

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

In the Matter of the First Amended)
Petition to Revoke Probation Against:)

DEREK PATRICK HUGHES, M.D.)

Case No. 800-2017-031076

Physician's and Surgeon's)
Certificate No. A 61410)

Respondent)

DECISION AND ORDER

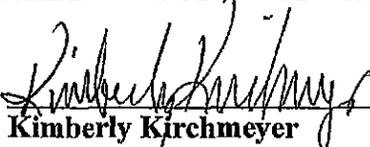
The attached Stipulated Surrender of License and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on July 7, 2017.

IT IS SO ORDERED June 30, 2017.

MEDICAL BOARD OF CALIFORNIA

By:


Kimberly Kirchmeyer
Executive Director

1 XAVIER BECERRA
Attorney General of California
2 ALEXANDRA M. ALVAREZ
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8 *Attorneys for Complainant*

10 **BEFORE THE**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
13 **STATE OF CALIFORNIA**

13 In the Matter of the First Amended Petition to
14 Revoke Probation Against:

Case No. 800-2017-031076

15 **DEREK PATRICK HUGHES, M.D.**
16 **3111 Professional Drive**
17 **Auburn, CA 95603-2456**

**STIPULATED SURRENDER OF
LICENSE AND DISCIPLINARY ORDER**

17 **Physician's and Surgeon's Certificate**
18 **No. A 61410**

18 Respondent.

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

22 PARTIES

23 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
24 of California (Board). She brought this action solely in her official capacity and is represented in
25 this matter by Xavier Becerra, Attorney General of the State of California, by Michael C.
26 Brummel, Deputy Attorney General.

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1 adverse decision; and all other rights accorded by the California Administrative Procedure Act
2 and other applicable laws.

3 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
4 every right set forth above.

5 CULPABILITY

6 8. Respondent does not contest that, at an administrative hearing, complainant could
7 establish a prima facie case with respect to the charges and allegations contained in First
8 Amended Petition to Revoke Probation No. 800-2017-031076 and that he has thereby subjected
9 his license to disciplinary action.

10 9. Respondent agrees that cause exists for discipline and hereby surrenders his
11 Physician's and Surgeon's Certificate No. A 61410 for the Board's formal acceptance.

12 10. Respondent understands that by signing this stipulation he enables the Board to issue
13 an order accepting the surrender of his Physician's and Surgeon's Certificate No. A 61410
14 without further process.

15 CONTINGENCY

16 11. Business and Professions Code Section 2224, subdivision (b), provides, in pertinent
17 part, that the Medical Board "shall delegate to its executive director the authority to adopt a . . .
18 stipulation for surrender of a license."

19 12. This Stipulated Surrender of License and Disciplinary Order shall be subject to
20 approval of the Executive Director on behalf of the Medical Board. The parties agree that this
21 Stipulated Surrender of License and Disciplinary Order shall be submitted to the Executive
22 Director for her consideration in the above-entitled matter and, further, that the Executive
23 Director shall have a reasonable period of time in which to consider and act on this Stipulated
24 Surrender of License and Disciplinary Order after receiving it. By signing this stipulation,
25 respondent fully understands and agrees that he may not withdraw his agreement or seek to
26 rescind this stipulation prior to the time the Executive Director, on behalf of the Medical Board,
27 considers and acts upon it.

28 ///

1 1. The surrender of Respondent's Physician's and Surgeon's Certificate No. A 61410
2 and the acceptance of the surrendered license by the Board shall constitute the imposition of
3 discipline against Respondent. This stipulation constitutes a record of the discipline and shall
4 become a part of Respondent's license history with the Medical Board of California.

5 2. Respondent shall lose all rights and privileges as a physician and surgeon in
6 California as of the effective date of the Board's Decision and Order.

7 3. Respondent shall cause to be delivered to the Board his pocket license and, if one was
8 issued, his wall certificate on or before the effective date of the Decision and Order.

9 4. If Respondent ever files an application for licensure or a petition for reinstatement in
10 the State of California, the Board shall treat it as a petition for reinstatement. Respondent must
11 comply with all the laws, regulations and procedures for reinstatement of a revoked license in
12 effect at the time the petition is filed, and all of the charges and allegations contained in the First
13 Amended Petition to Revoke Probation No. 800-2017-031076 shall be deemed to be true, correct
14 and admitted by Respondent when the Board determines whether to grant or deny the petition.

15 5. If Respondent should ever apply or reapply for a new license or certification, or
16 petition for reinstatement of a license, by any other health care licensing agency in the State of
17 California, all of the charges and allegations contained in the First Amended Petition to Revoke
18 Probation, No. 800-2017-031076 shall be deemed to be true, correct, and admitted by Respondent
19 for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict
20 licensure.

21 6. If Respondent ever files an application for licensure or a petition for reinstatement in
22 the State of California, Business and Professions Code Section 2307, subdivision (b)(1), shall
23 apply, allowing Respondent to petition for reinstatement two years after the effective date of the
24 Board's Decision and Order.

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Exhibit A

First Amended Petition to Revoke Probation No. 800-2017-031076

1 XAVIER BECERRA
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8 *Attorneys for Complainant*

9

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

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12

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In the Matter of the First Amended Petition to
Revoke Probation Against,

Case No. 800-2017-031076

14

DEREK PATRICK HUGHES, M.D.
3111 Professional Drive
Auburn, CA 95603-2456

FIRST AMENDED PETITION TO REVOKE
PROBATION

15

16

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

MEDICAL BOARD OF CALIFORNIA

I do hereby certify that this document is a true
and correct copy of the original on file in this
office.

17

18

Respondent.

[Signature]
Signature
Per Custodian of Records

19

20

Complainant alleges:

Title
Date 5/11/17

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PARTIES

22

1. Kimberly Kirchmeyer (Complainant) brings this First Amended Petition to Revoke
23 Probation solely in her official capacity as the Executive Director of the Medical Board of
24 California, Department of Consumer Affairs.

25

2. On or about December 26, 1996, the Medical Board of California issued Physician's
26 and Surgeon's Certificate No. A 61410 to Derek Patrick Hughes, M.D. (Respondent). The
27 Physician's and Surgeon's Certificate No. A 61410 was in effect at all times relevant to the
28 charges brought herein and will expire on August 31, 2018, unless renewed.

1 PRIOR DISCIPLINARY CONSIDERATIONS

2 3. To determine the degree of discipline, if any, to be imposed on Respondent,
3 Complainant alleges that Respondent's license has been subjected to multiple prior disciplinary
4 actions as set forth below.

5 4. On or about June 8, 2006, an Accusation was filed against Respondent *In the Matter*
6 *of the Accusation Against Derek Patrick Hughes, M.D.*, Case No. 02-2004-162685, alleging that
7 Respondent was subject to disciplinary action under Code Sections 2234 and 2239, subdivision
8 (a), in that he used or self-administered cocaine, and/or that he used drugs and alcohol in a
9 manner dangerous to himself and others.

