

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

In the Matter of the Accusation)
Against:)

KATHERINE GOSZTONI HEMELA, M.D.)

File No: 10-2003-148976

Physician's and Surgeon's)
Certificate #A 42074)

Respondent.)
_____)

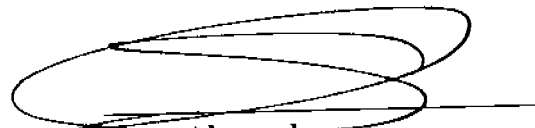
DECISION AND ORDER

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 28, 2005

IT IS SO ORDERED October 26, 2005

MEDICAL BOARD OF CALIFORNIA



Steve Alexander
Chair, Panel A
Division of Medical Quality

1 BILL LOCKYER, Attorney General
of the State of California
2 D. KENNETH BAUMGARTEN
Deputy Attorney General
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7 Attorneys for Complainant

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

13 In the Matter of the Accusation Against:)

14 **KATHERINE G. HEMELA, M.D.**)
15 3178 Sunset Hills Blvd.)
16 Thousand Oaks, CA 91362)

17 Physician and Surgeon's)
18 Certificate No. A 42074)

19 Respondent)

CASE NO. 10-2003-148976

OAH NO. L-2005-080241

**STIPULATED SETTLEMENT
AND
DISCIPLINARY ORDER**

20 **IT IS HEREBY STIPULATED AND AGREED**, by and between the parties to

21 the above-entitled proceedings, that the following matters are true:

22 **PARTIES**

23 1. David T. Thornton, ("Complainant") is the Executive Director of the
24 Medical Board of California and has brought this action solely in his official capacity.
25 Complainant is represented by the Attorney General of California, Bill Lockyer, by Deputy
26 Attorney General D. Kenneth Baumgarten.

27 2. Katherine G. Hemela, M.D., ("Respondent") is represented in this
28 matter by Mr. Peter R. Osinoff, Esq., Bonne, Bridges, Mueller, O'Keefe & Nichols, 3699
Wilshire Blvd., 10th Floor, Los Angeles, CA 90010-2719; (213) 738-5838.

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JURISDICTION

3. At all times relevant herein, respondent has been licensed by the Medical Board of California under Physician and Surgeon's Certificate No. A 42074.

4. On June 30, 2005, Accusation No. 10-2003-148976 was filed against respondent. On this same date, respondent was properly served with a true and correct copy of Accusation No. 09-2002-135694, together with true and correct copies of all other statutorily required documents, at her address of record then on file with the Board: 3178 Sunset Hills Boulevard, Thousand Oaks, CA 91362. A true and correct copy of Accusation No. 10-2003-148976 is attached hereto as Attachment A and is hereby incorporated by reference as if fully set forth herein. On or about July 14, 2005, a Notice of Defense was filed on respondent's behalf by her attorney of record, Peter R. Osinoff, Esq.

5. On or about July 7, 2005, the parties hereto entered into a Stipulated Interim Suspension of respondent's Certificate No. A 42074. This Interim Suspension was thereafter issued by the Office of Administrative Hearings on July 11, 2005, and remains in effect at the present time.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read and fully understands the charges and allegations contained in Accusation No. 10-2003-148976, and has fully reviewed and discussed same with her attorney of record, Peter R. Osinoff, Esq.

7. Respondent has carefully read and fully understands the contents, force, and effect of this Stipulated Settlement and Disciplinary Order, and has fully reviewed same with her attorney of record, Peter R. Osinoff, Esq.

8. Respondent is fully aware of her legal rights in this matter including her right to a hearing on the charges and allegations contained in Accusation No. 10-2003-148976; her right to present witnesses and evidence and to testify on her own behalf; her right to confront and cross-examine all witnesses testifying against her; her right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; her right to reconsideration and court review of an adverse decision; and all other

1 rights accorded her pursuant to the California Administrative Procedure Act, the California
2 Code of Civil Procedure, and all other applicable laws, having been fully advised of same by
3 her attorney of record, Peter R. Osinoff, Esq. Respondent, having the benefit of counsel,
4 hereby knowingly, intelligently, freely and voluntarily waives and gives up each and every
5 one of the rights set forth and/or referenced above.

