

BEFORE THE  
BoardUPUNCTURE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

SUBHASH RAMCHANDRA  
GHARMALKAR, L.Ac.  
1530 Baker Street, #G  
Costa Mesa, CA 92626-3572  
Acupuncturist's License No. AC 4473

Respondent.

Case No. 1A-2011-97

OAH No. 2014080110

DECISION AND ORDER

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

This Decision shall become effective on May 18, 2016.

It is so ORDERED April 18, 2016.

  
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FOR THE ACUPUNCTURE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS

1 KAMALA D. HARRIS  
Attorney General of California  
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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 Accusation Against:

Case No. 1A-2011-97

13 SUBHASH RAMCHANDRA  
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14 Acupuncturist's License No. AC 4473

15 **STIPULATED SETTLEMENT AND**  
16 **DISCIPLINARY ORDER**

17 Respondent.

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 **PARTIES**

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

25 2. SUBHASH RAMCHANDRA GHARMALKAR, L.Ac. ("Respondent") is  
26 represented in this proceeding by attorney David M. Liberman, whose address is: 9709 Venice  
27 Boulevard, No. 4, Los Angeles, CA 90034.

28 3. On or about August 6, 1993, the Acupuncture Board issued Acupuncturist's License

1 No. AC 4473 to Respondent. The License was in full force and effect at all times relevant to the  
2 charges brought in Accusation No. 1A-2011-97 and will expire on January 31, 2014, unless  
3 renewed.

#### 4 JURISDICTION

5 4. Accusation No. 1A-2011-97 was filed before the Acupuncture Board (Board),  
6 Department of Consumer Affairs, and is currently pending against Respondent. The Accusation  
7 and all other statutorily required documents were properly served on Respondent on April 25,  
8 2014. Respondent timely filed his Notice of Defense contesting the Accusation.

9 5. A copy of Accusation No. 1A-2011-97 is attached as Exhibit A and incorporated  
10 herein by reference.

#### 11 ADVISEMENT AND WAIVERS

12 6. Respondent has carefully read, fully discussed with counsel, and understands the  
13 charges and allegations in Accusation No. 1A-2011-97. Respondent has also carefully read, fully  
14 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary  
15 Order.

16 7. Respondent is fully aware of his legal rights in this matter, including the right to a  
17 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at  
18 his own expense; the right to confront and cross-examine the witnesses against him; the right to  
19 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel  
20 the attendance of witnesses and the production of documents; the right to reconsideration and  
21 court review of an adverse decision; and all other rights accorded by the California  
22 Administrative Procedure Act and other applicable laws.

23 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
24 every right set forth above.

#### 25 CULPABILITY

26 9. Respondent understands and agrees that the charges and allegations in Accusation  
27 No. 1A-2011-97, if proven at a hearing, constitute cause for imposing discipline upon his  
28 Acupuncturist's License.

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 his right to contest  
4 those charges.

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

7 **CONTINGENCY**

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

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

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

23 **DISCIPLINARY ORDER**

24 IT IS HEREBY ORDERED that Acupuncturist's License No. AC 4473 issued to  
25 Respondent is revoked. However, the revocation is stayed and Respondent is placed on probation  
26 for five (5) years on the following terms and conditions:

27 1. **THIRD-PARTY CHAPERONE** During probation, Respondent shall have a third-  
28 party chaperone present while examining or treating female patients. Respondent shall, within 30

1 calendar days of the effective date of the Decision, submit to the Board or its designee for prior  
2 approval name(s) of persons who will act as the third-party chaperone.

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

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

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

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

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

1           2.     REIMBURSEMENT FOR PROBATION SURVEILLANCE MONITORING

2 Respondent shall reimburse the Board for the hourly costs it incurs in monitoring the probation to  
3 ensure compliance for the duration of the probation period.

4           3.     COURSEWORK Respondent shall take and successfully complete not less than ten  
5 (10) semester units of coursework in the areas of boundary issues, ethics, laws and regulations.

6 All coursework shall be taken at the graduate level at a school approved by the Board. Classroom  
7 attendance must be specifically required. Course content shall be pertinent to the violation and all  
8 coursework must be completed within the first three (3) years of probation. The required  
9 coursework must be in addition to any continuing education courses that may be required for  
10 license renewal.

11           Within ninety (90) days of the effective date of this decision, respondent shall submit a plan  
12 for the Board's prior approval for meeting the educational requirements. All costs of the  
13 coursework shall be borne by the respondent.

14           4.     OBEY ALL LAWS Respondent shall obey all federal, state and local laws and all  
15 regulations governing the practice of acupuncture in California. A full and detailed account of  
16 any and all violations of law shall be reported by the respondent to the Board in writing within  
17 seventy-two (72) hours of occurrence.

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

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

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

1 reasonable notice.

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

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

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

13 11. COST RECOVERY Respondent is ordered to reimburse the Board the reasonable  
14 investigative and prosecutorial costs incurred by the Board in the amount of \$7,000.00. The  
15 Board or its designee may establish a payment plan for cost recovery; however, Respondent shall  
16 pay the full amount of cost recovery at least 180 days prior to the completion of probation.  
17 Failure to pay the ordered costs constitutes a violation of probation and may result in revocation.


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

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


27  
28

1 ACCEPTANCE

2 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
3 discussed it with my attorney, David M. Liberman. I understand the stipulation and the effect it  
4 will have on my Acupuncturist's License. I enter into this Stipulated Settlement and Disciplinary  
5 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order  
6 of the Acupuncture Board.

7  
8 DATED: 11/01/2015   
9 Subhash Ramchandra Gharmalkar, L.Board.  
10 Respondent


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

14 DATED: 11/2/15   
15 David M. Liberman  
16 Attorney for Respondent

17  
18 ENDORSEMENT

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

21 Dated: 2.22.16 KAMALA D. HARRIS  
22 Attorney General of California  
23 E. A. JONES III  
24 Supervising Deputy Attorney General

  
25 CINDY M. LOPEZ  
26 Deputy Attorney General  
27 Attorneys for Complainant