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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**
16 **Soquel, CA 95073**

Respondent.

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:
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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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