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

12 In the Matter of the Petition to Revoke
13 Probation Against:

14 **SUBHASH RAMCHANDRA**
15 **GHARMALKAR, L.Ac.**
16 **1530 Baker Street, #G**
17 **Costa Mesa, CA 92626-3572**

18 **Acupuncturist License No. AC 4473,**

19 Respondent.

Case No. 1A-2011-97

PETITION TO REVOKE PROBATION

20 Complainant alleges:

21 **PARTIES**

22 1. Benjamin Bodea (Complainant) brings this Petition to Revoke Probation solely in his
23 official capacity as the Executive Officer of the Acupuncture Board, Department of Consumer
24 Affairs.

25 2. On or about August 6, 1993, the Acupuncture Board issued Acupuncturist License
26 Number AC 4473 to Subhash Ramchandra Gharmalkar, L.Ac. (Respondent). The Acupuncturist
27 License was in effect at all times relevant to the charges brought herein and will expire on
28 January 31, 2022, unless renewed.

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1 Board of California, the California Board of Podiatric Medicine, the Dental Board of
2 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.

3 The board shall seek to ensure that licensees are informed of the responsibility
4 of licensees and others to follow infection control guidelines, and of the most recent
5 scientifically recognized 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 providing
7 evidence in a disciplinary action, other legal action, or in an investigation
contemplating a disciplinary action or other legal action.

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

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

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

13 (j) The violation of any law or local ordinance on an acupuncturist's business
14 premises by an acupuncturist's employee or a person who is working under the
15 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.

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

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

20 6. Section 4955.1 of the Code states:

21 The board may deny, suspend, revoke, or impose probationary conditions upon
22 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:

23 (a) Securing a license by fraud or deceit.

24 (b) Committing a fraudulent or dishonest act as an acupuncturist.

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

27 (d) Altering or modifying the medical record of any person, with fraudulent
28 intent, or creating any false medical record.

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1 (e) Failing to maintain adequate and accurate records relating to the provision
2 of services to their patients.

3 **COST RECOVERY**

4 7. Section 4959 of the Code states:

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

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

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

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

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

25 **FIRST CAUSE TO REVOKE PROBATION**

26 (Third Party Chaperone)

27 8. At all times after the effective date of Respondent's probation, Condition 1 stated:

28 **THIRD-PARTY CHAPERONE** During probation, Respondent shall have a third-party
chaperone present while examining or treating female patients. Respondent shall, within 30
calendar days of the effective date of the Decision, submit to the Board or its designee for
prior approval name(s) of persons who will act as the third-party chaperone.

If Respondent fails to obtain approval of a third-party chaperone within 60 calendar days of
the effective date of this Decision, Respondent shall receive a notification from the Board
or its designee to cease the practice of acupuncture within three (3) calendar days after
being so notified. Respondent shall cease the practice of acupuncture until a chaperone is

1 approved to provide monitoring responsibility.

2 Each third-party chaperone shall sign (in ink or electronically) and date each patient
3 medical record at the time the chaperone's services are provided. Each third-party
4 chaperone shall read the Decision(s) and the Accusation(s), and fully understand the role of
5 the third-party chaperone.

6 Respondent shall maintain a log of all patients seen for whom a third-party chaperone is
7 required. The log shall contain the: 1) patient initials, address and telephone number; 2)
8 medical record number; and 3) date of service. Respondent shall keep this log in a separate
9 file or ledger, in chronological order, shall make the log available for immediate inspection
10 and copying on the premises at all times during business hours by the Board or its designee,
11 and shall retain the log for the entire term of probation.

12 Respondent is prohibited from terminating employment of a Board-approved third-party
13 chaperone solely because that person provided information as required to the Board or its
14 designee.

15 If the third-party chaperone resigns or is no longer available, Respondent shall, within 5
16 calendar days of such resignation or unavailability, submit to the Board or its designee, for
17 prior approval, the name of the person(s) who will act as the third-party chaperone. If
18 Respondent fails to obtain approval of a replacement chaperone within 60 calendar days of
19 the resignation or unavailability of the chaperone, Respondent shall receive a notification
20 from the Board or its designee to cease the practice of acupuncture within three (3) calendar
21 days after being so notified. Respondent shall cease the practice of acupuncture until a
22 replacement chaperone is approved and assumes monitoring responsibility.