10 5. On or about September 20, 2006, Respondent signed a Stipulated Settlement and
11 Disciplinary Order in Case No. 02-2004-162685, in which he "admit[ed] the truth of each and
12 every allegation in the First Cause of Discipline."

13 6. On or about October 25, 2006, the Board issued its Decision and Order in the case
14 entitled *In the Matter of the Accusation Against Derek Patrick Hughes, M.D.*, Case No. 02-2004-
15 162685. That Decision, which became effective November 27, 2006, revoked Respondent's
16 Physician's and Surgeon's Certificate No. A 61410; however, the revocation was stayed and he
17 was placed on probation for five years, subject to various terms and conditions. That decision is
18 now final and is incorporated by reference as if fully set forth.

19 7. On or about July 2, 2007, the Board filed an Accusation and Petition to Revoke
20 Probation entitled *In the Matter of the Accusation/Petition to Revoke Probation Against: Derek*
21 *Patrick Hughes, M.D.*, Case No. D1-2004-162685. The Accusation/Petition to Revoke Probation
22 alleged that Respondent violated the terms of his probation by failing to abstain from the use of
23 alcohol, refusing to comply with required biological fluid testing, failing to submit required
24 quarterly reports to probation, making false statements to probation, engaging in unprofessional
25 conduct by using alcohol in a manner dangerous to himself and/or the public and due to his
26 conviction for driving under the influence of alcohol in violation of Vehicle Code Section 23152,
27 subdivision (a).

28 ///

1 8. On or about August 27, 2007, Respondent entered into a Stipulated Settlement and
2 Disciplinary Order in Case No. D1-2004-162685, in which he admitted the truth of the allegations
3 and that a cause for discipline was established under Code Sections 2234, 2234, subdivision (e)
4 and 2239, subdivision (a).

5 9. On or about October 18, 2007, the Medical Board issued its Decision in case No. D1-
6 2004-162685, entitled *In the Matter of the Accusation/Petition to Revoke Probation Against:*
7 *Derek Hughes, M.D.*, Case No. D1-2004-162685. That Decision, which became effective
8 November 19, 2007, revoked Respondent's Physician's and Surgeon's Certificate No. A 61410;
9 however, the revocation was stayed, and Respondent was placed on probation for eight years
10 consistent with the terms of his prior Order with additional requirements that he undergo a
11 psychiatric evaluation and complete an ethics course. That decision is now final and is
12 incorporated by reference as if fully set forth.

13 10. On or about February 21, 2009, the Board filed an Amended Accusation and Petition
14 to Revoke Probation entitled *In the Matter of the Amended Accusation and Petition to Revoke*
15 *Probation Against: Derek Patrick Hughes, M.D.*, Case No. D2-2004-162685. The Amended
16 Accusation and Petition to Revoke Probation alleged that Respondent violated the terms of his
17 probation by failing to abstain from controlled substances, failing to abstain from the use of
18 alcohol, failing to submit to biological fluid testing and due to his conviction for driving under the
19 influence of alcohol on November 14, 2008 in violation of Vehicle Code section 23152,
20 subdivision (b), driving with a blood alcohol of .08 percent or greater, with one prior.

21 11. On or about February 24, 2009, Respondent entered into a Stipulation for Surrender
22 of License in Case No. D2-2004-162685, entitled *In the Matter of the Amended Accusation and*
23 *Petition to Revoke Probation Against: Derek Patrick Hughes, M.D.*, pursuant to which he
24 admitted the truth of the allegations in the Amended Accusation and Petition to Revoke Probation
25 and surrendered his license.

26 12. On or about March 17, 2009, the Board issued its Decision in Case No. D2-2004-
27 162685, entitled *In the Matter of the Accusation Against: Derek Patrick Hughes, M.D.*, adopting
28

1 the Stipulated Surrender of License and Order. That Decision became effective on March 24,
2 2009, and is now final and is incorporated by reference as if fully set forth

3 13. On or about July 7, 2011 Respondent filed a Petition for Reinstatement in Case No.
4 27-2011-216769. After a hearing, Administrative Law Judge Catherine B. Frink issued a
5 Proposed Decision granting the Petition for Reinstatement. In the Decision Judge Frink
6 concluded, "Petitioner understands that, if his license is reinstated, this is his last and only chance
7 to show the Board that he can remain clean and sober and practice medicine safely." That
8 decision is now final and is incorporated by reference as if fully set forth.

9 14. On or about March 27, 2013, the Board issued its Decision in Case No. 27-2011-
10 216769, entitled *In the Matter of the Petition for Reinstatement of Revoked/Surrendered*
11 *Certificate of: Derek Patrick Hughes*, adopting the Proposed Decision of Administrative Law
12 Judge Catherine B. Frink. That Decision, which became effective April 26, 2013, revoked
13 Respondent's Physician's and Surgeon's Certificate No. A 61410; however, the revocation was
14 stayed, and Respondent was placed on probation for ten years subject to terms and conditions.
15 That decision is now final and is incorporated by reference as if fully set forth.

16 15. On or about March 27, 2017, the Board issued a Cease Practice Order in the case
17 entitled *In the Matter of the Petition for Reinstatement of Revoked/Surrendered Certificate of:*
18 *Derek Patrick Hughes*, Case No. 27-2011-216769, prohibiting Respondent from engaging in the
19 practice of medicine pending a final decision on a Petition to Revoke Probation. The Cease
20 Practice Order, which became effective March 27, 2017, at 5:00 p.m., was based on Respondent's
21 failure to obey Probation Condition No. 3 of the Board's Decision and Order in Case No. 27-
22 2011-216769, in that he failed to abstain from the use of alcohol.

23 JURISDICTION

24 16. This First Amended Petition to Revoke Probation is brought before the Medical
25 Board of California (Board), Department of Consumer Affairs, under the authority of the
26 following laws and the Board's Decision and Order in the case entitled "*In the Matter of the*
27 *Petition for Reinstatement of Revoked/Surrendered Certificate of: Derek Patrick Hughes*," Case
28 No. 27-2011-216769. A true and correct copy of the Board's Decision and Order in Case No. 27-

1 2011-216769 is attached hereto as Exhibit A and incorporated herein by reference as if fully set
2 forth herein.

3 17. All section references are to the Business and Professions Code (Code) unless
4 otherwise indicated.

5 18. Section 2004 of the Code states:

6 "The board shall have the responsibility for the following:

7 "(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice
8 Act.

9 "(b) The administration and hearing of disciplinary actions.

10 "(c) Carrying out disciplinary actions appropriate to findings made by a panel or an
11 administrative law judge.

12 "(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of
13 disciplinary actions.