6 **CULPABILITY**

7 9. Having the benefit of counsel, respondent hereby knowingly,
8 intelligently, freely and voluntarily admits the truth and accuracy of the second cause for
9 discipline contained in Accusation No. 10-2003-148976, a true and correct copy of which is
10 attached hereto as Attachment "A".^{1/} Respondent further admits and agrees that she has
11 thereby subjected her Physician's and Surgeon's Certificate No. A 42074 to disciplinary
12 action.

13 **CONTINGENCY**

14 10. The parties agree that this Stipulated Settlement and Disciplinary Order
15 shall be submitted to the Division for its consideration in the above-entitled matter and,
16 further, that the Division shall have a reasonable period of time in which to consider and act
17 on this Stipulated Settlement and Disciplinary Order after receiving it.

18 11. The parties agree that this Stipulated Settlement and Disciplinary Order
19 shall be null and void and not binding upon the parties unless approved and adopted by the
20 Division, except for this paragraph, which shall remain in full force and effect. Respondent
21 fully understands and agrees that in deciding whether or not to approve and adopt this
22 Stipulated Settlement and Disciplinary Order, the Division may receive oral and written
23 communications from its staff and/or the Attorney General's office. Communications
24 pursuant to this paragraph shall not disqualify the Division, any member thereof, and/or any

25
26 1. Respondent admits that she was arrested on or about September 27, 2004 for
27 driving under the influence of alcohol and not on October 27, 2004, the incorrect date alleged
28 in the pending Accusation, appended hereto as Attachment A, at page 6, line 23. Respondent
further admits that she subsequently pled guilty to this driving under the influence charge in or
about December 2004.

1 other person from future participation in this or any other matter affecting or involving
2 respondent. In the event that the Division, in its discretion, does not approve and adopt this
3 Stipulated Settlement and Disciplinary Order, with the exception of this paragraph, it shall
4 not become effective, shall be of no evidentiary value whatsoever, and shall not be relied
5 upon or introduced in any disciplinary action by either party hereto. Respondent further
6 agrees that should the Division reject this Stipulated Settlement and Disciplinary Order for
7 any reason, respondent will assert no claim that the Division, or any member thereof, was
8 prejudiced by its/his/her review, discussion and/or consideration of this Stipulated Settlement
9 and Disciplinary Order or of any matter or matters related hereto.

10 **ADDITIONAL PROVISIONS**

11 12. This Stipulated Settlement and Disciplinary Order is intended by the
12 parties herein to be an integrated writing representing the complete, final and exclusive
13 embodiment of the agreements of the parties in the above-entitled matter.

14 13. The parties agree that facsimile copies of this Stipulated Settlement and
15 Disciplinary Order, including facsimile signatures of the parties, may be used in lieu of
16 original documents and signatures and, further, that facsimile copies shall have the same
17 force and effect as originals.

18 14. In consideration of the foregoing admissions and stipulations, the
19 parties agree the Division may, without further notice to or opportunity to be heard by
20 respondent, issue and enter the following Disciplinary Order:

21 **DISCIPLINARY ORDER**

22 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No.
23 A 42074 heretofore issued to respondent Katherine G. Hemela, M.D., is revoked. However,
24 the revocation is stayed and respondent is placed on probation for ten (10) years on the
25 following terms and conditions:

26 A. **ACTUAL SUSPENSION**

27 As part of probation, respondent is suspended from the practice of medicine
28 for a period of **365 days** (one year) commencing on July 11, 2005, the effective date of the

1 Interim Suspension Order previously issued in this case. Thereafter, respondent shall not be
2 permitted to resume the practice of medicine unless and until such time as she has received
3 written authorization to do so from the Diversion Program, as described more fully below.

4 **B. BIOLOGICAL FLUID TESTING**

5 Respondent shall immediately submit to biological fluid testing, at respondent's
6 expense, upon the request of the Division or its designee. A certified copy of any laboratory
7 test results may be received in evidence in any proceedings between the Board and the
8 respondent. Failure to submit to, or failure to complete the required biological fluid testing,
9 is a violation of probation.

