  
25 License was in effect at all times relevant to the charges brought herein and will expire on July  
26 31, 2019, unless renewed.  
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1 Technicians, to encourage appropriate consistency in the implementation of this  
2 subdivision.

3 “The board shall seek to ensure that licensees are informed of the  
4 responsibility of licensees and others to follow infection control guidelines, and of the  
5 most recent scientifically recognized safeguards for minimizing the risk of  
6 transmission of blood-borne infectious diseases.

7 “(f) The use of threats or harassment against any patient or licensee for  
8 providing evidence in a disciplinary action, other legal action, or in an investigation  
9 contemplating a disciplinary action or other legal action.

10 “(g) Discharging an employee primarily for attempting to comply with  
11 the terms of this chapter.

12 “(h) Disciplinary action taken by any public agency for any act  
13 substantially related to the qualifications, functions, or duties of an acupuncturist or  
14 any professional health care licensee.

15 “(i) Any action or conduct that would have warranted the denial of the  
16 acupuncture license.

17 “(j) The violation of any law or local ordinance on an acupuncturist's  
18 business premises by an acupuncturist's employee or a person who is working under  
19 the acupuncturist's professional license or business permit, that is substantially related  
20 to the qualifications, functions, or duties of an acupuncturist. These violations shall  
21 subject the acupuncturist who employed the individuals, or under whose  
22 acupuncturist license the employee is working, to disciplinary action.

23 “(k) The abandonment of a patient by the licentiate without written notice  
24 to the patient that treatment is to be discontinued and before the patient has had a  
25 reasonable opportunity to secure the services of another practitioner.

26 “(l) the failure to notify the board of the use of any false, assumed, or  
27 fictitious name other than the name under which he or she is licensed as an individual  
28 to practice acupuncture.”

#### CAUSE TO REVOKE PROBATION

##### (Biological Fluid Testing)

5. At all times after the effective date of Respondent's probation, Condition 2 stated:

Respondent shall completely abstain from the personal use or possession of alcohol and controlled substances as defined in the California Uniform Controlled Substances Act and dangerous drugs as defined by Section 4022 of the Business and Professions Code, or any drugs requiring a prescription except when lawfully prescribed by a licensed practitioner for a bona fide illness. Respondent shall abstain completely from the use of alcoholic beverages. Respondent shall undergo random, biological fluid testing as determined by the Board. Respondent shall bear all costs of such testing. The length of time and frequency will be determined by the Board. Any confirmed positive finding will be considered a violation of probation.

1 6. Respondent's probation is subject to revocation because she failed to comply with  
2 Probation Condition 2, referenced above. The facts and circumstances regarding this violation  
3 are as follows:

4 A. Respondent is required to call-in daily to determine if Respondent must provide a  
5 biological fluid test for that day.

6 B. On the following dates Respondent was required to call-in and failed to comply:

- 7 • November 15, 2018
- 8 • November 16, 2018
- 9 • November 17, 2018
- 10 • November 19, 2018
- 11 • November 20, 2018
- 12 • November 21, 2018
- 13 • November 22, 2018
- 14 • November 23, 2018
- 15 • November 24, 2018
- 16 • November 26, 2018
- 17 • November 27, 2018
- 18 • November 28, 2018
- 19 • November 29, 2018
- 20 • November 30, 2018
- 21 • December 1, 2018

22 C. On or about December 20, 2017, Respondent was required to submit a biological  
23 fluid test and failed to comply.

24 D. On or about November 2, 2018, Respondent was required to submit a biological fluid  
25 test and failed to comply.

26 E. On or about November 14, 2018, Respondent was required to submit a biological  
27 fluid test and failed to comply.

#### 28 PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
and that following the hearing, the Acupuncture Board issue a decision:

1. Revoking the probation that was granted by the Acupuncture Board in Case No. 1A-  
2015-67 and imposing the disciplinary order that was stayed thereby revoking Acupuncturist  
License No. AC 16948 issued to Respondent;

2. Revoking or suspending Acupuncturist License No. AC 16948, issued to  
Respondent.;

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3. Ordering Respondent to pay any outstanding balance owed to the Board for the cost of probation monitoring ordered under Case No. 1A-2015-67;

4. Ordering Respondent to pay the Board for the costs of the investigation and enforcement of this case;

5. Taking such other and further action as deemed necessary and proper.

DATED: **DEC 27 2018**



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BENJAMIN BODEA  
Executive Officer  
Acupuncture Board  
Department of Consumer Affairs  
State of California  
*Complainant*

# **Exhibit A**

**Decision and Order**

**Acupuncture Board Case No. D1-2015-67**

1 KAMALA D. HARRIS  
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2 JANE ZACK SIMON  
Supervising Deputy Attorney General  
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**FILED**

**OCT 09 2015**

**ACUPUNCTURE BOARD**

7  
8 **BEFORE THE**  
**ACUPUNCTURE BOARD**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Statement of Issues  
11 Against:

Case No. 1A-2015-67

12 **ANNA MARIE SURBER**

**STATEMENT OF ISSUES**

13 **5098 Wilder Drive #1**  
14 **Soquel, CA 95073**

15 Respondent.

16  
17 Complainant alleges:

18 PARTIES

19 1. Terri Thorfinnson ("Complainant") brings this Statement of Issues solely in her  
20 official capacity as the Executive Officer of the Acupuncture Board, Department of Consumer  
21 Affairs.

