

1 KAMALA D. HARRIS
Attorney General of California
2 JOSE R. GUERRERO
Supervising Deputy Attorney General
3 CAROLYNE EVANS
Deputy Attorney General
4 State Bar No. 289206
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1211
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 Accusation Against:

Case No. 1A-2012-76

11 **MARY PATRICIA STUART**

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

12 **P.O. Box 213**
13 **Palo Alto, CA 94302**

14 **Acupuncture License No. AC 2811**

15 Respondent.
16

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:
20

21 PARTIES

22 1. Terri Thorfinnson ("Complainant") is the Executive Officer of the Acupuncture
23 Board ("Board"). She brought this action solely in her official capacity and is represented in this
24 matter by Kamala D. Harris, Attorney General of the State of California; by Carolyne Evans,
25 Deputy Attorney General.

26 2. Respondent Mary Patricia Stuart ("Respondent") is represented in this proceeding by
27 attorney Justin D. Hein, whose address is: Simas & Associates, LTD, 3835 North Freeway Blvd.,
28 Suite 228, Sacramento, CA 95834.

1 10. For the purpose of resolving the Accusation without the expense and uncertainty of
2 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
3 basis for the charges in the Accusation, and that Respondent hereby gives up her right to contest
4 those charges.

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

7 12. The admissions made by Respondent herein are only for the purposes of this
8 proceeding, or any other proceedings in which the Acupuncture Board or other professional
9 licensing agency is involved, and shall not be admissible in any other criminal or civil
10 proceeding.

11 13. Respondent agrees that if she ever petitions for early termination or modification of
12 probation, or if the Board ever petitions for revocation of probation, all of the charges and
13 allegations contained in Accusation No. 1A-2012-76 shall be deemed true, correct, and fully
14 admitted by Respondent for purposes of that proceeding or any other licensing proceeding
15 involving Respondent in the State of California.

16 CONTINGENCY

17 14. This stipulation shall be subject to approval by the Board. Respondent understands
18 and agrees that counsel for Complainant and the staff of the Board may communicate directly
19 with the Board regarding this stipulation and settlement, without notice to or participation by
20 Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that
21 she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board
22 considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order,
23 the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this
24 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not
25 be disqualified from further action by having considered this matter.

26 15. The parties understand and agree that Portable Document Format (PDF) and facsimile
27 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format
28 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

1 seventy-two (72) hours of occurrence.

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

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

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

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

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

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

25 11. COST RECOVERY Respondent shall pay to the Board its costs of investigation
26 and enforcement in the amount of \$6,421.50. Respondent shall be permitted to pay these costs in
27 a payment plan approved by the Board, with payments to be completed no later than three months
28 prior to the end of the probation term. The first payment will be due thirty (30) days after

1 Respondent informs Board she has resumed active practice as a licensee. Cost recovery will not
2 be tolled. Respondent understands that failure to make payments in accordance with any formal
3 agreement entered into with the Board or pursuant to any Decision by the Board shall be
4 considered a violation of probation.

5 Consideration of financial hardship will not be given to Respondent should she violate this
6 term and condition, unless an unexpected AND unavoidable hardship is established from the date
7 of this order to the date payment(s) is/are due. Submission of evidence demonstrating financial
8 hardship does not preclude the Board from pursuing further disciplinary action. However,
9 Respondent understands that providing evidence and supporting documentation of financial
10 hardship may delay further disciplinary action.

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

18 13. COMPLETION OF PROBATION Upon successful completion of probation,
19 Respondent's license will be fully restored.

20 ACCEPTANCE

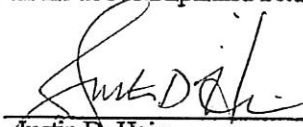
21 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
22 discussed it with my attorney, Justin D. Hein. I understand the stipulation and the effect it will
23 have on my Acupuncture License. I enter into this Stipulated Settlement and Disciplinary Order
24 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
25 Acupuncture Board.

26
27 DATED: May 7 2015 Mary Patricia Stuart
28 MARY PATRICIA STUART
Respondent

1 I have read and fully discussed with Respondent Mary Patricia Stuart the terms and
2 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.

3 I approve its form and content.

4 DATED: 5/7/15



Justin D. Hein
Attorney for Respondent

ENDORSEMENT

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

9 Dated: 6/10/15

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
JOSE R. GUERRERO
Supervising Deputy Attorney General


CAROLYNE EVANS
Deputy Attorney General
Attorneys for Complainant

17 SF2014408917
18 20731869.doc

Exhibit A

Accusation No. 1A-2012-76

1 KAMALA D. HARRIS
Attorney General of California
2 JOSE R. GUERRERO
Supervising Deputy Attorney General
3 CAROLYNE EVANS
Deputy Attorney General
4 State Bar No. 289206
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1211
6 Facsimile: (415) 703-5480
7 *Attorneys for Complainant*

FILED

NOV - 7 2014

ACUPUNCTURE BOARD

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

12 In the Matter of the Accusation Against:

Case No. 1A-2012-76

13 **MARY PATRICIA STUART**

ACCUSATION

14 **P.O. Box 1318-2577**
Sacramento, CA 95812

15 **Acupuncture License No. AC 2811**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about June 2, 1986, the Board issued Acupuncture License Number AC
24 2811 to Mary Patricia Stuart (Respondent). Said Acupuncture License will expire on June 30,
25 2016, unless it is renewed. It is currently on inactive status, which means that the licensee cannot
26 practice acupuncture and is exempt from complying with the continuing education requirement.

27 ///

28 ///

JURISDICTION

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

4. Section 4955 of the Code states, in pertinent part:

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

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

"..."

