

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

In the Matter of the Petition to Revoke
Probation Against:

Anna Marie Surber, L.Ac.
202 Central Ave.
Capitola, CA 95010

Acupuncture License No. AC 16948

Respondent


Case No. D1-2015-67

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Acupuncture Board, Department of Consumer Affairs, State of California, as its Decision in the above-entitled matter.

This Decision shall become effective on April 1, 2019.

IT IS SO ORDERED March 22, 2019.


Benjamin Bodea, Executive Officer
Acupuncture Board
Department of Consumer Affairs
State of California

1 XAVIER BECERRA
Attorney General of California
2 MARY CAIN-SIMON
Supervising Deputy Attorney General
3 GREG W. CHAMBERS
Deputy Attorney General
4 State Bar No. 237509
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 510-3382
6 Facsimile: (415) 703-5480
Attorneys for Complainant
7

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

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

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

16 **Acupuncturist License No. AC 16948**

17 Respondent.

Case No. D1-2015-67

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

18
19
20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
21 entitled proceedings that the following matters are true:

22 **PARTIES**

23 1. Benjamin Bodea (Complainant) is the Executive Officer of the Acupuncture Board
24 (Board). He brought this action solely in his official capacity and is represented in this matter by
25 Xavier Becerra, Attorney General of the State of California, by Greg W. Chambers, Deputy
26 Attorney General.

27 2. ANNA MARIE SURBER, L.Ac. (Respondent) is representing herself in this
28 proceeding and has chosen not to exercise her right to be represented by counsel.

1 3. On or about February 22, 2016, the Board issued Acupuncturist License No. AC
2 16948 to ANNA MARIE SURBER, L.Ac. (Respondent). The Acupuncturist License was in full
3 force and effect at all times relevant to the charges brought in Petition to Revoke Probation No.
4 D1-2015-67 and will expire on July 31, 2019, unless renewed.

5 **JURISDICTION**

6 4. Petition to Revoke Probation No. D1-2015-67 was filed before the Board, and is
7 currently pending against Respondent. The Petition to Revoke Probation and all other statutorily
8 required documents were properly served on Respondent on December 27, 2018. Respondent
9 timely filed her Notice of Defense contesting the Petition to Revoke Probation. A copy of
10 Petition to Revoke Probation No. D1-2015-67 is attached as Exhibit A and incorporated by
11 reference.

12 **ADVISEMENT AND WAIVERS**

13 5. Respondent has carefully read, and understands the charges and allegations in Petition
14 to Revoke Probation No. D1-2015-67. Respondent also has carefully read, and understands the
15 effects of this Stipulated Surrender of License and Order.

16 6. Respondent is fully aware of her legal rights in this matter, including the right to a
17 hearing on the charges and allegations in the Petition to Revoke Probation; the right to be
18 represented by counsel, at her own expense; the right to confront and cross-examine the witnesses
19 against her; the right to present evidence and to testify on her own behalf; the right to the issuance
20 of subpoenas to compel the attendance of witnesses and the production of documents; the right to
21 reconsideration and court review of an adverse decision; and all other rights accorded by the
22 California Administrative Procedure Act and other applicable laws.

23 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
24 every right set forth above.

25 **CULPABILITY**

26 8. Respondent admits the truth of each and every charge and allegation in Petition to
27 Revoke Probation No. D1-2015-67, agrees that cause exists for discipline and hereby surrenders
28 her Acupuncturist License No. AC 16948 for the Board's formal acceptance.

1 9. Respondent understands that by signing this stipulation she enables the Board to issue
2 an order accepting the surrender of her Acupuncturist License without further process.

3 **CONTINGENCY**

4 10. This stipulation shall be subject to approval by the Board. Respondent understands
5 and agrees that counsel for Complainant and the staff of the Board may communicate directly
6 with the Board regarding this stipulation and surrender, without notice to or participation by
7 Respondent. By signing the stipulation, Respondent understands and agrees that she may not
8 withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers
9 and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the
10 Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this
11 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not
12 be disqualified from further action by having considered this matter.

13 11. The parties understand and agree that Portable Document Format (PDF) and facsimile
14 copies of this Stipulated Surrender of License and Order, including PDF and facsimile signatures
15 thereto, shall have the same force and effect as the originals.

16 12. In consideration of the foregoing admissions and stipulations, the parties agree that
17 the Board may, without further notice or formal proceeding, issue and enter the following Order:

18 **ORDER**

19 IT IS HEREBY ORDERED that Acupuncturist License No. AC 16948, issued to
20 Respondent ANNA MARIE SURBER, L.Ac., is surrendered and accepted by the Board.

