

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)
Against:)
DEREK PATRICK HUGHES, M.D.)
Physician's and Surgeon's)
Certificate #A 61410)
Respondent.)
_____)

Case No. 02-2004-162685


DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby accepted and adopted as the Decision and Order by the Division of Medical Quality of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on November 27, 2006

IT IS SO ORDERED October 25, 2006

MEDICAL BOARD OF CALIFORNIA


Cesar Aristeiguieta, M.D.
Chair, Consolidated Panel
Division of Medical Quality

1 BILL LOCKYER, Attorney General
of the State of California
2 GAIL M. HEPPELL, State Bar No. 84134
Supervising Deputy Attorney General
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6 Attorneys for Complainant

7 **BEFORE THE**
8 **DIVISION OF MEDICAL QUALITY**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 02-2004-162685

13 DEREK HUGHES, M.D.
14 9727 Elk Grove-Florin Blvd
Elk Grove, CA 95624-2266

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15 Physician's and Surgeon's No. A61410

Respondent.

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
18 above-entitled proceedings that the following matters are true:

19 PARTIES

20 1. David T. Thornton (Complainant) is the Executive Director of the Medical
21 Board of California. He brought this action solely in official capacity and is represented in this
22 matter by Bill Lockyer, Attorney General of the State of California, by Gail M. Heppell,
23 Supervising Deputy Attorney General.

24 2. Respondent Derek Hughes, M.D. (Respondent) is represented in this
25 proceeding by attorney Robert J. Sullivan, whose address is Nossaman, Guthner, Knox & Elliott,
26 LLP, 915 L Street, Suite 1000 Sacramento, CA 95814-3705.
27

1 4. DIVERSION PROGRAM Within 30 calendar days from the effective
2 date of this Decision, respondent shall enroll and participate in the Board's Diversion Program
3 until the Diversion Program determines that further treatment and rehabilitation are no longer
4 necessary. Upon enrollment, respondent shall execute a release authorizing the Diversion
5 Program to notify the Division of the following: 1) respondent requires further treatment and
6 rehabilitation; 2) respondent no longer requires treatment and rehabilitation; and 3) respondent
7 may resume the practice of medicine. Respondent shall execute a release authorizing the
8 Diversion Program to provide confirmation to the Division whenever the Diversion Program has
9 determined that respondent shall cease the practice of medicine.

10 Within 5 calendar days after being notified by the Diversion Program of a
11 determination that further treatment and rehabilitation are necessary, respondent shall notify the
12 Division in writing. The Division shall retain continuing jurisdiction over respondent's license,
13 and the period of probation shall be extended until the Diversion Program determines that further
14 treatment and rehabilitation are no longer necessary. Within 24 hours after being notified by the
15 Diversion Program of a determination that respondent shall cease the practice of medicine,
16 respondent shall notify the Division, and respondent shall not engage in the practice of medicine
17 until notified in writing by the Division or its designee of the Diversion Program's determination
18 that respondent may resume the practice of medicine. Failure to cooperate or comply with the
19 Diversion Program requirements and recommendations, quitting the program without
20 permission, or being expelled for cause is a violation of probation.

21 5. NOTIFICATION Prior to engaging in the practice of medicine, the
22 respondent shall provide a true copy of the Decision(s) and Accusation(s) to the Chief of Staff or
23 the Chief Executive Officer at every hospital where privileges or membership are extended to
24 respondent, at any other facility where respondent engages in the practice of medicine, including
25 all physician and locum tenens registries or other similar agencies, and to the Chief Executive
26 Officer at every insurance carrier which extends malpractice insurance coverage to respondent.

27

1 Respondent shall submit proof of compliance to the Division or its designee within 15 calendar
2 days.

3 This condition shall apply to any change(s) in hospitals, other facilities or
4 insurance carrier.

5 6. SUPERVISION OF PHYSICIAN ASSISTANTS During probation,
6 respondent is prohibited from supervising physician assistants.

7 7. OBEY ALL LAWS Respondent shall obey all federal, state and local
8 laws, all rules governing the practice of medicine in California, and remain in full compliance
9 with any court ordered criminal probation, payments and other orders.

10 8. QUARTERLY DECLARATIONS Respondent shall submit quarterly
11 declarations under penalty of perjury on forms provided by the Division, stating whether there
12 has been compliance with all the conditions of probation. Respondent shall submit quarterly
13 declarations not later than 10 calendar days after the end of the preceding quarter.

