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FILED
DEC 27 2018
ACUPUNCTURE BOARD

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke Probation Against: **ANNA MARIE SURBER, L.AC.** **202 Central Ave.** **Capitola CA 95010** **Acupuncturist License No. AC 16948** Respondent.	Case No. D1-2015-67 PETITION TO REVOKE PROBATION

Complainant alleges:

PARTIES

1. Benjamin Bodea (Complainant) brings this Petition to Revoke Probation solely in his official capacity as the Executive Officer of the Acupuncture Board, Department of Consumer Affairs.1. On or about February 22, 2016, the Acupuncture Board issued Acupuncturist License Number AC 16948 to ANNA MARIE SURBER, L.Ac. (Respondent). The Acupuncturist License was in effect at all times relevant to the charges brought herein and will expire on July 31, 2019, unless renewed.

2. In a disciplinary action entitled "In the Matter of Statement of Issues Against Anna Marie Surber, L.Ac.," Case No. 1A-2015-67, the Acupuncture Board, issued a decision, effective February 22, 2016, in which Respondent was issued the aforementioned Acupuncturist License, which was then placed on probation for a period of five (5) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

JURISDICTION

3. This Petition to Revoke Probation is brought before the Acupuncture Board (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:

"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:

> "(a) Using or possessing any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or dangerous drug or alcoholic beverage to an extent or in a manner dangerous to himself or herself, or to any other person, or to the public, and to an extent that the use impairs his or her ability to engage in the practice of acupuncture with safety to the public.
>
> "(b) Conviction of a crime substantially related to the qualifications, functions, or duties of an acupuncturist, the record of conviction being conclusive evidence thereof.
>
> "(c) False or misleading advertising.
>
> "(d) Aiding or abetting in, or violating or conspiring in, directly or indirectly, the violation of the terms of this chapter or any regulation adopted by the board pursuant to this chapter.
>
> "(e) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the Medical Board of California, the California Board of Podiatric Medicine, the Dental Board of California, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric

Technicians, to encourage appropriate consistency in the implementation of this subdivision.

"The board shall seek to ensure that licensees are informed of the responsibility of licensees and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

"(f) The use of threats or harassment against any patient or licensee for providing evidence in a disciplinary action, other legal action, or in an investigation contemplating a disciplinary action or other legal action.

"(g) Discharging an employee primarily for attempting to comply with the terms of this chapter.

"(h) Disciplinary action taken by any public agency for any act substantially related to the qualifications, functions, or duties of an acupuncturist or any professional health care licensee.

"(i) Any action or conduct that would have warranted the denial of the acupuncture license.

"(j) The violation of any law or local ordinance on an acupuncturist's business premises by an acupuncturist's employee or a person who is working under the acupuncturist's professional license or business permit, that is substantially related to the qualifications, functions, or duties of an acupuncturist. These violations shall subject the acupuncturist who employed the individuals, or under whose acupuncturist license the employee is working, to disciplinary action.

"(k) The abandonment of a patient by the licentiate without written notice to the patient that treatment is to be discontinued and before the patient has had a reasonable opportunity to secure the services of another practitioner.

"(l) the failure to notify the board of the use of any false, assumed, or fictitious name other than the name under which he or she is licensed as an individual to practice acupuncture."

CAUSE TO REVOKE PROBATION

(Biological Fluid Testing)

5. At all times after the effective date of Respondent's probation, Condition 2 stated:

Respondent shall completely abstain from the personal use or possession of alcohol and controlled substances as defined in the California Uniform Controlled Substances Act and dangerous drugs as defined by Section 4022 of the Business and Professions Code, or any drugs requiring a prescription except when lawfully prescribed by a licensed practitioner for a bona fide illness. Respondent shall abstain completely from the use of alcoholic beverages. Respondent shall undergo random, biological fluid testing as determined by the Board. Respondent shall bear all costs of such testing. The length of time and frequency will be determined by the Board. Any confirmed positive finding will be considered a violation of probation.

6. Respondent's probation is subject to revocation because she failed to comply with Probation Condition 2, referenced above. The facts and circumstances regarding this violation are as follows:

A. Respondent is required to call-in daily to determine if Respondent must provide a biological fluid test for that day.

B. On the following dates Respondent was required to call-in and failed to comply:

- November 15, 2018
- November 16, 2018
- November 17, 2018
- November 19, 2018
- November 20, 2018
- November 21, 2018
- November 22, 2018
- November 23, 2018
- November 24, 2018
- November 26, 2018
- November 27, 2018
- November 28, 2018
- November 29, 2018
- November 30, 2018
- December 1, 2018

C. On or about December 20, 2017, Respondent was required to submit a biological fluid test and failed to comply.

D. On or about November 2, 2018, Respondent was required to submit a biological fluid test and failed to comply.

E. On or about November 14, 2018, Respondent was required to submit a biological fluid test and failed to comply.

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 the probation that was granted by the Acupuncture Board in Case No. 1A-2015-67 and imposing the disciplinary order that was stayed thereby revoking Acupuncturist License No. AC 16948 issued to Respondent;

2. Revoking or suspending Acupuncturist License No. AC 16948, issued to Respondent.;

3. Ordering Respondent to pay any outstanding balance owed to the Board for the cost of probation monitoring ordered under Case No. 1A-2015-67;

4. Ordering Respondent to pay the Board for the costs of the investigation and enforcement of this case;

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

DATED: DEC 27 2018

BENJAMIN BODEA
Executive Officer
Acupuncture Board
Department of Consumer Affairs
State of California
Complainant

Exhibit A

Decision and Order

Acupuncture Board Case No. D1-2015-67

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FILED

OCT 09 2015

ACUPUNCTURE BOARD

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 **STATEMENT OF ISSUES**

Complainant alleges:

PARTIES

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

2. On or about October 31, 2014, and then again on or about July 15, 2015, the Acupuncture Board ("Board"), Department of Consumer Affairs received an application for an Acupuncture License from Anna Marie Surber ("Respondent"). On or about July 13, 2015, Anna Marie Surber certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on August 3, 2015.