14 "(e) Reviewing the quality of medical practice carried out by physician and surgeon
15 certificate holders under the jurisdiction of the board.

16 "..."

17 19. Section 2227 of the Code states:

18 "(a) A licensee whose matter has been heard by an administrative law judge of the Medical
19 Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default
20 has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary
21 action with the board, may, in accordance with the provisions of this chapter:

22 "(1) Have his or her license revoked upon order of the board.

23 "(2) Have his or her right to practice suspended for a period not to exceed one year upon
24 order of the board.

25 "(3) Be placed on probation and be required to pay the costs of probation monitoring upon
26 order of the board.

27 "(4) Be publicly reprimanded by the board. The public reprimand may include a
28 requirement that the licensee complete relevant educational courses approved by the board.

1 “(5) Have any other action taken in relation to discipline as part of an order of probation, as
2 the board or an administrative law judge may deem proper.

3 “(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical
4 review or advisory conferences, professional competency examinations, continuing education
5 activities, and cost reimbursement associated therewith that are agreed to with the board and
6 successfully completed by the licensee, or other matters made confidential or privileged by
7 existing law, is deemed public, and shall be made available to the public by the board pursuant to
8 Section 803.1.”

9 20. Section 2234 of the Code, states:

10 “The board shall take action against any licensee who is charged with unprofessional
11 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
12 limited to, the following:

13 “(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
14 violation of, or conspiring to violate any provision of this chapter.

15 “... ”

16 “(f) any action or conduct which would have warranted the denial of a certificate.

17 “... ”

18 21. Probation Condition No. 18 of the Medical Board’s Decision in Case No. 27-2011-
19 216769, effective April 26, 2013, states:

20 “18. Violation of Probation

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

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FIRST CAUSE TO REVOKE PROBATION

(Abstain from Use of Alcohol)

22. At all times after the effective date of Respondent's probation, Condition 3 stated:

"3. Alcohol – Abstain From Use

"Petitioner shall abstain completely from the use of products or beverages containing alcohol.

"If petitioner has a confirmed positive biological fluid test for alcohol, petitioner shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Petitioner shall not resume the practice of medicine until a final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the notification to cease practice. If petitioner requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide petitioner with a hearing within 30 days of the request, unless petitioner stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

"If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide petitioner with a hearing within 30 days of such a request, the notification to cease practice shall be dissolved."

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1 23. Respondent's probation is subject to revocation under Section 2227, subdivision
2 (a)(1), in that he failed to comply with Probation Condition 3, of the Board's Decision and Order
3 effective April 26, 2013, referenced above. The facts and circumstances regarding this violation
4 are as follows:

5 A. On or about February 18, 2017, Respondent was selected to provide a biological fluid
6 specimen for testing and analysis by Firstlab. Respondent tested positive for EtG¹/EtS². A
7 positive test for EtG/EtS is indicative of the use of alcohol.

8 B. On or about March 3, 2017, Respondent was selected to provide a blood sample for
9 testing and analysis by Firstlab. Respondent tested positive for PEth³. A positive test for PEth is
10 indicative of the use of alcohol.

11 C. On or about March 27, 2017, the Board issued a Cease Practice Order, thereby
12 suspending Physician's and Surgeon's Certificate No. A 61410 issued to Respondent.

13 D. On or about April 18, 2017, Respondent was selected to provide a blood sample for
14 testing and analysis by Firstlab. Respondent tested positive for PEth. A positive test for PEth is
15 indicative of the use of alcohol.

16 24. Respondent's use of alcohol constitutes a violation of probation under Condition 3 of
17 the Board's Decision and Order in Case No. 27-2011-216769. Therefore, cause exists to impose
18 the disciplinary order of revocation that was stayed.

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24 ¹ EtG is an abbreviation for ethyl glucuronide which is a metabolite of alcohol formed in
25 the body by glucuronidation following exposure to ethanol. Levels of ethyl glucuronide in urine
are used as markers of previous alcohol consumption.

26 ² EtS is an abbreviation for ethyl sulfate, a direct ethanol metabolite. Levels of ethyl
sulfate in urine are used as markers of previous alcohol consumption.

27 ³ PEth is an abbreviation for phosphatidylethanol. Phosphatidylethanol represents a group
28 of phospholipids formed only during the presence of ethanol via the action of phospholipase D.
Levels of phosphatidylethanol in blood are used as markers of previous alcohol consumption.

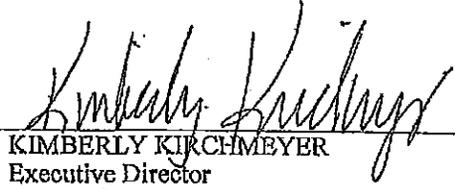
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking the probation that was granted by the Medical Board of California in Case No. 27-2011-216769 and imposing the disciplinary order that was stayed thereby revoking Physician's and Surgeon's Certificate No. A 61410 issued to Respondent Derek Patrick Hughes, M.D.;
2. Revoking or suspending Physician's and Surgeon's Certificate No. A 61410, issued to Respondent Derek Patrick Hughes, M.D.;
3. Revoking, suspending or denying approval of Respondent Derek Patrick Hughes, M.D.'s authority to supervise physician assistants and advance practice nurses;
4. Ordering Respondent Derek Patrick Hughes, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and
5. Taking such other and further action as deemed necessary and proper.

DATED: May 11, 2017



KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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Exhibit A

Decision and Order

Medical Board of California Case No. 27-2011-216769

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

In the Matter of the Petition for Reinstatement
of Revoked/Surrendered Certificate of:

DEREK PATRICK HUGHES
Carmichael, CA 95608

Petitioner.

Case No. 27-2011-216769

OAH No. 2012070750

PROPOSED DECISION

Catherine B. Frink, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on February 12, 2013, in Sacramento, California.

Michelle L. Angus, Deputy Attorney General, represented the People of the State of California pursuant to Government Code section 11522.

Derek Patrick Hughes (petitioner) appeared on his own behalf.

Evidence was received, the record was closed, and the matter was submitted for decision on February 12, 2013.

FACTUAL FINDINGS

License and Disciplinary History

1. On December 26, 1996, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate Number A 61410 to petitioner.
2. On June 8, 2006, an Accusation in Case No. 02-2004-162685 (2006 Accusation) was filed against petitioner. The First Cause for Discipline in the 2006 Accusation alleged that petitioner was subject to disciplinary action under Business and Professions Code sections 2234 and 2239, subdivision (a), in that he used or self-administered cocaine, and/or that he used drugs (cocaine) and alcohol in a manner dangerous to himself and others. The pertinent facts are as follows:

A. On or about November 23, 2005, the Board received an 805 Health Facility Report from Sutter North Medical Group in Yuba City, California. The Report stated that petitioner had been suspended from staff on November 18, 2004, "for substance abuse issues, with continuing absences from work." Petitioner had over 10 absences from work from September 6, 2004, to December 20, 2004. Petitioner was working as a pediatrician at Sutter North Medical Group. Petitioner told staff that he had been drinking due to stress from his recent divorce. He denied any drug use.