14 9. PROBATION UNIT COMPLIANCE Respondent shall comply with the
15 Division's probation unit. Respondent shall, at all times, keep the Division informed of
16 respondent's business and residence addresses. Changes of such addresses shall be immediately
17 communicated in writing to the Division or its designee. Under no circumstances shall a post
18 office box serve as an address of record, except as allowed by Business and Professions Code
19 section 2021(b).

20 Respondent shall not engage in the practice of medicine in respondent's place of
21 residence. Respondent shall maintain a current and renewed California physician's and
22 surgeon's license.

23 Respondent shall immediately inform the Division, or its designee, in writing, of
24 travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last,
25 more than 30 calendar days.

26 10. INTERVIEW WITH THE DIVISION, OR ITS DESIGNEE Respondent
27

1 shall be available in person for interviews either at respondent's place of business or at the
2 probation unit office, with the Division or its designee, upon request at various intervals, and
3 either with or without prior notice throughout the term of probation.

4 11. RESIDING OR PRACTICING OUT-OF-STATE In the event respondent
5 should leave the State of California to reside or to practice, respondent shall notify the Division
6 or its designee in writing 30 calendar days prior to the dates of departure and return. Non-
7 practice is defined as any period of time exceeding 30 calendar days in which respondent is not
8 engaging in any activities defined in Sections 2051 and 2052 of the Business and Professions
9 Code.

10 All time spent in an intensive training program outside the State of California
11 which has been approved by the Division or its designee shall be considered as time spent in the
12 practice of medicine within the State. A Board-ordered suspension of practice shall not be
13 considered as a period of non-practice. Periods of temporary or permanent residence or practice
14 outside California will not apply to the reduction of the probationary term. Periods of temporary
15 or permanent residence or practice outside California will relieve respondent of the responsibility
16 to comply with the probationary terms and conditions with the exception of this condition and
17 the following terms and conditions of probation: Obey All Laws; Probation Unit Compliance;
18 and Cost Recovery.

19 Respondent's license shall be automatically cancelled if respondent's periods of
20 temporary or permanent residence or practice outside California total two years. However,
21 respondent's license shall not be cancelled as long as respondent is residing and practicing
22 medicine in another state of the United States and is on active probation with the medical
23 licensing authority of that state, in which case the two year period shall begin on the date
24 probation is completed or terminated in that state.

25 12. FAILURE TO PRACTICE MEDICINE - CALIFORNIA RESIDENT

26 In the event respondent resides in the State of California and for any reason
27
28

1 respondent stops practicing medicine in California, respondent shall notify the Division or its
2 designee in writing within 30 calendar days prior to the dates of non-practice and return to
3 practice. Any period of non-practice within California, as defined in this condition, will not
4 apply to the reduction of the probationary term and does not relieve respondent of the
5 responsibility to comply with the terms and conditions of probation. Non-practice is defined as
6 any period of time exceeding 30 calendar days in which respondent is not engaging in any
7 activities defined in sections 2051 and 2052 of the Business and Professions Code.

8 All time spent in an intensive training program which has been approved by the
9 Division or its designee shall be considered time spent in the practice of medicine. For purposes
10 of this condition, non-practice due to a Board-ordered suspension or in compliance with any
11 other condition of probation, shall not be considered a period of non-practice.

12 Respondent's license shall be automatically cancelled if respondent resides in
13 California and for a total of two years, fails to engage in California in any of the activities
14 described in Business and Professions Code sections 2051 and 2052.

15 13. COMPLETION OF PROBATION Respondent shall comply with all
16 financial obligations (e.g., probation costs) not later than 120 calendar days prior to the
17 completion of probation. Upon successful completion of probation, respondent's certificate shall
18 be fully restored.

19 14. VIOLATION OF PROBATION Failure to fully comply with any term or
20 condition of probation is a violation of probation. If respondent violates probation in any respect,
21 the Division, after giving respondent notice and the opportunity to be heard, may revoke
22 probation and carry out the disciplinary order that was stayed. If an Accusation, Petition to
23 Revoke Probation, or an Interim Suspension Order is filed against respondent during probation,
24 the Division shall have continuing jurisdiction until the matter is final, and the period of
25 probation shall be extended until the matter is final.

26 15. LICENSE SURRENDER Following the effective date of this Decision, if
27

1 respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy
 2 the terms and conditions of probation, respondent may request the voluntary surrender of
 3 respondent's license. The Division reserves the right to evaluate respondent's request and to
 4 exercise its discretion whether or not to grant the request, or to take any other action deemed
 5 appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender,
 6 respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the
 7 Division or its designee and respondent shall no longer practice medicine. Respondent will no
 8 longer be subject to the terms and conditions of probation and the surrender of respondent's
 9 license shall be deemed disciplinary action. If respondent re-applies for a medical license, the
 10 application shall be treated as a petition for reinstatement of a revoked certificate.