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

5. Section 4955.1 of the Code states, in pertinent part:

"The board may deny, suspend, revoke, or impose probationary conditions upon the license of any acupuncturist if he or she is guilty of committing a fraudulent act including, but not be limited to, any of the following: . . .

"(c) Committing any act involving dishonesty or corruption with respect to the qualifications, functions, or duties of an acupuncturist. . . ."

6. Section 4956 of the Code provides:

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

"The board may order a license suspended or revoked, or may deny a license, or may impose probationary conditions upon a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing the person to withdraw his or her

1 pleas of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
2 dismissing the accusation, complaint, information, or indictment.”

3 7. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
4 or forfeiture by operation of law of a license issued by a board in the department, or its
5 suspension, forfeiture, or cancellation of a license by order of the board or by order of a court of
6 law, or its surrender without the written consent of the board, during any period in which it may
7 be renewed, restored, reissued or reinstated, shall not deprive the board of its authority to institute
8 or continue a disciplinary proceeding against the licensee upon any ground provided by law or to
9 enter an order suspending or revoking the license or otherwise taking disciplinary action against
10 the licensee on any such ground.

11 COST RECOVERY

12 8. Section 4959 of the Code states:

13 "(a) The board may request the administrative law judge, under his or her
14 proposed decision in resolution of a disciplinary proceeding before the board, to direct
15 any licensee found guilty of unprofessional conduct to pay to the board a sum not to
16 exceed actual and reasonable costs of the investigation and prosecution of the case.

17 "(b) The costs to be assessed shall be fixed by the administrative law judge and
18 shall not in any event be increased by the board. When the board does not adopt a
19 proposed decision and remands the case to an administrative law judge, the
20 administrative law judge shall not increase the amount of any costs assessed in the
21 proposed decision.

22 "(c) When the payment directed in the board's order for payment of costs is not
23 made by the licensee, the board may enforce the order for payment in the superior
24 court in the county where the administrative hearing was held. This right of
25 enforcement shall be in addition to any other rights the board may have as to any
26 licensee directed to pay costs.

1 "(d) In any judicial action for the recovery of costs, proof of the board's
2 decision shall be conclusive proof of the validity of the order of payment and the
3 terms for payment.

4 "(e) All costs recovered under this section shall be considered a reimbursement
5 for costs incurred and shall be deposited in the Acupuncture Fund."

6 CAUSE FOR DISCIPLINE

7 (Unprofessional conduct: Substantially-related criminal conviction)

8 9. Respondent's license is subject to disciplinary action for unprofessional conduct
9 under Code sections 4955(b) [substantially related conviction] and 4955.1(c) [act involving
10 dishonesty or corruption with respect to the qualifications, functions, or duties of an
11 acupuncturist], as detailed herein below.

12 10. On or about February 11, 2010, a criminal complaint titled *People of the State*
13 *of California vs. Mary Patricia Stuart*, case number SC070330B, was filed in San Mateo County
14 Superior Court. Count 1 charged a felony violation of Penal Code (PC) section 368(D),
15 embezzlement against an elder or dependent adult. Count 2 charged a felony violation of PC
16 484E(D), unlawfully acquiring access to credit card account information without consent of the
17 cardholder, with fraudulent intent. Count 3 charged a felony violation of PC 475(A), unlawfully
18 passed forged or counterfeitd unlawfully obtained information.

19 11. On or about April 25, 2011, an Amended Information was filed, which added
20 Count 4 that charged a felony violation of PC 487(A), grand theft - unlawfully taking money or
21 personal property exceeding \$950.00, which was reduced to a misdemeanor pursuant to PC 17,
22 stipulated to be a lesser-included offense within that count.

23 12. At a hearing on April 25, 2011, Respondent entered a plea of nolo contendere to
24 Count 4, a misdemeanor violation of PC 487(A), and was found guilty of the Count 4 charge. All
25 remaining counts were dismissed. Respondent was placed on two years of court probation, and
26 sentenced to thirty days in jail, with credit for a total of thirteen days. She was recommended to
27 the Alternative Sentencing Bureau Program, and ordered to the Sheriff's Office to sign up prior to
28

1 the surrender date. She was ordered not to have access to financial information of the victim F.S.
2 and to pay restitution, a fine, and fees.

3 13. The underlying facts of Respondent's conviction are as follows:

4 a. In or about September 2009, the Menlo Park Police Department
5 investigated a report from Adult Protective Services (APS) regarding embezzlement and financial
6 abuse of an elder, F.S. who was an 81-year old female and Respondent's mother.

7 b. During the course of the police investigation, Respondent was
8 interviewed and admitted that she and her ex-fiancee, both of whom were unemployed, moved
9 into F.S.'s home and made unauthorized purchases with F.S.'s credit cards. Respondent admitted
10 that she used F.S.'s credit cards to pay for Respondent's cellular phone bill, a storage unit rental, a
11 video store membership, a down payment on a new car, dental work, restaurant bills, groceries,
12 electronics, books, gas, and perfume, among other items. According to information provided by
13 Respondent, Respondent incurred charges of \$5,079.06 and Respondent's friend G.D. incurred
14 charges of \$8,959.61, all unauthorized by F.S., Respondent's mother.

15 PRAYER

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

18 1. Revoking or suspending Acupuncture License Number AC 2811, issued to Mary
19 Patricia Stuart;

20 2. Ordering Mary Patricia Stuart to pay the Acupuncture Board the reasonable costs of
21 the investigation and enforcement of this case, pursuant to Business and Professions Code section
22 4959; and

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

DATED: NOV 07 2014



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

SF2014408917
41088714_2.doc