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

C. Petitioner was admitted to Springbrook/Hazelden on December 26, 2004, and discharged on January 24, 2005. Discharge diagnoses were: Axis I: 303.90 Alcohol Dependence; 305.60 Cocaine Abuse, with Psychological Dependence, Sustained Partial Remission. It was determined that petitioner needed "intensive outpatient treatment" and recommendations upon discharge included participation in the Board's Diversion Program.

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

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

F. When petitioner reported to work on Monday, June 20, 2005, he gave several different excuses to explain his absence the previous Friday. Petitioner was referred to the Occupational Medicine Clinic for follow-up and reasonable suspicion for a drug screen. Before the sample was obtained, petitioner asked how long it would take drugs to be cleared from his body. He stated that on Thursday, June 16, 2005, he had done "two lines" of cocaine. He "was around old friends," and had "messed up big time." The test results indicated a detectable level of the cocaine metabolite benzoylecgonine. Petitioner was advised that he would no longer be able to see patients and would be placed on medical leave. His Diversion case manager was notified of the results of the drug screen and his admissions regarding his drug use. In August 2005, petitioner stopped participating in the Board's Diversion Program and he quit his employment with Sutter North Medical Group.

G. On or about August 1, 2005, Senior Investigator Robert Sherer interviewed petitioner by telephone. Petitioner denied having a drug and alcohol problem, claiming that he was only a recreational user, and that he had acted inappropriately due to the stress of a contentious divorce and custody fight over his son. He stated that he had begun running with an inappropriate crowd and began to make poor choices in the use of alcohol. He stated that he had called in sick four times, which led the staff at Sutter to conclude that he had developed a drug and alcohol problem. He stated that he had been directed to a three-month drug program in another state by the Board's Diversion Program but refused to go, fearing that he would lose custody of his son if his ex-wife learned that he was admitted to a drug and alcohol treatment program. He told Senior Investigator Sherer that he had been providing clear urine samples all year. Petitioner failed to inform Senior Investigator Sherer about his use of cocaine on June 16, 2005; his failure to report to work on June 17; his positive drug test on June 20; and his subsequent suspension from work.

3. On September 20, 2006, petitioner signed a Stipulated Settlement and Disciplinary Order (2006 Stipulation), in which he "admit[ed] the truth of each and every allegation in the First Cause for Discipline" in the 2006 Accusation, and that "cause exists for discipline pursuant to Business and Professions Code sections 2234 and 2239(a)." Pursuant to the 2006 Stipulation, petitioner's medical license was revoked; the revocation was stayed, and petitioner was placed on probation for five years, subject to various terms and conditions. The Board issued a Decision and Order on October 25, 2006, adopting the 2006 Stipulation, effective November 27, 2006.

The conditions of probation included requirements that petitioner abstain from use or possession of controlled substances (Condition 1); abstain completely from the use of alcohol (Condition 2); submit to biological fluid testing (Condition 3); enroll in and participate in the Board's Diversion Program (Condition 4); obey all laws (Condition 7); and submit quarterly declarations (Condition 8).

4. On July 2, 2007, an Accusation/Petition to Revoke Probation in Case No. D1-2004-162685 (2007 Accusation) was filed against petitioner. The 2007 Accusation alleged that petitioner violated Condition 2 of his probation (abstain from the use of alcohol) by consuming alcohol on February 4, 2007. Petitioner failed to comply with Condition 3 (biological fluid testing) by refusing to submit to biological fluid testing at the request of Board Senior Investigator Caterina Le on December 1, 2006.

Petitioner violated Condition 7 (obey all laws), in that on December 15, 2006, petitioner was convicted, upon his plea of nolo contendere, of violating Vehicle Code section 23152, subdivision (a), driving under the influence (DUI). Petitioner was placed on criminal probation for three years. The circumstances underlying the conviction were that petitioner was arrested on August 31, 2006, after a California Highway Patrol officer observed his vehicle traveling 95 to 100 miles per hour on the freeway. Petitioner failed a field sobriety test, and his blood alcohol content (BAC) was determined to be .14 percent. Petitioner failed to comply with Condition 8 (submit quarterly reports) in that he failed to submit his quarterly report for the period from November 27, 2006, to December 31, 2006, by the January 10,

2007 deadline, and when he submitted the report on February 28, 2007, it contained false information (failed to disclose his criminal conviction).

In addition to the violations of probation, the 2007 Accusation alleged that petitioner's medical license was subject to discipline under Business and Professions Code section 2234, subdivision (e), in that he engaged in unprofessional conduct by making false statements, by failing to disclose his arrest and DUI conviction in two probation interviews (December 1, 2006, and February 28, 2007), and on his March 2, 2007 application to participate in the Board's Diversion Program. The 2007 Accusation further alleged that petitioner was subject to discipline under Business and Professions Code section 2239, subdivision (a), in that he engaged in unprofessional conduct by using alcohol in a manner dangerous to himself and/or the public, by reason of his conduct on August 31, 2006, when he operated a vehicle under the influence of alcohol; he engaged in this conduct even after having been diagnosed and treated for alcohol abuse and dependency.

5. On August 27, 2007, petitioner entered into a Stipulated Settlement and Disciplinary Order (2007 Stipulation) in which he admitted the truth of the allegations in the 2007 Accusation, and that cause for discipline was established under Business and Professions Code sections 2234, 2234, subdivision (e), and 2239, subdivision (a).

Pursuant to the 2007 Stipulation, "the license revocation previously imposed and stayed against [petitioner] pursuant to the Decision and Order [adopting the 2006 Stipulation] is imposed and [petitioner's] license is revoked. However, revocation is stayed and [petitioner's] license is placed on probation for an additional 3 years for a total of 8 years, 5 years from the original order, plus the additional 3...."

The Board issued a Decision and Order on October 18, 2007, adopting the 2007 Stipulation, effective November 19, 2007. The 2007 Stipulation reinstated the conditions of probation contained in the 2006 Stipulation, and added conditions that petitioner undergo a psychiatric evaluation, and that he complete an ethics course.

6. On February 21, 2009, a First Amended Accusation and Petition to Revoke Probation in Case No. D2-2004-162685 (2009 Accusation) was filed against petitioner. The 2009 Accusation alleged that petitioner violated Condition 1 of his probation (abstain from the use of controlled substances) in that petitioner tested positive for the use of cocaine on November 5, 2007. Petitioner failed to comply with Condition 2 (abstain for use of alcohol), in that on June 20, 2008, petitioner consumed alcohol; he was later arrested and charged with DUI, with a BAC of .10 percent.