10 In the event that the laboratory test results of biological fluid testing show that
11 respondent has consumed alcohol, or any dangerous drug or controlled substance for which
12 she does not have a lawful prescription, respondent agrees that, upon notification of such
13 laboratory test results by the Division or its designee, she shall be immediately suspended
14 from practice of medicine in the State of California pending the issuance of a final decision
15 by the Division of Medical Quality following an administrative hearing on a Petition to
16 Revoke Probation to be filed against her. Respondent further agrees that the immediate
17 suspension of her Physician's and Surgeon's Certificate No. A 42074, as stated above, shall
18 take place without the necessity of complainant seeking and obtaining a suspension order
19 pursuant to the provisions of Government Code section 11529 and that, with the benefit of
20 counsel, she hereby knowingly, intelligently, and voluntarily waives all of the rights accorded
21 her under of Government Code section 11529.

22 **C. DIVERSION PROGRAM**

23 Within thirty (30) calendar days from the effective date of this Decision,
24 respondent shall enroll and participate in the Diversion Program until the Diversion Program
25 determines that further treatment and rehabilitation are no longer necessary. Upon
26 enrollment, respondent shall execute a release authorizing the Diversion Program to notify
27 the Division of the following:

28 ///

- 1 1. Respondent requires treatment and rehabilitation; and
- 2 2. Respondent no longer requires treatment and rehabilitation; and
- 3 3. Respondent may resume the practice of medicine.

4 Respondent shall also execute a release authorizing the Diversion Program to
5 provide confirmation to the Division whenever the Diversion Program has determined that
6 respondent shall cease the practice of medicine.

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

19 Respondent agrees that, if she fails to cooperate or comply with the Diversion
20 Program requirements and/or recommendations in any respect, she shall notify the Division
21 or its designee within five (5) calendar days of any such failure. In the event that respondent
22 fails to cooperate or comply with the Diversion Program requirements and/or
23 recommendations, respondent further agrees that, upon notification of such failure by the
24 Division or its designee, she shall be immediately suspended from practice of medicine in the
25 State of California pending the issuance of a final decision by the Division of Medical Quality
26 following an administrative hearing on a Petition to Revoke Probation to be filed against her.
27 Respondent further agrees that the immediate suspension of her Physician's and Surgeon's
28 Certificate No. A 42074, as stated above, shall take place without the necessity of

1 complainant seeking and obtaining a suspension order pursuant to the provisions of
2 Government Code section 11529 and that, with the benefit of counsel, she hereby knowingly,
3 intelligently, and voluntarily waives all of the rights accorded her under of Government Code
4 section 11529.

5 **D. NOTIFICATION**

6 Prior to engaging in the practice of medicine following suspension, and upon
7 receiving approval to resume the practice of medicine by the Diversion Program, respondent
8 shall provide a true copy of the Decision and Accusation in this matter to the Chief of Staff or
9 the Chief Executive Officer at every hospital where privileges or membership are extended to
10 respondent, at any other facility where respondent engages in the practice of medicine,
11 including all physician and locum tenens registries or other similar agencies, and to the Chief
12 Executive Officer at every insurance carrier which extends malpractice insurance coverage to
13 respondent. Respondent shall submit proof of compliance of this requirement to the Division
14 or its designee within 30 calendar days of resuming the practice of medicine in California.

15 This condition shall apply to any and all future change(s) in hospitals, other
16 facilities or insurance carrier.

17 **E. SUPERVISION OF PHYSICIAN ASSISTANTS**

18 During probation, respondent is prohibited from supervising physician
19 assistants.

20 **F. OBEY ALL LAWS**

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

24 **G. QUARTERLY DECLARATIONS**

25 Respondent shall submit quarterly declarations under penalty of perjury on
26 forms provided by the Division, stating whether there has been compliance with all the
27 conditions of probation. Respondent shall submit quarterly declarations not later than 10
28 calendar days after the end of the preceding quarter.

1 H. PROBATION UNIT COMPLIANCE

2 Respondent shall comply with the Division's probation unit. Respondent shall,
3 at all times, keep the Division informed of her business and residence addresses. Changes of
4 such addresses shall be immediately communicated in writing to the Division or its designee.
5 Under no circumstances shall a post office box serve as an address of record, except as
6 allowed by Business and Professions Code section 2021(b).