22 2. On or about October 31, 2014, and then again on or about July 15, 2015, the  
23 Acupuncture Board ("Board"), Department of Consumer Affairs received an application for an  
24 Acupuncture License from Anna Marie Surber ("Respondent"). On or about July 13, 2015, Anna  
25 Marie Surber certified under penalty of perjury to the truthfulness of all statements, answers, and  
26 representations in the application. The Board denied the application on August 3, 2015.

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JURISDICTION

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2           3.     This Statement of Issues is brought before the Acupuncture Board, Department of  
3 Consumer Affairs, under the authority of the following laws. All section references are to the  
4 Business and Professions Code unless otherwise indicated.

5           4.     Section 4955 of the Code states:

6           “The board may deny, suspend, or revoke, or impose probationary conditions upon, the  
7 license of any acupuncturist if he or she is guilty of unprofessional conduct.

8           “Unprofessional conduct shall include, but not be limited to, the following:

9           “(a) Using or possessing any controlled substance as defined in Division 10 (commencing  
10 with Section 11000) of the Health and Safety Code, or dangerous drug or alcoholic beverage to an  
11 extent or in a manner dangerous to himself or herself, or to any other person, or to the public, and  
12 to an extent that the use impairs his or her ability to engage in the practice of acupuncture with  
13 safety to the public.

14           “(b) Conviction of a crime substantially related to the qualifications, functions, or duties of  
15 an acupuncturist, the record of conviction being conclusive evidence thereof.

16           “(c) False or misleading advertising.

17           “(d) Aiding or abetting in, or violating or conspiring in, directly or indirectly, the violation  
18 of the terms of this chapter or any regulation adopted by the board pursuant to this chapter.

19           “(e) Except for good cause, the knowing failure to protect patients by failing to follow  
20 infection control guidelines of the board, thereby risking transmission of blood-borne infectious  
21 diseases from licensee to patient, from patient to patient, and from patient to licensee. In  
22 administering this subdivision, the board shall consider referencing the standards, regulations, and  
23 guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of  
24 the Health and Safety Code and the standards, regulations, and guidelines pursuant to the  
25 California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300)  
26 of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other  
27 blood-borne pathogens in health care settings. As necessary, the board shall consult with the  
28 Medical Board of California, the California Board of Podiatric Medicine, the Dental Board of



1 California, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric  
2 Technicians, to encourage appropriate consistency in the implementation of this subdivision.

3 “The board shall seek to ensure that licensees are informed of the responsibility of licensees  
4 and others to follow infection control guidelines, and of the most recent scientifically recognized  
5 safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

6 “(f) The use of threats or harassment against any patient or licensee for  
7 providing evidence in a disciplinary action, other legal action, or in an investigation  
8 contemplating a disciplinary action or other legal action.

9 “(g) Discharging an employee primarily for attempting to comply with the terms of this  
10 chapter.

11 “(h) Disciplinary action taken by any public agency for any act substantially related to the  
12 qualifications, functions, or duties of an acupuncturist or any professional health care licensee.

13 “(i) Any action or conduct that would have warranted the denial of the acupuncture license.

14 “(j) The violation of any law or local ordinance on an acupuncturist's business premises by  
15 an acupuncturist's employee or a person who is working under the acupuncturist's professional  
16 license or business permit, that is substantially related to the qualifications, functions, or duties of  
17 an acupuncturist. These violations shall subject the acupuncturist who employed the individuals,  
18 or under whose acupuncturist license the employee is working, to disciplinary action.

19 “(k) The abandonment of a patient by the licentiate without written notice to the patient that  
20 treatment is to be discontinued and before the patient has had a reasonable opportunity to secure  
21 the services of another practitioner.

22 “(l) the failure to notify the board of the use of any false, assumed, or fictitious name other  
23 than the name under which he or she is licensed as an individual to practice acupuncture.”

24 5. Section 480 of the Code states:

25 “(a) A board may deny a license regulated by this code on the grounds that the applicant  
26 has one of the following:

27 “(1) Been convicted of a crime. A conviction within the meaning of this section means a  
28 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a

1 board is permitted to take following the establishment of a conviction may be taken when the time  
2 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an  
3 order granting probation is made suspending the imposition of sentence, irrespective of a  
4 subsequent order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

5 “(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially  
6 benefit himself or herself or another, or substantially injure another.