Petitioner failed to comply with Condition 3 (submit to biological fluid testing), in that on November 10 and 11, 2007, he failed to respond to several phone messages left by the Board's Diversion Program's urine collector requesting that petitioner drug test within six hours of the call. Petitioner failed to comply with Condition 4 (Diversion Program), in that on November 8, 2007, petitioner's Diversion Case Manager contacted his Diversion work site monitor and informed her that petitioner was suspended from work due to a

positive cocaine test. Petitioner stopped work as of November 9, 2007, but did not inform the Division of Medical Quality within 24 hours, as required by Condition 4.

Petitioner violated Condition 7 (obey all laws) by (1) ingesting cocaine on or about November 5, 2007, in violation of law and his criminal court probation for his 2007 DUI, which was not due to terminate until December 14, 2009; and (2) his conviction on November 14, 2008, of violation of Vehicle Code section 23152, subdivision (b), driving with a BAC of .08 percent or greater, with one prior.

The 2009 Accusation further alleged that petitioner was subject to discipline under Business and Professions Code section 2239, subdivision (a), in that petitioner engaged in unprofessional conduct by (1) using a controlled substance, namely cocaine, as established by a positive drug test on November 5, 2007; and (2) consuming alcohol in a manner dangerous to himself and others, when he drank alcohol and operated a vehicle on June 20, 2008.

7. On February 24, 2009, petitioner entered into a Stipulation for Surrender of License, pursuant to which he admitted the truth of the allegations in the 2009 Accusation and surrendered his license. The Board accepted the Stipulation for Surrender of License as its decision, effective March 24, 2009.

Petition for Reinstatement

8. Petitioner filed a Petition for Reinstatement (Petition) dated July 7, 2011. Petitioner attached a 24-page personal statement to the Petition, and included letters of support from Thomas B. Walther, CEO of PeachTree Healthcare; Leonard J. Marks, M.D.; Stephen R. Kerr, M.D.; and Amanda Diehl, M.D. He also attached documents to corroborate his rehabilitation and continuing medical education (CME) coursework.

Petitioner's Testimony and Evidence

9. Petitioner received his Bachelor of Science degree from UCLA in 1991, and earned his M.D. degree from the University of Chicago Medical School in 1995. He completed his pediatric residency at UCSF in 1998, and has been board certified by the American Board of Pediatrics since December 2000. He was elected as a Fellow of the American Academy of Pediatrics on February 1, 2004.

10. Petitioner paid his own way through college and medical school, and he graduated with a great deal of debt. While in school, he gravitated toward the "heavier drinking group." When petitioner came to Sacramento, he enjoyed the single lifestyle and became familiar with the downtown "bar scene." After petitioner married and moved to Rocklin in 2001, he and his wife "decided to start aggressively paying off [his] student loans." Petitioner moved out of the house and filed for divorce in December of 2003. After his divorce was final in mid-2004, his "social drinking wasn't in need of another jump start." Petitioner was socializing at night with pharmaceutical representatives, his medical practice

was "in full gear," and he became part-owner of a bar in Rancho Cordova. Between student loans, legal fees, and support payments to his ex-wife and son, petitioner was "just getting by" financially.

11. While petitioner was working as a pediatrician for Sutter North, he was drinking heavily and used cocaine occasionally. He never came to work under the influence of alcohol or drugs, and there was never any issue regarding his care or treatment of patients. He called in sick rather than show up for work impaired. His drug and alcohol use escalated, and it negatively impacted his work attendance, which ultimately led to petitioner contacting the Board's Diversion program, and entering the Hazelden in-patient treatment program in Oregon. After completing in-patient treatment, petitioner began a six-month outpatient program in Rocklin, and met his AA sponsor at the Rocklin fellowship.

12. In his personal statement, petitioner wrote that he had a "victim mentality" during this time (2004 and 2005) because of ongoing financial and child custody problems. He quit his job with Sutter North, and was thereafter unable to afford to pay for additional alcohol rehabilitation. Thereafter, petitioner became employed at Elk Grove Pediatrics. Petitioner maintained his sobriety for a period of about nine months, but then resumed drinking in July of 2006. He rationalized that it was not "the late night bar scene, just the happy hour and with dinner variety." However, petitioner was arrested for DUI on August 31, 2006, while driving from Roseville to Sacramento. As a result of the DUI and other legal issues, he was "let go" by Elk Grove Pediatrics.

13. Petitioner joined Diversion in early 2007 and spent time at Impact House in Pasadena. When he returned to Sacramento, he continued his involvement in AA, and was hired by Del Norte Clinics in Yuba City in August 2007. Petitioner continued his work in Yuba City until he was informed by the Diversion program on November 8, 2007, that he had tested positive for cocaine. Petitioner testified that he believed the test was a "false positive," attributable to some herbal tea he had consumed; however, he accepted full responsibility for the consequences of the test. He was required to cease practice as of that date.

14. Petitioner had not consumed alcohol for about 15 months when he relapsed by consuming alcohol at a party on June 20, 2008. On his drive home, he was stopped at a sobriety checkpoint, which led to his second DUI arrest. Petitioner testified that, if he could drink one time and end up with a DUI, that he was "done drinking." Petitioner knew he had "hit bottom," and thereafter agreed to surrender his medical license.

15. After petitioner's second DUI, he was ordered to complete an 18-month drinking driver program, which included individual and group counseling sessions. Petitioner provided documentation of his attendance at the counseling sessions and his successful completion of the program. Petitioner's criminal probation ended in November of 2012. Petitioner still owes \$2,100 in court fines and fees, which he is paying according to a payment plan approved by the court.

16. Petitioner acknowledged that he is an alcoholic and drug abuser, and he takes full responsibility for his conduct. At hearing, petitioner acknowledged that he was going through a divorce and contentious custody battle while he was drinking and using cocaine, but he does not blame these events for his substance abuse. Rather, he stated that it was him "running reckless," and he "could have stopped it eight or 10 times." He also recognized that he was in denial during the time he was on Board probation, and he engaged in behavior that was at times manipulative in an attempt to retain his medical practice while not fully acknowledging his substance abuse problems. He has accepted that he is an alcoholic, and has "stopped fighting it, stopped being angry at someone who is trying to keep you from drinking."

17. Petitioner attends four to five Alcoholics Anonymous (AA) meetings per week, and has been the secretary of a Thursday afternoon AA group, which involved running the meetings and scheduling speakers. Petitioner submitted verification lists of AA meetings he attended, with dates, group name, and signature of the group secretary. Petitioner has a sponsor in AA, and together they have worked through the 12 steps twice.

18. Petitioner is a practicing Buddhist, which he believes has helped him to live in the moment and learn humility. He feels his religious beliefs are in harmony with the principles of AA and further support his sobriety.

