BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for Reduction of Penalty Against: DIXIE SHANNON WALL, LAc., Petitioner.	Case No.: 1A-2010-45 OAH No.: 2015040965

DECISION

The attached Proposed Decision of the Administrative Law Judge 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 November 11, 2015.

IT IS SO ORDERED October 12, 2015.

ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____

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In the Matter of the Petition for Reduction of Penalty Against:	Case No. 1A-2010-45
DIXIE SHANNON WALL, LAc.,	OAH No. 2015040965
Petitioner.	

PROPOSED DECISION

This matter came on regularly for hearing before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, on September 9, 2015, at Los Angeles, California.

Petitioner, Dixie Shannon Wall, LAc. (Petitioner), was present and was represented by Sara Schroeder, Attorney at Law.

Pursuant to the provisions of Government Code section 11522, the Attorney General of the State of California was represented by Wendy Widlus, Deputy Attorney General.

Oral and documentary evidence was received. The record was closed on the hearing date, and the matter was submitted for decision.

FACTUAL FINDINGS

1. Petitioner is the holder of Acupuncture License number 14079. By decision effective March 12, 2011, made pursuant to a Stipulated Settlement and Disciplinary Order, the Acupuncture Board (Board) granted Petitioner's application for licensure, immediately revoked the license, stayed the revocation, and placed Petitioner on probation for a period of five years subject to various terms and conditions including but not limited to undergoing drug and alcohol abuse treatment, abstaining from drugs and alcohol, and submitting to random biological fluid testing. Her probation was based on an August 25, 2000 felony conviction for possession of methamphetamine, a misdemeanor conviction for amphetamine use, and a misdemeanor conviction for possession of marijuana. In August 2006, the court reduced the felony count to a misdemeanor, vacated the plea, and dismissed all three counts.

2. On March 16, 2013, Petitioner filed a petition for early termination of probation. That petition was heard before a quorum of the Board on May 23, 2013. After considering the evidence presented at the hearing, the Board denied the petition. The Board, in a split decision, wrote:

> The board commends petitioner's years of sobriety and her efforts in community service and assistance to others in recovery from substance abuse. The board also notes that petitioner has thus far complied with the terms of probation. Petitioner, however, agreed to a five-year term of probation; at the time of her petition had been on probation only about one and one-half years. It is the opinion of the majority of the board members that it is too early to terminate petitioner's probation.

(Exhibit 5, page AG-031.)

3. Petitioner filed her current petition on May 27, 2014. At the administrative hearing, she established the truth of the statements in her narrative statement (Exhibit 3) which are repeated verbatim below and incorporated herein as factual findings:

> 1. I have been clean and sober for over 13 years and an active member of Alcoholics Anonymous (AA) since November 2000. During this 13 years time I have attended 3-5 meetings weekly, sponsored at least 3-5 women and held accountability with an AA sponsor. I also speak in front of large groups on a regular basis about my personal story of recovery so that I may help newly recovering people find hope. I completed a 6 month in patient (*sic*) treatment program to create a solid foundation in recovery from September 2000-February 2001. After which I voluntarily lived at an outpatient sober living home for another 7 months. From there, two other women in recovery and I rented a condo for a few years up until 2005 when I bought my own house in Tustin in which (*sic*) I still own. I completed my probation with the state early and discontinued meeting with my probation officer and having to submit random drug tests after less than two years sober in recovery.
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> 2. In practice, I have been a successful and active part of two well-established medical groups for nearly three years. One in Tustin, with a Medical Doctor and a Chiropractor, Optimal Orthopedic Group, and the other in Costa Mesa called the Cohn Health Institute with three other Chiropractors, and other healing practitioners of sorts.

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3. Since receiving my license in 2011, I have completed at least double the required Continuing Education units (almost 100 a year) and have received two additional certifications. Moreover, I have always taken my studying very seriously, graduated with honors, scored in the top 10 percent on my State Board Exam and was selected as the Student Speaker Representative for my 2009 graduating class.

4. I have been an active Board member of the California Massage Therapy Counsel (the governing body for CA massage therapist/camtc.org) since January 2010 and served as the Board[']s Chair from 2010-2012. I also served on the Federation of States Massage Therapy Boards (comprised of over 40 member states regulatory bodies for massage Therapy/fsmth.org) in 2012-2013, and still serve on the Boards' Policy Committee.

5. For my mental health, I have received and participated in several different types of psychotherapy through the years. I have done almost four years of counseling from 2003-2007 with a Marriage and Family Counselor, Sam Newman, who wrote me a letter for my petition in 2010-2011. Since my sobriety in 2000, I have received regular alternative medicine treatments including acupuncture, massage, chiropractic, and nutritional counseling [from] a wide spread group of highly qualified, skilled doctors and practitioners. For my spiritual health, I have maintained a regular meditation practice. Lastly for my physical health, I am a devoted fitness fanatic whose regimen includes a regular yoga practice, snowboarding, bike riding, running and rock climbing.