7 “(3) (A) Done any act that if done by a licentiate of the business or profession in question,  
8 would be grounds for suspension or revocation of license.

9 “(B) The board may deny a license pursuant to this subdivision only if the crime or act is  
10 substantially related to the qualifications, functions, or duties of the business or profession for  
11 which application is made.

12 “(b) Notwithstanding any other provision of this code, a person shall not be denied a  
13 license solely on the basis that he or she has been convicted of a felony if he or she has obtained a  
14 certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of  
15 Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has  
16 met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate  
17 the rehabilitation of a person when considering the denial of a license under subdivision (a) of  
18 Section 482.

19 “(c) Notwithstanding any other provisions of this code, a person shall not be denied a  
20 license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4,  
21 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been  
22 dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof  
23 of the dismissal.

24 “(d) A board may deny a license regulated by this code on the ground that the applicant  
25 knowingly made a false statement of fact required to be revealed in the application for the  
26 license.”

27 6. Section 4956 of the Code states:  
28

1 "A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a  
2 charge which is substantially related to the qualifications, functions, or duties of an acupuncturist  
3 is deemed to be a conviction within the meaning of this chapter.

4 "The board may order a license suspended or revoked, or may deny a license, or may  
5 impose probationary conditions upon a license, when the time for appeal has elapsed, or the  
6 judgment of conviction has been affirmed on appeal, or when an order granting probation is made  
7 suspending the imposition of sentence irrespective of a subsequent order under the provisions of  
8 Section 1203.4 of the Penal Code allowing the person to withdraw his or her pleas of guilty and to  
9 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation,  
10 complaint, information, or indictment."

11 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or  
12 revoke a license on the ground that the licensee has been convicted of a crime substantially related  
13 to the qualifications, functions, or duties of the business or profession for which the license was  
14 issued.

#### 15 CAUSE FOR DENIAL OF APPLICATION

16 (Conviction)

17 8. Respondent's application is subject to denial under sections 4955, 480, 490, and 493  
18 in that on or about June 6, 2012, in a criminal proceeding entitled *State of Nevada v. Anna Surber*  
19 in Lyon County, Nevada, Case Number 11 CR 0340 3G, Respondent was convicted by plea of  
20 guilty of Nevada Revised Statutes section 484C.110, DUI Alcohol and/or Controlled Substance,  
21 Above the Legal Limit. The circumstances are as follows:

22 a. On or about August 31, 2011, Respondent as involved in a traffic accident on  
23 U.S. 50 at approximately 8:50 a.m. A preliminary breath test recorded a blood alcohol content  
24 ("BAC") of .24. After arrest, Respondent requested a blood draw that ultimately registered a  
25 BAC of .248.

26 b. On or about June 6, 2012, Respondent was sentenced as follows: 30 days in  
27 Lyon County jail, with all but two days suspended for one year on condition of compliance with  
28 terms of probation, and credit for two days already served. Probation, which was successfully

1 completed, included completion of a DUI workshop within two months time; completion of a  
2 victim impact panel within two months time; attendance at substance abuse counseling with  
3 monthly reports to the Court; twice a week attendance at AA meetings; and installation of a breath  
4 interlock device on her vehicle.

5 9. Additionally, on or about June 20, 2007, in a criminal proceeding in Carson City,  
6 Nevada, Respondent was convicted by plea of guilty to Nevada Revised Statutes section  
7 484C.110, DUI Alcohol and/or Controlled Substance, Above the Legal Limit. The circumstances  
8 are as follows:

9 a. On or about April 10, 2007, Respondent was arrested in Carson City, Nevada  
10 for driving under the influence of alcohol. Respondent eventually pleaded guilty and was  
11 sentenced to 120 day in jail, sentence suspended for one-year on condition of compliance with  
12 terms of probation, which included completion of a victim impact panel; and DUI school.

13 10. Additionally, on or about September 15, 2004, in a criminal proceeding in Carson  
14 City, Nevada, Respondent was convicted after a bench trial of violating Nevada Revised Statutes  
15 section 199.280.3, Resisting a Public Officer. The circumstances are as follows:

16 a. On or about March 28, 2004, Respondent was pulled over by the Carson City  
17 Sheriff's Department based on a domestic violence complaint made by Respondent's parents.  
18 Respondent refused to exit her car as requested by the peace officers. When the officers  
19 attempted to remove Respondent from the car Respondent physically refused and was ultimately  
20 arrested.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Acupuncture Board issue a decision:

1. Denying the application of Anna Marie Surber for an Acupuncture License;
2. Taking such other and further action as deemed necessary and proper.

DATED:           **OCT 09 2015**          

  
TERRI THORFINNSON  
Executive Officer  
Acupuncture Board  
Department of Consumer Affairs  
State of California  
*Complainant*

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