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

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

13 I. PROBATION MONITORING COSTS

14 Respondent shall pay the costs associated with her probation monitoring each
15 and every year of probation, as designated by the Division, which may be adjusted on an
16 annual basis. Annual probation cost payments shall be payable to the Division of Medical
17 Quality and delivered to the designated probation surveillance monitor no later than January
18 31st of each calendar year.

19 Failure to pay these annual probation costs within 30 days of the due date,
20 without prior written approval of the Division, or its designee, shall constitute a violation of
21 probation.

22 J. INTERVIEW WITH THE DIVISION, OR ITS DESIGNEE

23 Throughout her term of probation, respondent shall be available in person for
24 interviews with the Division or its designee, at respondent's place of business or other
25 designated location, upon request and with or without prior notice.

26 Respondent shall also be available for in person interviews at a designated
27 probation office of the Medical Board of California, with prior notice.

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1 K. RESIDING OR PRACTICING OUT-OF-STATE

2 In the event respondent should leave the State of California to reside or to
3 practice medicine in another state, respondent shall notify the Division or its designee in
4 writing 30 calendar days prior to her date of departure. Non-practice is defined as any period
5 of time exceeding 30 calendar days in which respondent is not engaging in any activities
6 defined in Sections 2051 and 2052 of the Business and Professions Code within the State of
7 California.

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

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

23 L. FAILURE TO PRACTICE MEDICINE - CALIFORNIA
24 RESIDENT

25 In the event respondent continues to reside in the State of California and for
26 any reason stops practicing medicine in California, respondent shall notify the Division or its
27 designee in writing within 30 calendar days prior to the dates of non-practice. Any period of
28 non-practice within California, as defined in this condition, will not apply to the reduction of

1 the probationary term and does not relieve respondent of the responsibility to comply with all
2 terms and conditions of probation. Non-practice is defined as any period of time exceeding
3 30 calendar days in which respondent is not engaging in any activities defined in sections
4 2051 and 2052 of the Business and Professions Code.

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

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

13 **M. COMPLETION OF PROBATION**

14 Upon successful completion of probation, respondent's certificate shall be
15 fully restored.

16 **N. VIOLATION OF PROBATION**

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

24 **O. LICENSE SURRENDER**

25 Following the effective date of this Decision, if respondent ceases practicing
26 due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of
27 probation, respondent may request the voluntary surrender of her medical license. The
28 Division reserves the right to evaluate respondent's request and to exercise its discretion

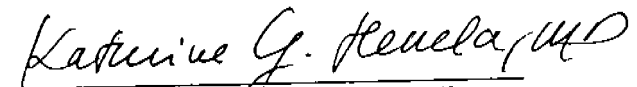
1 whether or not to grant the request, or to take any other action deemed appropriate and
2 reasonable under the circumstances. Upon formal acceptance of the surrender, respondent
3 shall within 15 calendar days deliver respondent's wallet and wall certificate to the Division
4 or its designee and respondent shall no longer practice medicine. Thereafter, respondent will
5 no longer be subject to the terms and conditions of probation and the surrender of
6 respondent's license shall be deemed disciplinary action. If respondent re-applies for a
7 medical license, the application shall be treated as a petition for reinstatement of a revoked
8 certificate.

9 **ACCEPTANCE**

10 I have carefully read this Stipulated Settlement and Disciplinary Order and
11 have fully discussed the terms and conditions and other matters contained therein with my
12 attorney, Peter R. Osinoff, Esq. I understand the effect this Stipulated Settlement and
13 Disciplinary Order will have on my Physician and Surgeon's Certificate No. A 42074 and
14 agree to be bound thereby.


15 I enter into this Stipulation freely, knowingly, intelligently and voluntarily.

16 DATED: 9-14-05

17 
18 KATHERINE G. HEMELA, M.D.
19 Respondent

20 I have read and have fully discussed the terms and conditions and other matters
21 contained in this Stipulated Settlement and Disciplinary Order with Respondent,
22 KATHERINE G. HEMELA, M.D., and I approve of its form and content.