11 16. PROBATION MONITORING COSTS Respondent shall pay the costs
 12 associated with probation monitoring each and every year of probation, as designated by the
 13 Division, which are currently set at \$2,304, but may be adjusted on an annual basis. Such costs
 14 shall be payable to the Medical Board of California and delivered to the Division or its designee
 15 no later than January 31 of each calendar year. Failure to pay costs within 30 calendar days of
 16 the due date is a violation of probation.

ACCEPTANCE

Robert S. McVicker RSM

17
 18 I have carefully read the above Stipulated Settlement and Disciplinary Order and
 19 have fully discussed it with my attorney, ~~Robert J. Sullivan~~. I understand the stipulation and the
 20 effect it will have on my Physician's and Surgeon's. I enter into this Stipulated Settlement and
 21 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
 22 Decision and Order of the Medical Board of California

DATED: _____

9/20/06



[Signature]

 DEREK HUGHES, M.D. (Respondent)
 Respondent

23
 24
 25
 26 I have read and fully discussed with Respondent Derek Hughes, M.D. the terms
 27

1 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary
2 Order. I approve its form.

3 DATED: 9/21/06


ROBERT J. SULLIVAN

Attorney for Respondent

7 ENDORSEMENT

8 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
9 submitted for consideration by the Medical Board of California.

10 DATED: 9/25/06

BILL LOCKYER, Attorney General
of the State of California


GAIL M. HEPPELL
Supervising Deputy Attorney General

Attorneys for Complainant

16 DOJ Matter ID: SA2006300708

17 30164901.wpd

Exhibit A
Accusation No.

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO June 8, 2006
BY Chelene Benjamin ANALYST

1 BILL LOCKYER, Attorney General
of the State of California
2 GAIL M. HEPPELL, State Bar Number 84134
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8 **BEFORE THE**
9 **DIVISION OF MEDICAL QUALITY**
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12 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 02-2004-162685

13 DEREK PATRICK HUGHES, M.D.
14 9727 Elk-Grove-Florin Road
Elk Grove, CA 95624-2266

A C C U S A T I O N

15 Physician's and Surgeon's
16 Certificate No. A 61410

Respondent.

18 Complainant alleges:

19 PARTIES

20 1. David T. Thornton (Complainant) brings this Accusation solely in his official
21 capacity as the Executive Director of the Medical Board of California.

22 2. On or about December 26, 1996, the Medical Board of California issued
23 Physician's and Surgeon's Certificate Number A 61410 to Derek Patrick Hughes (Respondent). The
24 Physician and Surgeon's Certificate was in full force and effect at all times relevant to the charges
25 brought herein and will expire on August 31, 2006, unless renewed.

26 JURISDICTION

27 3. This Accusation is brought before the Division of Medical Quality (Division)
28 for the Medical Board of California, Department of Consumer Affairs, under the authority of the

1 following laws. All section references are to the Business and Professions Code unless otherwise
2 indicated.

3 4. Section 2227 of the Code provides that a licensee who is found guilty under
4 the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed
5 one year, placed on probation and required to pay the costs of probation monitoring, or such other
6 action taken in relation to discipline as the Division deems proper.

7 5. Section 2234 provides in part that unprofessional conduct shall be grounds
8 for discipline.

9 6. Section 2234(e) provides in part that the commission of any act of dishonesty
10 substantially related to the qualifications, functions and duties of a physician and surgeon constitutes
11 unprofessional conduct.

12 7. Section 2239 of the Code states in part that the use or prescribing for or
13 administering to himself or herself, of any controlled substance; or the use of any of the dangerous
14 drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to
15 be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that
16 such use impairs the ability of the licensee to practice medicine safely or more than one
17 misdemeanor or any felony involving the use, consumption, or self-administration of any of the
18 substances referred to in this section, or any combination thereof, constitutes unprofessional conduct.

19 8. Section 2350 provides in part that the Division shall establish criteria for the
20 acceptance, denial or termination of physicians in the Diversion program, including requirement that
21 a physician seeking to participate in the Diversion program sign a statement of understanding.
22 Subdivision (e) provides in part that the Division is not precluded from taking disciplinary action
23 for violations identified in the statement of understanding if a physician is terminated from the
24 Diversion Program for failure to comply with program requirements.

25 9. Section 2354 of the Code states in part that each physician and surgeon who
26 requests participation in a diversion program shall agree to cooperate with the treatment and
27 monitoring program designed by the program manager. Any failure to complete successfully a
28

1 treatment and monitoring program or an acceptable substitute program may result in the filing of an
2 accusation for discipline which may include any acts giving rise to the original diversion.