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JURISDICTION

3. This Statement of Issues is brought before the Acupuncture 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:

"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:

"(a) Using or possessing any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or dangerous drug or alcoholic beverage to an extent or in a manner dangerous to himself or herself, or to any other person, or to the public, and to an extent that the use impairs his or her ability to engage in the practice of acupuncture with safety to the public.

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

"(c) False or misleading advertising.

"(d) Aiding or abetting in, or violating or conspiring in, directly or indirectly, the violation of the terms of this chapter or any regulation adopted by the board pursuant to this chapter.

"(e) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the Medical Board of California, the California Board of Podiatric Medicine, the Dental Board of

California, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.

"The board shall seek to ensure that licensees are informed of the responsibility of licensees and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

"(f) The use of threats or harassment against any patient or licensee for providing evidence in a disciplinary action, other legal action, or in an investigation contemplating a disciplinary action or other legal action.

"(g) Discharging an employee primarily for attempting to comply with the terms of this chapter.

"(h) Disciplinary action taken by any public agency for any act substantially related to the qualifications, functions, or duties of an acupuncturist or any professional health care licensee.

"(i) Any action or conduct that would have warranted the denial of the acupuncture license.

"(j) The violation of any law or local ordinance on an acupuncturist's business premises by an acupuncturist's employee or a person who is working under the acupuncturist's professional license or business permit, that is substantially related to the qualifications, functions, or duties of an acupuncturist. These violations shall subject the acupuncturist who employed the individuals, or under whose acupuncturist license the employee is working, to disciplinary action.

"(k) The abandonment of a patient by the licentiate without written notice to the patient that treatment is to be discontinued and before the patient has had a reasonable opportunity to secure the services of another practitioner.

"(l) the failure to notify the board of the use of any false, assumed, or fictitious name other than the name under which he or she is licensed as an individual to practice acupuncture."

5. Section 480 of the Code states:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

"(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a

board is permitted to take following the establishment of a conviction may be taken 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, 1203.4a, or 1203.41 of the Penal Code.

"(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

"(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

"(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

"(b) Notwithstanding any other provision of this code, a person shall not be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

"(c) Notwithstanding any other provisions of this code, a person shall not be denied a license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the dismissal.

"(d) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for the license."

6. Section 4956 of the Code states:

"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 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

CAUSE FOR DENIAL OF APPLICATION

(Conviction)

8. Respondent's application is subject to denial under sections 4955, 480, 490, and 493 in that on or about June 6, 2012, in a criminal proceeding entitled *State of Nevada v. Anna Surber* in Lyon County, Nevada, Case Number 11 CR 0340 3G, Respondent was convicted by plea of guilty of Nevada Revised Statutes section 484C.110, DUI Alcohol and/or Controlled Substance, Above the Legal Limit. The circumstances are as follows:

a. On or about August 31, 2011, Respondent as involved in a traffic accident on U.S. 50 at approximately 8:50 a.m. A preliminary breath test recorded a blood alcohol content ("BAC") of .24. After arrest, Respondent requested a blood draw that ultimately registered a BAC of .248.

b. On or about June 6, 2012, Respondent was sentenced as follows: 30 days in Lyon County jail, with all but two days suspended for one year on condition of compliance with terms of probation, and credit for two days already served. Probation, which was successfully

completed, included completion of a DUI workshop within two months time; completion of a victim impact panel within two months time; attendance at substance abuse counseling with monthly reports to the Court; twice a week attendance at AA meetings; and installation of a breath interlock device on her vehicle.

9. Additionally, on or about June 20, 2007, in a criminal proceeding in Carson City, Nevada, Respondent was convicted by plea of guilty to Nevada Revised Statutes section 484C.110, DUI Alcohol and/or Controlled Substance, Above the Legal Limit. The circumstances are as follows:

a. On or about April 10, 2007, Respondent was arrested in Carson City, Nevada for driving under the influence of alcohol. Respondent eventually pleaded guilty and was sentenced to 120 day in jail, sentence suspended for one-year on condition of compliance with terms of probation, which included completion of a victim impact panel; and DUI school.

10. Additionally, on or about September 15, 2004, in a criminal proceeding in Carson City, Nevada, Respondent was convicted after a bench trial of violating Nevada Revised Statutes section 199.280.3, Resisting a Public Officer. The circumstances are as follows:

a. On or about March 28, 2004, Respondent was pulled over by the Carson City Sheriff's Department based on a domestic violence complaint made by Respondent's parents. Respondent refused to exit her car as requested by the peace officers. When the officers attempted to remove Respondent from the car Respondent physically refused and was ultimately 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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