23 DATED: 9/19/05

24 
25 PETER R. OSINOFF, Esq.
26 Attorney for Respondent

27 ///

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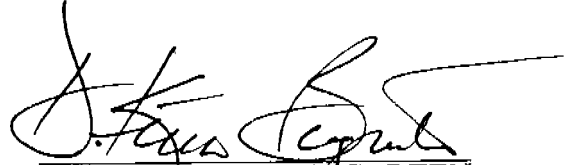
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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Division of Medical Quality, Medical Board of California, Department of Consumer Affairs.

DATED: 9/22/05

BILL LOCKYER, Attorney General
of the State of California


D. KENNETH BAUMGARTEN
Deputy Attorney General
Attorneys for Complainant

Attachment A: Hemela Accusation
No. 10-2003-148976

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ACCUSATION
No. 10-2003-148976
ATTACHMENT
A

1 BILL LOCKYER, Attorney General
of the State of California
2 D. KENNETH BAUMGARTEN, State Bar No. 124371 BY
Deputy Attorney General
3 California Department of Justice
110 West "A" Street, Suite 1100
4 San Diego, California 92101
P.O. Box 85266
5 San Diego, California 92186-5266
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6 Facsimile: (619) 645-2061

7 Attorneys for Complainant

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

13 In the Matter of the Accusation Against:

Case No. 10-2003-148976

14 **KATHERINE G. HEMELA, M.D.**
15 3178 Sunset Hills Blvd.
Thousand Hills, CA 91362

ACCUSATION
(Cal. Gov. Code, § 11503.)

16 Physician's and Surgeon's
17 Certificate No. A 42074

Respondent.

18
19 Complainant David T. Thornton, as causes for disciplinary action, alleges:

20 **PARTIES**

21 1. Complainant is the Executive Director of the Medical Board of California,
22 Department of Consumer Affairs, State of California (hereinafter the "Board"), and makes and
23 files this Accusation solely in his official capacity.

24 2. At all times mentioned herein, Katherine G. Hemela, M.D. (hereinafter
25 "Respondent") has been licensed by the Board under Physician's and Surgeon's Certificate
26 No. A 42074. Said Certificate was issued by the Board on August 19, 1985, and will expire on
27 December 31, 2006, unless renewed.

28 ///

JURISDICTION

1
2 3. This Accusation is brought before the Division of Medical Quality
3 (“Division”) of the Medical Board of California under the authority of the following laws.¹

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

8 5. Section 2234 of the Code provides that the Division of Medical Quality
9 shall take action against any licensee who is charged with unprofessional conduct. In addition to
10 other provisions of this article, unprofessional conduct includes, but is not limited to, the
11 following:

12 “(a) Violating or attempting to violate, directly or indirectly, assisting in
13 or abetting the violation of, or conspiring to violate any provision of this chapter
14 [Chapter 5, the Medical Practice Act].

15 “(b) Gross negligence.

16 “(c) Repeated negligent acts.

17 “(d) Incompetence.

18 “(e) The commission of any act involving dishonesty or corruption which is
19 substantially related to the qualifications, functions, or duties of a physician and surgeon.

20 “(f) Any action or conduct which would have warranted the denial of a
21 certificate.

22 “...”

23 6. Unprofessional conduct under California Business and Professions Code
24 section 2234 is conduct which breaches the rules or ethical code of the medical profession, or

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26
27
28 1. All section references are to the California Business and Professions Code (“Code”) unless otherwise indicated.

1 conduct which is unbecoming to a member in good standing of the medical profession, and
2 which demonstrates an unfitness to practice medicine.²

3 7. Section 2236 of the Code provides, in pertinent part, that:

4 “(a) The conviction of any offense substantially related to the
5 qualifications, functions, or duties of a physician and surgeon constitutes
6 unprofessional conduct within the meaning of this chapter. The record of
7 conviction shall be conclusive evidence only of the fact that the conviction
8 occurred.

9 “... ”

10 “(d) A plea or verdict of guilty or a conviction after a plea of nolo
11 contendere is deemed to be a conviction within the meaning of this section and
12 Section 2236.1. The record of conviction shall be conclusive evidence of the fact
13 that the conviction occurred.”