21 1. The surrender of Respondent's Acupuncturist License and the acceptance of the
22 surrendered license by the Board shall constitute the imposition of discipline against Respondent.
23 This stipulation constitutes a record of the discipline and shall become a part of Respondent's
24 license history with the Board.

25 2. Respondent shall lose all rights and privileges as an Acupuncturist in California as of
26 the effective date of the Board's Decision and Order.

27 3. Respondent shall cause to be delivered to the Board her pocket license and, if one was
28 issued, her wall certificate on or before the effective date of the Decision and Order.

1 If Respondent ever files an application for licensure or a petition for reinstatement in the
2 State of California, the Board shall treat it as a petition for reinstatement. Respondent must
3 comply with all the laws, regulations and procedures for reinstatement of a revoked or
4 surrendered license in effect at the time the petition is filed, and all of the charges and allegations
5 contained in Petition to Revoke Probation No. D1-2015-67 shall be deemed to be true, correct and
6 admitted by Respondent when the Board determines whether to grant or deny the petition.

7 4. Respondent may not petition for reinstatement of a revoked or surrendered
8 license/registration for three (3) years from the effective date of this Decision. If the Board grants
9 future reinstatement, Respondent agrees to reimburse the Board for its costs of investigation and
10 enforcement of this matter in the amount of \$1,725.00 payable to the Board upon the effective
11 date of such reinstatement Decision.

12 5. Respondent shall pay the agency its costs of investigation and enforcement in the
13 amount of \$1,725.00 prior to issuance of a new or reinstated license.

14 6. If Respondent should ever apply or reapply for a new license or certification, or
15 petition for reinstatement of a license, by any other health care licensing agency in the State of
16 California, all of the charges and allegations contained in Petition to Revoke Probation, No. D1-
17 2015-67 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any
18 Statement of Issues or any other proceeding seeking to deny or restrict licensure.

19 **ACCEPTANCE**

20 I have carefully read the Stipulated Surrender of License and Order. I understand the
21 stipulation and the effect it will have on my Acupuncturist License. I enter into this Stipulated
22 Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound
23 by the Decision and Order of the Acupuncture Board.

24
25 DATED: 3/13/2019



26 ANNA MARIE SURBER, L.AC.
27 Respondent

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ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Acupuncture Board of the Department of Consumer Affairs.

Dated: 3/18/2019

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
MARY CAIN-SIMON
Supervising Deputy Attorney General

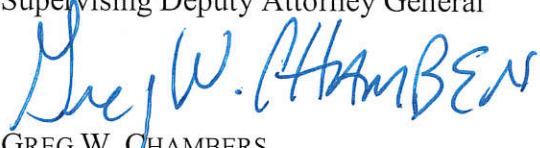
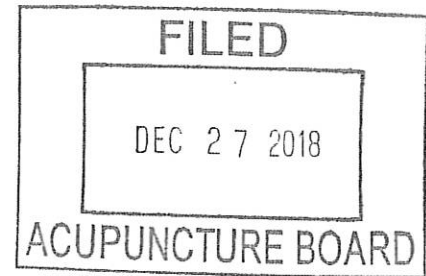

GREG W. CHAMBERS
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Petition to Revoke Probation No. D1-2015-67

1 XAVIER BECERRA
Attorney General of California
2 MARY CAIN-SIMON
Supervising Deputy Attorney General
3 GREG W. CHAMBERS
Deputy Attorney General
4 State Bar No. 237509
455 Golden Gate Avenue, Suite 11000
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Attorneys for Complainant
7



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.

18
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.
27
28

1 Technicians, to encourage appropriate consistency in the implementation of this
subdivision.

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

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

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

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

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

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

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

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

27 CAUSE TO REVOKE PROBATION

28 (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 3. Ordering Respondent to pay any outstanding balance owed to the Board for the cost
- 2 of probation monitoring ordered under Case No. 1A-2015-67;
- 3 4. Ordering Respondent to pay the Board for the costs of the investigation and
- 4 enforcement of this case;
- 5 5. Taking such other and further action as deemed necessary and proper.

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DATED: **DEC 27 2018**



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

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

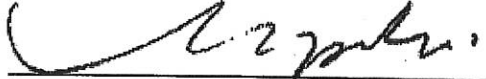
In the Matter of the Statement of Issues)	
Against:)	Case No. 1A-2015-67
)	
ANNA MARIE SURBER)	
5098 Wilder Drive #1)	
Soquel, CA 95073)	
)	
)	
Respondent.)	
_____)	

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Acupuncture Board, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on February 22, 2016.