3
4 **FIRST CAUSE FOR DISCIPLINE**
5 (Unprofessional Conduct/Use of Alcohol/Drugs)

6 10. Respondent is subject to disciplinary action under sections 2234 and 2239(a)
7 of the Code in that he has used or administered to himself cocaine; and/or that he has used drugs
8 (cocaine) and alcohol in manner dangerous to himself or others as follows:

9 A. On or about November 23, 2004 the Medical Board received an 805
10 Health Facility Report from Sutter North Medical Group in Yuba City, CA. The Report stated that
11 Respondent had been suspended from staff on November 18, 2004 “for substance abuse issues, with
12 continuing absences from work.” Respondent had over ten (10) absences from work from
13 September 6, 2004 to December 20, 2004. Respondent was working as a pediatrician at Sutter North
14 Medical Group. Respondent told staff that he had been drinking due to stress from his recent
15 divorce. He denied any drug use.

16 B. Respondent underwent a three-day evaluation at Betty Ford Center
17 in November 2004. His final DSM IV diagnosis was Axis I: Cocaine Abuse, 305.60; Alcohol
18 Abuse, 305.00; Rule Out Alcohol Dependence. It was noted that Respondent had a “significantly
19 elevated liver functioning test indicating long-term use of alcohol with possible alcohol
20 dependence.” Respondent “admitted to cocaine abuse, and to a pattern of significant alcohol
21 consumption; however, he expressed denial that his substance abuse was of any significance.” It was
22 recommended that Respondent stop practicing medicine until he completed treatment, and
23 successfully engaged in a recovery program.

24 C. Respondent was admitted to Springbrook/Hazelden on December 26,
25 2004, and discharged on January 24, 2005. Discharge Diagnoses were: Axis I: 303.90 Alcohol
26 Dependence, 305.60 Cocaine Abuse, with Psychological Dependence, Sustained Partial Remission.
27 It was determined that respondent needed “intensive outpatient treatment” and recommendations
28 upon discharge included participation in the Board’s Diversion Program.

1 D. After his discharge from Springbrook/Hazelden, Respondent returned
2 to work at Sutter North Medical Group and began voluntarily attending the Board's Diversion
3 Program.

4 E. On Friday June 17, 2005, Respondent failed to report to work as
5 scheduled. Initially Respondent called in and stated that he would be in by 11:00 am, but he did not
6 report to work that day. On Saturday, he telephoned Dr. Raman and apologized for not coming in
7 and thanked her for seeing his patients. He denied any drug use. He told her that his car and wallet
8 had been stolen. Dr. Raman advised him to get a urine test right away to remove any suspicions.
9 He failed to get a drug test.

10 F. When Respondent reported to work on Monday, June 20, he was asked
11 by Dr. Wander why he had not come to work on Friday. He stated that when he calculated how
12 many hours that he had worked he decided not to come in because he was close to or at the
13 maximum of 32 hours. He also stated that some of his former drug friends were angry with him and
14 had stolen his car and he had trouble getting it back. Respondent was referred to the Occupational
15 Medicine Clinic for follow-up and reasonable suspicion for a drug screen. Before the sample was
16 obtained, Respondent asked how long it would take drugs to be cleared from his body. He stated
17 that on Thursday, June 16, he had done "two lines" of cocaine. He had gone to a place that he
18 frequented in the past, Shady Brady's, and was around old friends. He also stated that he had
19 "messed up big time." The test came back at 117 ng/ml, which is a detectable level of the cocaine
20 metabolite benzoylecgonine. Respondent was advised that he would no longer be able to see patients
21 and would be placed on medical leave. His Diversion case manager was notified of the results of
22 the drug screen and his admissions regarding his drug use. In August 2005, Respondent quit
23 participating in the Board's Diversion Program and he quit his employment with Sutter North
24 Medical Group.

25 G. On or about August 1, 2005, Senior Investigator Robert Sherer
26 interviewed Respondent by telephone. Respondent denied having a drug and alcohol problem,
27 claiming that he was only a recreational user, and that he had acted inappropriately due to the stress
28 of a contentious divorce and custody fight over his son. He stated that he had begun running with

1 an inappropriate crowd and began to make poor choices in the use of alcohol. He stated that he had
2 called in sick four times, which led the staff at Sutter to conclude that he had developed a drug and
3 alcohol problem. He stated that he had been directed to a three-month drug program in another state
4 by the Board's Diversion Program, but refused to go, fearing that he would lose custody of his son
5 if his ex-wife learned that he was admitted to a drug and alcohol treatment program. He told Senior
6 Investigator Sherer that he had been providing clear urine samples all year. Respondent failed to
7 inform Senior Investigator Sherer about his use of cocaine on June 16, his failure to report to work
8 on June 17, his positive drug test on June 20, and his subsequent suspension from work.