14 8. Section 2239 of the Code provides that the excessive use of drugs or
15 alcohol to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to
16 any person or to the public, or to the extent that such use impairs the ability of the licensee to
17 practice medicine, constitutes unprofessional conduct. The record of conviction is conclusive
18 evidence of such unprofessional conduct.

19 9. Section 2280 of the Code provides that no licensee shall practice medicine
20 while under the influence of any narcotic drug or alcohol to such an extent as to impair his or her
21 ability to conduct the practice of medicine with safety to the public and his or her patients.
22 Violation of this section constitutes unprofessional conduct and is a misdemeanor.

23 10. Section 2350(e) of the Code provides, in pertinent part, that any physician
24 and surgeon terminated from the diversion program for failure to comply with program
25 requirements is subject to disciplinary action by the division for acts committed before, during,
26 and after participation in the diversion program.

27
28 2. *Shea v. Board of Medical Quality Assurance* (1978) 81 Cal.App.3d 564, 575.

1 11. Section 125.3 of the Code provides, in pertinent part, that in any order
2 issued in resolution of a disciplinary proceeding, a board may request that the administrative law
3 judge direct a licensee found to have committed a violation or violations of the licensing act to
4 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case,
5 including charges imposed by the Attorney General. Under section 125.3, subdivision (c), a
6 certified copy of the actual costs or a good faith estimate of costs where actual costs are not
7 available, including investigative and enforcement costs, and charges imposed by the Attorney
8 General, up to the date of the hearing, signed by the designated representative of the entity
9 bringing the proceeding shall be *prima facie* evidence of the reasonable costs of investigation and
10 prosecution of the case.

11 12. Section 14124.12 of the Welfare and Institutions Code provides, in
12 pertinent part, that:

13 “(a) Upon receipt of written notice from the Medical Board of
14 California, the Osteopathic Medical Board of California, or the Board of Dental
15 Examiners of California, that a licensee's license has been placed on probation as
16 a result of a disciplinary action, the Department may not reimburse any Medi-Cal
17 claim for the type of surgical service or invasive procedure that gave rise to the
18 probation, including any dental surgery or invasive procedure, that was performed
19 by the licensee on or after the effective date of probation and until the termination
20 of all probationary terms and conditions or until the probationary period has
21 ended, whichever occurs first. This section shall apply except in any case in
22 which the relevant licensing board determines that compelling circumstances
23 warrant the continued reimbursement during the probationary period of any
24 Medi-Cal claim, including any claim for dental services, as so described. In such
25 a case, the Department shall continue to reimburse the licensee for all procedures,
26 except for those invasive or surgical procedures for which the licensee was placed
27 on probation.”

28 ///

1 **FIRST CAUSE FOR DISCIPLINARY ACTION**

2 (Excessive Use of Alcohol)

3 13. Respondent has subjected her Physician's and Surgeon's Certificate No.
4 A 42074 to disciplinary action under sections 2220, 2227, 2234, as defined by sections 2239,
5 2280 and 2350 of the Code in that she has used alcohol to the extent, and in such a manner, as to
6 be dangerous or injurious to her and the public and to impair her ability to practice medicine.

7 The circumstances are as follows:

8 A. In or about January 2003, Respondent was employed as a
9 psychiatrist at the San Diego County Psychiatric Hospital where she worked
10 approximately one shift a month. She worked about five or six shifts before she was
11 terminated for having alcohol on her breath while on duty.

12 B. The incident leading to Respondent's employment termination
13 occurred on or about June 22, 2003, when another physician, M.A.R., reported she had
14 smelled alcohol on Respondent's breath during a time when both were on duty at the San
15 Diego County Psychiatric Hospital. Nursing staff had reported to M.A.R. that
16 Respondent was gone for at least 30 minutes during her shift. M.A.R. noted there were at
17 least two other times when she could not find Respondent as well. When Respondent
18 would reappear, the smell of alcohol was stronger and her face was flushed. When
19 M.A.R. became aware of this situation, she decided to personally attend to all of the
20 patients on the shift.

21 C. On or about this same date, another physician, K.L., also noted that
22 Respondent smelled of alcohol. He further noted that when Respondent was asked where
23 she had been, Respondent's response was, "I was in the parking lot having coffee."