It is so ORDERED January 21, 2016.



Michael Shi, L.Ac., Board President
Acupuncture Board
Department of Consumer Affairs
State of California.

1 KAMALA D. HARRIS
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 **GREG W. CHAMBERS**
Deputy Attorney General
4 State Bar No. 237509
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5723
6 Facsimile: (415) 703-5480
Attorneys for Complainant
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**

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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

15 Respondent.
16

17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 PARTIES

20 1. Terri Thorfinnson ("Complainant") is the Executive Officer of the Acupuncture
21 Board. She brought this action solely in her official capacity and is represented in this matter by
22 Kamala D. Harris, Attorney General of the State of California, by Greg W. Chambers, Deputy
23 Attorney General.

24 2. Respondent Anna Marie Surber ("Respondent") is representing herself in this
25 proceeding and has chosen not to exercise her right to be represented by counsel.

26 3. On or about July 15, 2015, Respondent filed an application dated July 13, 2015, with
27 the Acupuncture Board to obtain an Acupuncture License.
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JURISDICTION

4. Statement of Issues No. 1A-2015-67 was filed before the Acupuncture Board ("Board"), Department of Consumer Affairs, and is currently pending against Respondent. The Statement of Issues and all other statutorily required documents were properly served on Respondent on October 9, 2015.

5. A copy of Statement of Issues No. 1A-2015-67 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, and understands the charges and allegations in Statement of Issues No. 1A-2015-67. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Statement of Issues; the right to be represented by counsel at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Statement of Issues No. 1A-2015-67.

10. Respondent agrees that her Acupuncture License is subject to denial and she agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

11. This stipulation shall be subject to approval by the Acupuncture Board. Respondent understands and agrees that counsel for Complainant and the staff of the Acupuncture Board may

1 communicate directly with the Board regarding this stipulation and settlement, without notice to
2 or participation by Respondent. By signing the stipulation, Respondent understands and agrees
3 that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the
4 Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and
5 Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for
6 this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall
7 not be disqualified from further action by having considered this matter.

8 12. The parties understand and agree that Portable Document Format (“PDF”) and
9 facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and
10 facsimile signatures thereto, shall have the same force and effect as the originals.

11 13. In consideration of the foregoing admissions and stipulations, the parties agree that
12 the Board may, without further notice or formal proceeding, issue and enter the following
13 Disciplinary Order:

14 **DISCIPLINARY ORDER**

15 IT IS HEREBY ORDERED that an Acupuncture License will be issued to Respondent
16 Anna Marie Surber and immediately revoked. The revocation will be stayed and the Respondent
17 placed on five (5) years probation on the following terms and conditions.

18 1. ALCOHOL AND DRUG ABUSE TREATMENT Effective 30 days from the date
19 of this decision, Respondent shall enter an inpatient or outpatient alcohol or other drug abuse
20 recovery program (a minimum of six (6) months duration) or an equivalent program as approved
21 by the Board.

22 Quitting the program without permission or being expelled for cause shall constitute a
23 violation of probation by respondent. Subsequent to the program, Respondent shall participate in
24 on-going treatment such as receiving individual and/or group therapy from a psychologist trained
25 in alcohol and drug abuse treatment; and/or attend Twelve Step meetings or the equivalent as
26 approved by the Board at least three times a week during the first year of probation; and/or other
27 substance abuse recovery programs approved by the Board. Respondent shall pay all costs of
28 treatment and therapy, and provide documentation of attendance at Twelve Step meetings or the

1 equivalent as approved by the Board. The psychologist shall confirm that Respondent has
2 complied with the requirements of this decision and shall notify the Board immediately if he or
3 she believes the Respondent cannot safely render acupuncture services. Respondent shall execute
4 a release authorizing the psychologist to divulge the aforementioned information to the Board.

5 An inpatient or outpatient drug or alcohol abuse recovery program taken after the facts that
6 gave rise to the charges in the Statement of Issues, but prior to the effective date of the Decision
7 may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this
8 condition if the program would have been approved by the Board or its designee had the program
9 been taken after the effective date of the Decision.

10 2. ABSTAIN FROM DRUGS AND ALCOHOL AND SUBMIT TO TESTS AND
11 SAMPLES Respondent shall completely abstain from the personal use or possession of alcohol
12 and controlled substances as defined in the California Uniform Controlled Substances Act and
13 dangerous drugs as defined by Section 4022 of the Business and Professions Code, or any drugs
14 requiring a prescription except when lawfully prescribed by a licensed practitioner for a bona fide
15 illness. Respondent shall abstain completely from the use of alcoholic beverages. Respondent
16 shall undergo random, biological fluid testing as determined by the Board. Respondent shall bear
17 all costs of such testing. The length of time and frequency will be determined by the Board. Any
18 confirmed positive finding will be considered a violation of probation.