19. Petitioner completed the coursework to become a Registered Addiction Specialist on July 30, 2009. His studies provided added insight into his alcoholism and substance abuse issues. With his background in pediatrics, he is interested in running teen groups on addiction. He has done some counseling informally for the children of friends and acquaintances who approached him after reading about his certification on his Facebook page.

20. Petitioner has not practiced medicine since November 7, 2007, and has experienced severe financial difficulties during the past five years. He has not held steady employment, in part due to the downturn in the economy, and in part due to his DUIs, which have impacted his ability to drive. Petitioner worked as a test evaluator at McGraw Hill for \$10 per hour, and sold many of his possessions on eBay and Craigslist to make ends meet. He lost his home to foreclosure, and had periods of homelessness, when he lived out of his car.

Petitioner was encouraged by a friend to apply for a job selling insurance. In June of 2010, petitioner passed the license examination to become a Life Agent (Life-Only and Accident and Health Agent). However, the promised employment did not materialize, and petitioner did not complete the license application process.

Petitioner is not currently employed full-time. He accepts odd jobs, including pet-sitting, housecleaning, and handyman/yard work. His family (parents and siblings) have provided some financial assistance to him.

Petitioner rents a room from a woman who is a retired social worker and has problems with ambulation. As part of his rental agreement, petitioner was to provide two hours per week of work around the house and yard; however, he estimated that he is actually spending about 15 hours per week making repairs to the house.

21. While petitioner was still employed as a physician, he founded the Albert Medina Scholarship Fund, which he named after his grandfather, a Mexican immigrant, to award a \$1,000 yearly stipend to a Mexican American student from petitioner's old high school (Clovis High School) for college expenses. Petitioner hopes to continue to give back to the community through his financial support of this scholarship program, when his circumstances allow.

22. Petitioner has been to Haiti twice on mission trips after the earthquake in 2010, where he was providing primary care and other assistance to the local population.

23. Petitioner's son is 10 years old. Petitioner is an active volunteer at his son's school and helps to coach his sports activities.

24. If petitioner's license is reinstated, he would like to return to the practice of pediatrics, and incorporate the training he has received as an addiction specialist into his practice. To assure the protection of the public, petitioner stated that he would openly acknowledge his alcoholism, and would welcome the oversight of his peers. He is open to any terms of probation, including a practice monitor and the PACE program. He recognizes that the Board has given him chances in the past by placing him on probation initially and reinstating his probation after his first DUI. He understands that this is his "last chance" to prove to the Board that he can remain clean and sober while practicing medicine.

25. Petitioner has been saving money to pay for the PACE physician assessment course offered through UCSD School of Medicine. He has raised \$7,200 of the \$8,500 needed to take Phase I of PACE.

26. Petitioner has completed over 350 hours of online CME since the surrender of his license, and he estimated that he has spent an additional 500 hours in self-study reading materials related to addiction, pediatrics, general medical updates, and certain topic of interest to him (such as malaria, cholera, and post-amputee wound care).

Witness Testimony and Letters of Support

27. Leonard Marks, M.D. wrote a letter of support for petitioner, dated July 2, 2011, and he testified at the administrative hearing. He has known petitioner since 1998 or 1999, when he and petitioner were partners in medical practice with Sutter North in Yuba City. Dr. Marks described petitioner as "an amazing physician," who loved pediatrics and was able to handle a high volume, high pressure practice. Dr. Marks is aware of the fact that petitioner was drinking heavily while he was employed by Sutter North, but he did not ever see petitioner in an impaired state while at work. He perceived that petitioner had come from

a humble background, worked hard for what he had, and suddenly found himself as a "high roller" in a "party crowd." When petitioner "fell off the wagon," he "did not realize he needed help," and "tried to do it himself."

Dr. Marks has seen petitioner "hit the depths of despair," and he is "trying to climb out." He believes that petitioner "has been there," and will be able to help others who are struggling with addiction. He thinks that petitioner has a strong support system in place to support his sobriety, and he will not repeat the conduct that led to the revocation of his medical license. Dr. Marks described himself as petitioner's "mentor, peer, and friend." He fully supports the reinstatement of petitioner's license, and orally committed himself to loan petitioner the money he needs to complete the PACE program if required as a condition of probation.

28. Thomas B. Walther wrote a letter of support for petitioner, dated June 23, 2011, and he testified at the administrative hearing. Mr. Walther was the CEO of PeachTree Healthcare until his recent retirement, and he was the chief operating officer for Sutter North Medical Foundation until 2007. In that capacity, he was familiar with petitioner's quality of care while petitioner was employed by Sutter North. He described petitioner as "one of the most respected pediatricians in town," whose "compassion for children is enormous." He rented a room to petitioner when petitioner worked in Yuba City, because petitioner resided in the Sacramento area, and needed to be close to the hospital when on call in Yuba City. He never noticed any issues with drinking or substance abuse when petitioner stayed at his house. However, he became aware of petitioner's heavy drinking and drug use, and watched as alcoholism and family problems took its toll on petitioner, and he "hit deep bottom." He sees that now petitioner "has taken full responsibility and changed his life."

Mr. Walther fully supports the reinstatement of petitioner's license. While Mr. Walther was the CEO of PeachTree Healthcare, petitioner was interviewed by the medical staff for possible employment if his license is reinstated, and Mr. Walther expressed confidence that PeachTree Healthcare would offer employment to petitioner if his license is restored.

29. Amanda Diehl, M.D., is a pediatrician from Rapid City, South Dakota, who wrote a letter of support for petitioner, dated June 24, 2011. Dr. Diehl met petitioner during a medical mission trip to Haiti, where they worked together in medical clinics in the camp cities for two weeks. She described petitioner as "an outstanding individual with a caring heart," who "has a vast fund of knowledge which was a great asset on a trip where conventional medicine and treatments weren't often available."

30. Stephen R. Kerr, M.D., wrote a letter of support for petitioner. Dr. Kerr is a surgical hospitalist who currently works in Puyallup, Washington. He met petitioner in 2008 when he had a temporary position in the Sacramento area and was looking for a short-term place to stay. He and petitioner lived together for about two months, and they became good friends. Dr. Kerr attested to the fact that petitioner is a "great father," and a "hands on dad," who was involved in his son's activities. He also described petitioner's love of people and

willingness to help the less fortunate. Dr. Kerr is aware of petitioner's struggles with alcohol, and he wrote that petitioner "attended AA meetings on a daily, sometimes twice daily basis" while they lived together. He described petitioner as "more down to earth, focused and ... humble" than when they originally met, and believes that petitioner "is willing to do whatever it takes to get back into practice." He supports the reinstatement of petitioner's medical license.