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> In conclusion, I would like to mention that the terms of my probation have not been easy but have been successfully adhered too (*sic*). Every day, including Christmas and New Years, I log into a website to drug test. When indicated I have to go to the nearest [site] to test. The wait can be up to two hours and costs an average of 60 dollars every time I submit a sample. I have now tested 75 times which is a total of nearly 5000 dollars that I have spent in drug testing over the last 3 years, not to mention the time taken away from my practice. I also have to submit quarterly reports and get clearance from Kristine Brothers[1] every time I am unable to test because of attendance at a Board meeting, seminar or vacation. I, the petitioner, believe the Acupuncture Board has indeed been given clear indication beyond any possible reasonable doubt that I, the petitioner, have clearly displayed overwhelming evidence to prove successful rehabilitation. If we were to count the years of factual basis, at the current juncture, the amount of years of successful rehabilitation would be fourteen (14). I ask for the Acupuncture Board's reasonable decision to terminate my probation.

4. Petitioner has written numerous articles for the magazine, Massage Today. She has been on the board of the Massage Therapy Counsel since 2009, and served as its chairperson for two of those years. She has also raised money for the improvement of women's lives through the Soroptimist organization. She has served as a volunteer mentor, counselor, and sponsor to a great many individuals attempting to pursue their recovery from drug or alcohol abuse.

5. In 2006, Petitioner was granted an unrestricted license by the Department of Insurance to act as a fire and casualty insurance broker.

6. Probation has imposed certain hardships on Petitioner which she believes are no longer necessary to ensure public protection. Drug testing has been particularly onerous. She has now taken 108 tests at a cumulative cost of approximately $6,500. She must log in to a website each day and travel to a testing center if required to do so. The process takes between 25 minutes and two hours depending on how many people are waiting to test. This requires Petitioner to re-schedule her patients on that day. Petitioner has not had a positive result on a drug test in all 108 tests she has undergone.

7. Petitioner has also found that being on probation precludes her from being a provider for certain insurance carriers such as Blue Cross/Blue Shield. That creates difficulties not only for her, but for those individuals who want to be Petitioner's patients but who are insured by carriers that do not recognize Petitioner as one of their providers.

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[1] The identity of Kristine Brothers was not established during the hearing.

8. Petitioner submitted numerous letters in support of her petition from individuals whose lives she has touched both professionally and personally. Those who know her professionally describe her as an extremely competent, skilled and compassionate practitioner. Those who know her personally describe her as a deeply caring and helpful person who has aided numerous people in recovery.

LEGAL CONCLUSIONS

1. Petitioner has established, by clear and convincing evidence to a reasonable certainty, that cause exists to grant the Petition under the provisions of Business and Professions Code section 4960.5, by reason of Findings 3 through 8.

2. Business and Professions Code section 4960.5 states in relevant part:

> (a) A person whose license or registration has been revoked, suspended, or surrendered, or who has been placed on probation, may petition the board for reinstatement or modification of penalty, including modification or termination of probation, after a period of not less than the following minimum periods has elapsed from the effective date of the decision ordering that disciplinary action: [¶] . . . [¶]
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> (2) At least two years for early termination of probation of three years or more.

2. Petitioner bore the burden of proving both her rehabilitation and her fitness to practice acupuncture. (*Houseman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308.) The standard of proof is clear and convincing evidence to a reasonable certainty. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084; *Feinstein v. State Bar* (1952) 39 Cal.2d 541.) This means the burden rests on Petitioner to establish her rehabilitation and fitness to practice by proof that is clear, explicit and unequivocal--so clear as to leave no substantial doubt, and sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478.) Petitioner's burden required a showing that she was no longer deserving of the adverse character judgment associated with the discipline imposed against her certificate. (*Tardiff v. State Bar* (1980) 27 Cal.3d 395.)

3. Petitioner's recovery has been so extensive and so complete that the Deputy Attorney General assigned to the case described her as the "dictionary definition of an excellent probationer." Petitioner has amply demonstrated that she no longer presents a risk to the public, but instead works every day to assist the public by dedication to her patients' well-being and to the improvement of women's lives. She has been on probation for over four and one-half years of her five-year probation without a single positive biological fluid test result. Nothing further can be gained by keeping Petitioner on probation.

ORDER

The Petition of Dixie Shannon Wall, LAc. for termination of her probation is granted. Acupuncture License 14079 is fully restored.

Dated: September 14, 2015

H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings