

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

In the Matter of the Statement of Issues )  
Against: )  
 )  
ANNA MARIE SURBER )  
5098 Wilder Drive #1 )  
Soquel, CA 95073 )  
 )  
Respondent. )  
\_\_\_\_\_ )

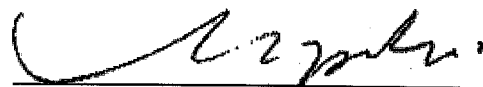
Case No. 1A-2015-67

**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.

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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.  
28



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



**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  
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*Attorneys for Complainant*  
7

**FILED**

**OCT 09 2015**

**ACUPUNCTURE BOARD**

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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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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COPY OF GOVERNMENT CODE SECTIONS 11518, 11519, 11520, 11521, 11522 AND 11523

**SECTION 11518: Copy of Decision to Parties**

Copies of the decision shall be delivered to the parties personally or sent to them by registered mail.

**SECTION 11519: Effective date of decision; Stay of execution; Notice of suspension or revocation; Restitution; Actual knowledge as condition of enforcement**

(a) The decision shall become effective 30 days after it is delivered or mailed to respondent unless: a reconsideration is ordered within that time, or the agency itself orders that the decision shall become effective sooner, or a stay of execution is granted.

(b) A stay of execution may be included in the decision or if not included therein may be granted by the agency at any time before the decision becomes effective. The stay of execution provided herein may be accompanied by an express condition that respondent comply with specified terms of probation; provided, however, that the terms of probation shall be just and reasonable in the light of the findings and decision.

(c) If respondent was required to register with any public officer, a notification of any suspension or revocation shall be sent to the officer after the decision has become effective.

(d) As used in subdivision (b), specified terms of probation may include an order of restitution. Where restitution is ordered and paid pursuant to the provisions of this subdivision, the amount paid shall be credited to any subsequent judgment in a civil action.

(e) The person to which the agency action is directed may not be required to comply with a decision unless the person has been served with the decision in the manner provided in Section 11505 or has actual knowledge of the decision.

(f) A nonparty may not be required to comply with a decision unless the agency has made the decision available for public inspection and copying or the nonparty has actual knowledge of the decision.

(g) This section does not preclude an agency from taking immediate action to protect the public interest in accordance with Article 13 (commencing with Section 11460.10) of Chapter 4.5.

**SECTION 11520: Defaults and uncontested cases**

(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent; and where the burden of proof is on the respondent to establish that the respondent is entitled to the agency action sought, the agency may act without taking evidence.

(b) Notwithstanding the default of the respondent, the agency or the administrative law judge, before a proposed decision is issued, has discretion to grant a hearing on reasonable notice to the parties. If the agency and administrative law judge make conflicting orders under this subdivision, the agency's order takes precedence. The administrative law judge may order the respondent, or the respondent's attorney or other authorized representative, or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of the respondent's failure to appear at the hearing.

(c) Within seven days after service on the respondent of a decision based on the respondent's default, the respondent may serve a written motion requesting that the decision be vacated and stating the grounds relied on. The agency in its discretion may vacate the decision and grant a hearing on a showing of good cause. As used in this subdivision, good cause includes, but is not limited to, any of the following:

- (1) Failure of the person to receive notice served pursuant to Section 11505.
- (2) Mistake, inadvertence, surprise, or excusable neglect.



## **SECTION 11521: Reconsideration**

(a) The agency itself may order a reconsideration of all or part of the case on its own motion or on petition of any party. The agency shall notify a petitioner of the time limits for petitioning for reconsideration. The power to order a reconsideration shall expire 30 days after the delivery or mailing of a decision to a respondent, or on the date set by the agency itself as the effective date of the decision if that date occurs prior to the expiration of the 30-day period or at the termination of a stay of not to exceed 30 days which the agency may grant for the purpose of filing an application for reconsideration. If additional time is needed to evaluate a petition for reconsideration filed prior to the expiration of any of the applicable periods, an agency may grant a stay of that expiration for no more than 10 days, solely for the purpose of considering the petition. If no action is taken on a petition within the time allowed for ordering reconsideration, the petition shall be deemed denied.

(b) The case may be reconsidered by the agency itself on all the pertinent parts of the record and such additional evidence and argument as may be permitted, or may be assigned to an administrative law judge. A reconsideration assigned to an administrative law judge shall be subject to the procedure provided in Section 11517. If oral evidence is introduced before the agency itself, no agency member may vote unless he or she heard the evidence.

## **SECTION 11522: Reinstatement of license or reduction of penalty**

A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefor, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement. This section shall not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty.

## **SECTION 11523: Judicial Review**

Judicial review may be had by filing a petition for a writ of mandate in accordance with the provisions of the Code of Civil Procedure, subject, however, to the statutes relating to the particular agency. Except as otherwise provided in this section, the petition shall be filed within 30 days after the last day on which reconsideration can be ordered. The right to petition shall not be affected by the failure to seek reconsideration before the agency. On request of the petitioner for a record of the proceedings, the complete record of the proceedings, or the parts thereof as are designated by the petitioner in the request, shall be prepared by the Office of Administrative Hearings or the agency and shall be delivered to the petitioner, within 30 days after the request, which time shall be extended for good cause shown, upon the payment of the cost for the preparation of the transcript, the cost for preparation of other portions of the record and for certification thereof. The complete record includes the pleadings, all notices and orders issued by the agency, any proposed decision by an administrative law judge, the final decision, a transcript of all proceedings, the exhibits admitted or rejected, the written evidence and any other papers in the case. If the petitioner, within 10 days after the last day on which reconsideration can be ordered, requests the agency to prepare all or any part of the record, the time within which a petition may be filed shall be extended until 30 days after its delivery to him or her. The agency may file with the court the original of any document in the record in lieu of a copy thereof. If the petitioner prevails in overturning the administrative decision following judicial review, the agency shall reimburse the petitioner for all costs of transcript preparation, compilation of the record, and certification.