24 D. On or about this same date, a registered nurse, S.O., also noted
25 alcohol on Respondent's breath. The nurse called the hospital guard station and asked
26 that they watch Respondent's activities. The security officers then noted that Respondent
27 was going into her car and drinking something. When asked by the nurse where she had
28 been, Respondent stated, "I went out and had a small drink." The nurse then asked

1 Respondent what she was drinking and she said, "Water." In addition, Respondent also
2 stated that she went out to smoke.

3 E. When further questioned about her activities in the parking lot and
4 what she had been drinking, Respondent told hospital security staff she been drinking
5 "non-alcoholic beer" prior to her shift that day and that was the reason why hospital staff
6 "thought" they had smelled alcohol on her breath.

7 F. Thereafter, Respondent applied for admission to the Medical
8 Board's Diversion Program and was approved for participation in the Program on or
9 about October 27, 2003.

10 G. On or about October 27, 2004, Respondent was arrested for driving
11 under the influence of alcohol.

12 H. On or about December 1, 2004, Respondent was terminated from
13 the Medical Board's Diversion Program.

14 **SECOND CAUSE FOR DISCIPLINARY ACTION**

15 (Conviction of a Crime Substantially Related to the Qualifications,
16 Functions and Duties of a Physician and Surgeon)

17 14. Respondent has further subjected her Physician's and Surgeon's
18 Certificate No. A 42074 to disciplinary action under sections 2236 and 2239 of the Code in that
19 she has been convicted of a crime substantially related to the qualifications, functions, or duties
20 of a physician and surgeon. The details are as follows:

21 A. Paragraph 13 is incorporated by reference and realleged as if fully
22 set forth herein.

23 B. On or about October 27, 2004, Respondent was arrested in Santa
24 Barbara for driving under the influence of alcohol. Immediately prior to this arrest,
25 Respondent was participating in an alcohol treatment program called Sober Living for
26 which she had gone to Santa Barbara to attend the Casa Serena Treatment Center.
27 However, while there, she had another relapse, consumed alcohol and had a complete
28 blackout. She remembered stopping her car at the beach because she did not want to

1 drive under the influence. The next thing she remembers was waking up in a hospital
2 ICU. According to Respondent, the police had broken into her car and taken her to the
3 hospital for treatment.

4 C. In or about December 2004, Respondent pled guilty to driving
5 under the influence of alcohol.

6 **THIRD CAUSE FOR DISCIPLINARY ACTION**

7 (General Unprofessional Conduct)

8 15. Respondent has further subjected her Physician's and Surgeon's
9 Certificate No. A 42074 to disciplinary action under sections 2227 and 2234 of the Code in that
10 she has engaged in conduct which breaches the rules or ethical code of the medical profession, or
11 conduct which is unbecoming to a member in good standing of the medical profession, and
12 which demonstrates an unfitness to practice medicine, as more particularly described hereinafter:

13 A. Paragraphs 13 and 14 are incorporated by reference and
14 realleged as if fully set forth herein.

15 **ADDITIONAL DISCIPLINARY CONSIDERATIONS**

16 16. Respondent had a previous voluntary admission to the Medical Board's
17 Diversion Program which she also failed to successfully complete.

18 **PRAYER**

19 WHEREFORE, Complainant requests that a hearing be held on the matters
20 alleged herein, and that following the hearing, the Division of Medical Quality, Medical Board of
21 California, issue its Decision and Order:

22 1. Revoking or suspending Physician's and Surgeon's Certificate No.
23 A 42074 heretofore issued by the Board to KATHERINE G. HEMELA, M.D.;

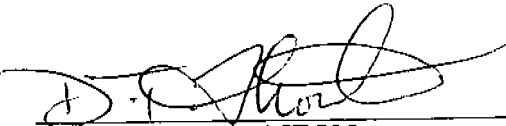
24 2. Revoking, suspending or denying Respondent's approval authority
25 to supervise physician's assistants pursuant to Code section 3527;

26 3. Ordering Respondent to pay the Board the reasonable costs of the
27 investigation and enforcement of this case, and, if placed on probation, the costs
28 of probation monitoring; and

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4. Taking such other and further action as the Board deems necessary
and proper.

DATED: June 30, 2005



DAVID T. THORNTON
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California

Complainant