19 3. REIMBURSEMENT FOR PROBATION SURVEILLANCE MONITORING
20 Respondent shall reimburse the Board for the hourly costs it incurs in monitoring the
21 probation to ensure compliance for the duration of the probation period.

22 4. OBEY ALL LAWS Respondent shall obey all federal, state and local laws and all
23 regulations governing the practice of acupuncture in California. A full and detailed account of
24 any and all violations of law shall be reported by the Respondent to the Board in writing within
25 seventy-two (72) hours of occurrence.

26 5. QUARTERLY REPORTS Respondent shall submit quarterly declarations under
27 penalty of perjury on forms provided by the Board, stating whether there has been compliance
28 with all the conditions of probation.

1 6. SURVEILLANCE PROGRAM Respondent shall comply with the Board's probation
2 surveillance program and shall, upon reasonable notice, report to the assigned investigative
3 district office. Respondent shall contact the assigned probation surveillance monitor regarding
4 any questions specific to the probation order. Respondent shall not have any unsolicited or
5 unapproved contact with 1) victims or complainants associated with the case; 2) Board members
6 or members of its staff; or 3) persons serving the Board as expert examiners.

7 7. INTERVIEW WITH THE BOARD OR ITS DESIGNEE Respondent shall appear in
8 person for interviews with the Board or its designee upon request at various intervals and with
9 reasonable notice.

10 8. CHANGES OF EMPLOYMENT Respondent shall notify the Board in writing,
11 through the assigned probation surveillance compliance officer of any and all changes of
12 employment, location and address within 30 days of such change.

13 9. TOLLING FOR OUT-OF-STATE PRACTICE OR RESIDENCE In the event
14 Respondent should leave California to reside or to practice outside the State, Respondent must
15 notify the Board in writing of the dates of departure and return. Periods of residency or practice
16 outside California will not apply to the reduction of this probationary period.

17 10. EMPLOYMENT AND SUPERVISION OF TRAINEES Respondent shall not
18 employ or supervise or apply to employ or supervise acupuncture trainees during the course of
19 this probation. Respondent shall terminate any such supervisory relationship in existence on the
20 effective date of this probation.

21 11. VIOLATION OF PROBATION If Respondent violates probation in any respect, the
22 Board may, after giving respondent notice and the opportunity to be heard, revoke probation and
23 carry out the disciplinary order that was stated. If an accusation or petition to revoke probation is
24 filed against Respondent during probation, the Board shall have continuing jurisdiction until the
25 matter is final, and the period of probation shall be extended until the matter is final. No petition
26 for modification or termination of probation shall be considered while there is an accusation or
27 petition to revoke probation pending against respondent.

28

1 12. COMPLETION OF PROBATION Upon successful completion of probation,
2 Respondent's license will be fully restored.

3 ACCEPTANCE

4 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
5 stipulation and the effect it will have on my Acupuncture License. I enter into this Stipulated
6 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be
7 bound by the Decision and Order of the Acupuncture Board.

8
9 DATED: 12-4-15 anna marie surber
10 ANNA MARIE SURBER
11 Respondent

12 ENDORSEMENT

13 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
14 submitted for consideration by the Acupuncture Board.

15 Dated: 12/8/2015 Respectfully submitted,
16 KAMALA D. HARRIS
17 Attorney General of California
18 JANE ZACK SIMON
19 Supervising Deputy Attorney General
20 Greg W. Chambers
21 GREG W. CHAMBERS
22 Deputy Attorney General
23 *Attorneys for Complainant*

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Exhibit A

Statement of Issues No. 1A-2015-67

1 KAMALA D. HARRIS
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 GREG W. CHAMBERS
Deputy Attorney General
4 State Bar No. 237509
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6 Facsimile: (415) 703-5480
Attorneys for Complainant
7

FILED

OCT 09 2015

ACUPUNCTURE BOARD

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

12 In the Matter of the Statement of Issues
13 Against:

Case No. 1A-2015-67

14 **ANNA MARIE SURBER**

STATEMENT OF ISSUES

15 **5098 Wilder Drive #1**
Soquel, CA 95073

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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28 ///

JURISDICTION

1
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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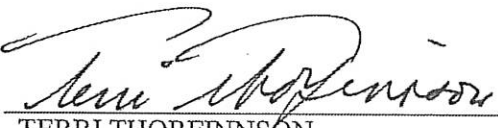
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PRAYER

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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