Discussion

31. Petitioner has an extensive history of alcohol and substance abuse that led to prior disciplinary action by the Board. The Board attempted to work with petitioner as he struggled with his addiction, and continued him on probation after he relapsed into alcohol use after his first DUI in 2006. However, petitioner was still in denial about his alcoholism and drug use, which led to further violations of probation, and the surrender of his license. As petitioner and others have stated, he "hit bottom" after he was required to cease practice in November 2007, and was arrested for DUI in June 2008. Since that time, petitioner has struggled to extricate himself from the pit he created by his own actions.

32. Petitioner last consumed alcohol on June 20, 2008, and he has not used controlled substances since November 7, 2007. He has recommitted himself to his sobriety, by frequent and regular attendance at AA, and diligently working the 12 steps with his sponsor. He has educated himself about addiction, through completion of the 18-month drinking driver program, and the addiction specialist certification. He has remained active in his community, by volunteering at his child's school and after school sports activities. He affirmed his commitment to the less fortunate and those who need help, by his medical missions to Haiti, and his assistance to his landlady.

33. The witnesses who testified on petitioner's behalf have attested to the change in petitioner's attitude they have seen over the past five years, and the support system that petitioner has in place to reinforce and maintain his sobriety. Their testimony was a compelling affirmation of petitioner's rehabilitation efforts.

34. Petitioner has a passion for children and the practice of pediatric medicine, particularly in underserved areas of California. He has worked hard to maintain his medical knowledge, through self-study and CME. Despite his dire financial circumstances, he has been saving the money he needs to be able to attend the PACE program.

35. Petitioner understands that, if his license is reinstated, this is his last and only chance to show the Board that he can remain clean and sober and practice medicine safely. The evidence presented by petitioner was sufficient to establish that he can resume the practice of medicine, with a lengthy period of probation and stringent conditions to protect the public.

LEGAL CONCLUSIONS

1. Business and Professions Code section 2307 states, in pertinent part:

(a) A person whose certificate has been surrendered while under investigation or while charges are pending or whose certificate has been revoked or suspended or placed on probation, may petition the board for reinstatement or modification of penalty, including modification or termination of probation.

[¶]...[¶]

(e) The panel of the board or the administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. The hearing may be continued from time to time as the administrative law judge designated in Section 11371 of the Government Code finds necessary.

(f) The administrative law judge designated in Section 11371 of the Government Code reinstating a certificate or modifying a penalty may recommend the imposition of any terms and conditions deemed necessary.

[¶]...[¶]

2. California Code of Regulations, title 16, section 1360.2 provides that, when considering a petition for reinstatement, the Board shall evaluate evidence of rehabilitation submitted by the petitioner considering the following criteria:

(a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(b) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480.

(c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subsections (a) or (b).

(d) In the case of a suspension or revocation based upon the

conviction of a crime, the criteria set forth in Section 1360.1, subsections (b), (d) and (e).¹

(e) Evidence, if any, of rehabilitation submitted by the applicant.

3. In proceedings on a petition for reinstatement or modification of penalty, the burden of proof is on the petitioner to establish rehabilitation by clear and convincing evidence to a reasonable certainty. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1091; *Feinstein v. State Bar* (1952) 30 Cal.2d 541.) Petitioner's burden required a showing that he is no longer deserving of the adverse character judgment associated with the discipline imposed against his certificate. (*Tardiff v. State Bar* (1980) 27 Cal.3d 395, 403.)

4. As set forth in the Factual Findings, and particularly Findings 31 through 35, petitioner submitted substantial and convincing evidence of rehabilitation. Good cause is established to reinstate petitioner's physician's and surgeon's certificate, with terms and conditions of probation, as set forth in the Order below.

ORDER

The petition for reinstatement of petitioner Derek Patrick Hughes is GRANTED. Physician's and Surgeon's Certificate No. A 61410 is reinstated, and simultaneously

¹ California Code of Regulations, title 16, section 1360.1, states in pertinent part:

When considering the suspension or revocation of a license, certificate or permit on the ground that a person holding a license, certificate or permit under the Medical Practice Act has been convicted of a crime, the division, in evaluating the rehabilitation of such person and his or her eligibility for a license, certificate or permit shall consider the following criteria:

[§]...[§]

(b) The total criminal record.

[§]...[§]

(d) Whether the licensee, certificate or permit holder has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person.

(e) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

[§]...[§]

revoked; however the revocation is stayed and petitioner is placed on probation for ten (10) years, subject to the following terms and conditions:

1. Clinical Training Program

Within 60 calendar days of the effective date of this Decision, petitioner shall enroll in a clinical training or educational program equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the University of California - San Diego School of Medicine ("Program"). Petitioner shall successfully complete the Program not later than six (6) months after petitioner's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The Program shall consist of a Comprehensive Assessment program comprised of a two-day assessment of petitioner's physical and mental health; basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment pertaining to petitioner's area of practice in which petitioner was alleged to be deficient, and at minimum, a 40-hour program of clinical education in the area of practice in which petitioner was alleged to be deficient and which takes into account data obtained from the assessment, Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. Petitioner shall pay all expenses associated with the clinical training program.

Based on petitioner's performance and test results in the assessment and clinical education, the Program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, treatment for any medical condition, treatment for any psychological condition, or anything else affecting petitioner's practice of medicine. Petitioner shall comply with Program recommendations.

At the completion of any additional educational or clinical training, petitioner shall submit to and pass an examination. Determination as to whether petitioner successfully completed the examination or successfully completed the program is solely within the program's jurisdiction.

Petitioner shall not practice medicine until petitioner has successfully completed the Program and has been so notified by the Board or its designee in writing, except that petitioner may practice in a clinical training program approved by the Board or its designee. Petitioner's practice of medicine shall be restricted only to that which is required by the approved training program.

2. Controlled Substances - Abstain From Use

Petitioner shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a

prescription. This prohibition does not apply to medications lawfully prescribed to petitioner by another practitioner for a bona fide illness or condition.

Within 15 calendar days of receiving any lawful prescription medications, petitioner shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone number; medication name and strength; and issuing pharmacy name, address, and telephone number.

If petitioner has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use to the Board or its designee, petitioner shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Petitioner shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the notification to cease practice. If petitioner requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the petitioner with a hearing within 30 days of the request, unless the petitioner stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide petitioner with a hearing within 30 days of such a request, the notification to cease practice shall be dissolved.

3. Alcohol - Abstain From Use

Petitioner shall abstain completely from the use of products or beverages containing alcohol.

If petitioner has a confirmed positive biological fluid test for alcohol, petitioner shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Petitioner shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the notification to cease practice. If petitioner requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide petitioner with a hearing within 30 days of the request, unless petitioner stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide petitioner with a hearing within 30 days of such a request, the notification to cease practice shall be dissolved.