23 9. Respondent's probation is subject to revocation because he failed to comply with
24 Probation Condition 1, referenced above. The facts and circumstances regarding this violation
25 are as follows:

26 A. On or about September 23, 2016, Respondent advised his Probation Monitor, via
27 email, that his Board-approved third-party chaperone, C.B., was ill and would not be able to come
28 to his office. Respondent advised that he was looking for a replacement chaperone.

1 B. The Probation Monitor replied to Respondent in an email dated September 26, 2016,
2 that pursuant to his probation order, Respondent was to advise the Board of the name of his
3 replacement chaperone within 5 days of the resignation of the prior chaperone's resignation.
4 Respondent was given leave until Friday, September 30, 2016, to submit the name of the
5 replacement chaperone for the Board's review and approval.

6 C. On September 27, 2016, Respondent replied to his Probation Monitor and inquired
7 whether his wife could serve as his third-party chaperone for his Costa Mesa office.

8 D. Respondent's Probation Monitor called Respondent and explained to him that the
9 chaperone could not have any relationship to him. She also reiterated that he could not see any
10 female patients during the time he did not have a Board-approved third-party chaperone.
11 Respondent was given the option of submitting a name to assist him temporarily, he would then
12 have more time to find a permanent chaperone. This conversation was documented in
13 Respondent's probation file.

14 E. On September 27, 2016, Respondent submitted the name of Y.W. to serve as his
15 third-party chaperone. Y.W. was reviewed and approved by the Board to work in Respondent's
16 Costa Mesa office.

17 F. Between 2017 to the present, Respondent has used his wife, A.R., to serve as his
18 third-party chaperone at his Costa Mesa office when Y.W. was not available, despite knowing
19 that his wife could not serve as his chaperone.

20 G. Condition 1 of Respondent's probation also required that "each third-party chaperone
21 shall sign (in ink or electronically) and date each patient medical record at the time the
22 chaperone's services are provided."

23 H. Respondent employed three third-party chaperones: Y.W. and A.R. in his Costa Mesa
24 office and C.G. in his Signal Hill office. None of the third-party chaperones signed and dated in
25 each patient's medical record, as required by Condition 1 of Respondent's probation.

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1 **SECOND CAUSE TO REVOKE PROBATION**

2 (Violation of Probation)

3 10. At all times after the effective date of Respondent's probation, Condition 12 stated:
4 **VIOLATION OF PROBATION** If respondent violates probation in any respect, the Board
5 may, after giving respondent notice and the opportunity to be heard, revoke probation and
6 carry out the disciplinary order that was stated. If an accusation or petition to revoke
7 probation is filed against respondent during probation, the Board shall have continuing
8 jurisdiction until the matter is final, and the period of probation shall be extended until the
9 matter is final. No petition for modification or termination of probation shall be considered
10 while there is an accusation or petition to revoke probation pending against respondent.

11 11. Respondent's probation is subject to revocation because he failed to comply with
12 Probation Condition 12, referenced above. The facts and circumstances regarding this violation
13 are as follows:

14 A. Paragraphs 9, above, is incorporated herein by reference.

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 the probation that was granted by the Acupuncture Board in Case No. 1A-
19 2011-97 and imposing the disciplinary order that was stayed thereby revoking Acupuncturist
20 License No. AC 4473 issued to Subhash Ramchandra Gharmalkar, L.Ac.;

21 2. Revoking or suspending Acupuncturist License No. AC 4473, issued to Subhash
22 Ramchandra Gharmalkar, L.Ac.;

23 3. Ordering Subhash Ramchandra Gharmalkar, L.Ac. to pay the reasonable costs of the
24 investigation and enforcement of this case, pursuant to Business and Professions Code section
25 4959;

26 4. Ordering Subhash Ramchandra Gharmalkar, L.Ac., if placed on probation, to pay the
27 Acupuncture Board, the costs of probation monitoring; and

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

DATED: 05/13/2021

Original Signature On File
BENJAMIN BODEA
Executive Officer
Acupuncture Board
Department of Consumer Affairs
State of California
Complainant

LA2021601812

Exhibit A

Decision and Order

Acupuncture Board Case No. 1A-2011-97