9
10 **SECOND CAUSE FOR DISCIPLINE**
11 (Unprofessional Conduct/Noncompliance with Diversion)

12 11. Respondent is subject to disciplinary action under sections 2234 and 2354 of
13 the Code in that he is guilty of unprofessional conduct for failing to comply with the terms and
14 conditions of the Board's Diversion Program. The circumstances are as follows:

15 A. In November 2005, Respondent was offered the opportunity to reenter
16 the Board's Diversion Program. On December 6, 2005, Respondent signed a Statement of
17 Understanding in which he admitted to the self-administration of alcohol or drugs per Business and
18 Professions Code section 2239 and agreed to contact and to comply with the Diversion Program
19 guidelines.

20 B. On December 28, 2005, Respondent reported to Diversion for his
21 Intake Interview. He completed a Diversion Program Application and signed an Interim
22 Enforcement Agreement. The Agreement set forth certain terms and conditions that Respondent
23 agreed to comply with, including his attendance at weekly facilitated Diversion Group meetings;
24 attendance at recovery support meetings such as AA or NA; abstention from alcohol and drugs
25 unless prescribed by a physician; and a minimum of four (4) observed biological fluid samples per
26 month, as requested. At the conclusion of the interview, Respondent was asked to cease the practice
27 of medicine and to enter a treatment facility within seven (7) days. He was asked to notify the
28 Diversion Program which facility he was going to enter.

1 C. On Friday, December 30, 2005, Respondent was notified that he was
2 to be tested. Respondent refused, stating that he "had a bad day" and that he was not going to test.
3 He was advised to contact his Case Manager which he did via voice mail on Saturday, December 31,
4 2005.

5 D. On Tuesday, January 3, 2006, Respondent was notified that he was
6 going to be tested. Respondent again refused.

7 E. On Tuesday, January 3, 2006, Respondent sent a note to the Diversion
8 Program stating that he was no longer going to participate in the Program. Thereafter respondent was
9 terminated from the Diversion Program unsuccessfully, due to noncompliance and was referred to
10 the Board's Enforcement program as a threat to public safety.

11 F. Respondent is guilty of unprofessional conduct in that he failed to
12 successfully complete the Board's Diversion Program by refusing to comply with Diversion Program
13 guidelines. He is guilty of unprofessional conduct in that he failed to abide by the terms of the
14 Interim Agreement which he signed in that he failed and refused to be tested and failed to enter an
15 inpatient treatment facility.

16
17 **THIRD CAUSE FOR DISCIPLINE**
18 (Dishonesty)

19 12. Complainant incorporates by reference as if fully set forth at this point
20 paragraph 10, subparagraphs A thru G, above.

21 13. Respondent is subject to disciplinary action pursuant to Code section 2234(e)
22 in that he is guilty of unprofessional conduct and dishonesty by lying to co-workers and fellow
23 physicians at Sutter North in June 2005 about his drug use. Respondent denied drug use when he
24 had in fact used cocaine.

25 14. Respondent is further subject to disciplinary action pursuant to Code section
26 2234 (e) in that he is guilty of unprofessional conduct and dishonesty by lying to Senior Investigator
27 Robert Sherer in August 2005 about his drug use in 2005. Respondent stated that all his urine tests
28 had been clean when, in fact, there was a positive test for cocaine metabolite. He failed to inform


1 Senior Investigator Sherer about his use of cocaine in June. He purposely mislead Senior
2 Investigator Sherer about his drug use, stating that he was only a "recreational user of alcohol." Said
3 conduct constitutes unprofessional conduct and dishonesty and subjects respondent to disciplinary
4 action.

5 **PRAYER**

6 WHEREFORE, Complainant requests that a hearing be held on the matters herein
7 alleged, and that following the hearing, the Division of Medical Quality issue a decision:

- 8 1. Revoking or suspending Physician'S and Surgeon's Certificate Number
9 A6140, issued to Derek Patrick Hughes, M.D.;
- 10 2. Revoking, suspending or denying approval of Derek Patrick Hughes' authority
11 to supervise physician's assistants, pursuant to section 3527 of the Code;
- 12 3. Taking such other and further action as deemed necessary and proper.

13 DATED: June 8, 2006

14
15 
16 _____
17 DAVID T. THORNTON
18 Executive Director
19 Medical Board of California
20 State of California
21 Complainant
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