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

In the Matter of the Accusation Against:	)	Case No. 1A-2012-76
	)	
MARY PATRICIA STUART, L.AC.	)	
P.O. Box 213	)	
Palo Alto, CA 94302	)	
	)	
Acupuncture License No. AC 2811	)	
	)	
Respondent.	)	
	)	

DECISION AND ORDER

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

This Decision shall become effective on AUG 2 3 2015.

It is so ORDERED JUL 2 4 2015.

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

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

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **MARY PATRICIA STUART** **P.O. Box 213** **Palo Alto, CA 94302** **Acupuncture License No. AC 2811** Respondent.	Case No. 1A-2012-76 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

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

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

3. On or about June 2, 1986, the Board issued Acupuncture License No. AC 2811 to Respondent. The Acupuncture License is currently in inactive status and will expire on June 30, 2016.

JURISDICTION

4. Accusation No. 1A-2012-76 was filed before the Board, Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on November 7, 2014. Respondent filed her Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 1A-2012-76 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 1A-2012-76. Respondent has also carefully read, fully discussed with counsel, 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 Accusation; 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 understands and agrees that the charges and allegations in Accusation No. 1A-2012-76, if proven at a hearing, constitute cause for imposing discipline upon her Acupuncture License.

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

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

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

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

CONTINGENCY

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

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

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Acupuncture License No. AC 2811 issued to Respondent Mary Patricia Stuart is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

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

2. COURSEWORK Respondent shall take and successfully complete not less than 10 hours of coursework in the area of ethics. The coursework shall be taken as approved by the Board. Classroom attendance must be specifically required. Course content shall be pertinent to the violation and all coursework must be completed within the first three (3) years of probation. The required coursework must be in addition to any continuing education courses that may be required for license renewal. Within ninety (90) days of the effective date of the Decision, respondent shall submit a plan for the Board's prior approval for meeting the educational requirement. All costs of the coursework shall be borne by the Respondent.

3. COMMUNITY SERVICE Respondent shall complete 500 hours of community service. The services rendered shall be professional in nature and under the auspices of a governmental entity or a non-profit corporation tax exempt under the Internal Revenue Code. All community service must receive prior approval from the Board. The Board must approve the community service monitor that provides written verification of completion of community service. Such verification must include a penalty of perjury clause. Verifications should be submitted to the Board quarterly.

4. OBEY ALL LAWS Respondent shall obey all federal, state and local laws and all regulations governing the practice of acupuncture in California. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board in writing within

seventy-two (72) hours of occurrence.

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

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

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

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

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

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

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

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

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

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

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

ACCEPTANCE

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

DATED: May 7 2015

MARY PATRICIA STUART
Respondent

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

DATED: 5/7/15

Justin D. Hein
Attorney for Respondent

ENDORSEMENT

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

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

SF2014408917
20731869.doc

Exhibit A

Accusation No. 1A-2012-76

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

FILED

NOV - 7 2014

ACUPUNCTURE BOARD

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **MARY PATRICIA STUART** **P.O. Box 1318-2577** **Sacramento, CA 95812** **Acupuncture License No. AC 2811** Respondent.	Case No. 1A-2012-76 **ACCUSATION**

Complainant alleges:

PARTIES

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

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

///

///

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

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

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

COST RECOVERY

8. Section 4959 of the Code states:

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

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

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

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

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

CAUSE FOR DISCIPLINE

(Unprofessional conduct: Substantially-related criminal conviction)

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

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

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

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

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

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

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

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

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

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

///

///

///

///

///

///

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