4. Biological Fluid Testing

Petitioner shall immediately submit to biological fluid testing, at petitioner's expense, upon request of the Board or its designee. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the Board or its designee. Prior to practicing medicine, petitioner shall contract with a laboratory or service approved in advance by the Board or its designee that will conduct random, unannounced, observed, biological fluid testing. The contract shall require results of the tests to be transmitted by the laboratory or service directly to the Board or its designee within four hours of the results becoming available. Petitioner shall maintain this laboratory or service contract during the period of probation.

A certified copy of any laboratory test result may be received in evidence in any proceedings between the Board and petitioner.

If petitioner fails to cooperate in a random biological fluid testing program within the specified time frame, petitioner shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Petitioner shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the notification to cease practice. If petitioner requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide petitioner with a hearing within 30 days of the request, unless petitioner stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide petitioner with a hearing within 30 days of such a request, the notification of cease practice shall be dissolved.

5. Education Course

Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, petitioner shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at petitioner's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test petitioner's knowledge of the course. Petitioner shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

6. Psychiatric Evaluation

Within 60 calendar days of the effective date of this Decision, and on whatever periodic basis thereafter may be required by the Board or its designee, petitioner shall undergo and complete a psychiatric evaluation (and psychological testing, if deemed necessary) by a Board-appointed, board certified psychiatrist, who shall consider any information provided by the Board or designee and any other information the psychiatrist deems relevant, and shall furnish a written evaluation report to the Board or its designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not be accepted towards the fulfillment of this requirement. Petitioner shall pay the cost of all psychiatric evaluations and psychological testing.

Petitioner shall comply with all restrictions or conditions recommended by the evaluating psychiatrist within 15 calendar days after being notified by the Board or its designee.

7. Psychotherapy

If recommended by the evaluating psychiatrist as part of Probation Condition 6, petitioner shall submit to the Board or its designee for prior approval the name and qualifications of a board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, petitioner shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the Board or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Board or its designee. Petitioner shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent.

Petitioner shall have the treating psychotherapist submit quarterly status reports to the Board or its designee. The Board or its designee may require petitioner to undergo psychiatric evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of probation, petitioner is found to be mentally unfit to resume the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over petitioner's license and the period of probation shall be extended until the Board determines that petitioner is mentally fit to resume the practice of medicine without restrictions.

Petitioner shall pay the cost of all psychotherapy and psychiatric evaluations. Failure to undergo and continue psychotherapy treatment, or comply with any required modification in the frequency of psychotherapy, is a violation of probation.

8. Monitoring - Practice

Within 30 calendar days of the date petitioner resumes the practice of medicine, petitioner shall submit to the Board or its designee for prior approval as a practice monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with petitioner, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in petitioner's field of practice, and must agree to serve as petitioner's monitor. Petitioner shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement.

Within 60 calendar days of the date petitioner resumes the practice of medicine, and continuing throughout probation, petitioner's practice shall be monitored by the approved monitor. Petitioner shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

The monitor shall submit a quarterly written report to the Board or its designee which includes an evaluation of petitioner's performance, indicating whether petitioner's practices are within the standards of practice of medicine, and whether petitioner is practicing medicine safely. It shall be the sole responsibility of petitioner to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, petitioner shall, within five (5) calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If petitioner fails to obtain approval of a replacement monitor within 60 days of the resignation or unavailability of the monitor, petitioner shall be suspended from the practice of medicine until a replacement monitor is approved and prepared to assume immediate monitoring responsibility. Petitioner shall cease the practice of medicine within three (3) calendar days after being so notified by the Board or designee.

In lieu of a monitor, petitioner may participate in a professional enhancement program equivalent to the one offered by the Physician Assessment and Clinical Education

Program at the University of California, San Diego School of Medicine, that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Petitioner shall participate in the professional enhancement program at petitioner's expense during the term of probation.

9. Solo Practice

Petitioner is prohibited from engaging in the solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice where: 1) petitioner merely shares office space with another physician but is not affiliated for purposes of providing patient care, or 2) petitioner is the sole physician practitioner at that location.

If petitioner fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the date petitioner resumes the practice of medicine, petitioner shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The petitioner shall not resume practice until an appropriate practice setting is established.

If, during the course of the probation, petitioner's practice setting changes and the petitioner is no longer practicing in a setting in compliance with this Decision, petitioner shall notify the Board or its designee within 5 calendar days of the practice setting change. If petitioner fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the practice setting change, petitioner shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Petitioner shall not resume practice until an appropriate practice setting is established.

STANDARD CONDITIONS

10. Notification

Prior to engaging in the practice of medicine, petitioner shall provide a true copy of the Decision(s) and Accusation(s) to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to petitioner, at any other facility where petitioner engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to petitioner. Petitioner shall submit proof of compliance to the Board or its designee within 15 calendar days.

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

11. Supervision of Physician Assistants

During probation, petitioner is prohibited from supervising physician assistants.

12. Obey All Laws

Petitioner shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court-ordered criminal probation, payments, and other orders.

13. Quarterly Declarations

Petitioner 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.

Petitioner shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

14. General Probation Requirements

Compliance with Probation Unit

Petitioner shall comply with the Board's probation unit and all terms and conditions of this Decision.

Address Changes

Petitioner shall, at all times, keep the Board informed of petitioner's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Place of Practice

Petitioner shall not engage in the practice of medicine in petitioner's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal

Petitioner shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California

Petitioner shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event petitioner should leave the State of California to reside or to practice petitioner shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

15. Interview with the Board or its Designee

Petitioner shall be available in person upon request for interviews either at petitioner's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

16. Non-practice While on Probation

Petitioner shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of petitioner's return to practice. Non-practice is defined as any period of time petitioner is not practicing medicine in California as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event petitioner's period of non-practice while on probation exceeds 18 calendar months, petitioner shall successfully complete a clinical training program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Petitioner's period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice will relieve petitioner of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; and General Probation Requirements.

17. Completion of Probation

Petitioner shall comply with all financial obligations (e.g., cost recovery, restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, petitioner's certificate shall be fully restored.

18. Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation. If petitioner violates probation in any respect, the Board, after giving petitioner notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against petitioner 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.

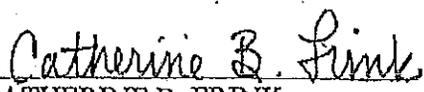
19. License Surrender

Following the effective date of this Decision, if petitioner ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, petitioner may request the voluntary surrender of petitioner's license. The Board reserves the right to evaluate petitioner's request and to exercise its discretion whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, petitioner shall within 15 calendar days deliver petitioner's wallet and wall certificate to the Board or its designee and petitioner shall no longer practice medicine. Petitioner will no longer be subject to the terms and conditions of probation and the surrender of petitioner's license shall be deemed disciplinary action. If petitioner re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

20. Probation Monitoring Costs

Petitioner shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

DATED: March 1, 2013.


CATHERINE B. FRINK
Administrative Law Judge
Office of Administrative Hearings