

AUG 6 2024

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 2171

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF
KENTUCKY HELD BY MICHAEL G. HUGHES, M.D., LICENSE NO. 44016,
2401 TERRA CROSSING BLVD, SUITE 375, LOUISVILLE, KENTUCKY
40245

AGREED ORDER

Come now the Kentucky Board of Medical Licensure (hereafter "the Board"), acting by and through its Inquiry Panel B, and Michael G. Hughes, M.D. (hereafter "the licensee"), and, based upon their mutual desire to resolve the pending investigation, the parties hereby ENTER INTO the following **AGREED ORDER**:

STIPULATIONS OF FACT

The parties stipulate the following facts, which serve as the factual bases for this Agreed Order:

1. At all relevant times, Michael G. Hughes, M.D., was licensed by the Board to practice medicine within the Commonwealth of Kentucky.
2. The licensee's medical specialty is Surgery.
3. The Board received a report concerning actions taken by the University of Louisville Health – Jewish Hospital ("the Hospital"). According to the report, on October 11, 2023, the Hospital's Medical Executive Committee ("MEC") voted to recommend the revocation of the licensee's privileges based on concerns about his care of a surgical patient.
4. On or about November 21, 2023, following a review of additional cases involving postsurgical complications, the MEC voted to summarily suspend the licensee's privileges.

5. Pursuant to the Hospital's Medical Staff Bylaws, the licensee appeared at a meeting of the MEC to contest the summary suspension on or about December 5, 2023. The MEC continued the summary suspension, and as of December 21, 2023, the summary suspension had been in effect for 30 days. The licensee requested a hearing to challenge the MEC's recommendation.
6. On or about January 25, 2024, a five-member panel of the Hospital's medical staff held an evidentiary hearing. It voted 5-0 to uphold the recommendation.
7. On or about February 14, 2024, the MEC accepted the hearing panel's recommendation and confirmed the revocation.
8. The licensee responded to the Board, through counsel by letter dated February 22, 2024, regarding the report. The response included an educational and professional background for the licensee, details of the suspension by the Hospital, a summary of care provided for the four (4) patients identified by the Hospital, and an independent review of the four (4) patients from Dr. Roman Petrov who believes the licensee met the standard of care in all four cases. The licensee disagrees with the decision to suspend his privileges. He also alleges there were conflicts with physicians who consulted on these patients but also participated in the decision to suspend his privileges.
9. An Ad-hoc Appellate Review Panel of the Hospital's Board of Directors met and on or about May 10, 2024, it recommended revoking the licensee's privileges. It found substantially as follows:

The grounds for the recommendation to revoke Dr. Hughes's privileges include: (1) Failure to optimize a patient with documented malnutrition prior to surgery; (2) Failure to recognize and address a patient's post-operative complications timely following her return to the hospital; (3) An

extended period during the patient's hospitalization without a visit from Dr. Hughes; (4) Dr. Hughes's documentation that BVM (bag-mask ventilation by code team) caused the patient's complications; and (5) the procedure in question was not medically necessary. An external peer review of Dr. Hughes's care of the patient found that "there was a significant delay in the recognition and management of the patient's post-operative complications that had a "certain negative impact on the patient's outcome." (After a lengthy stay in the hospital, the patient was placed in palliative care and passed away). This patient care episode followed a peer review conducted in early 2022 of a similar concern involving a patient who died following post-operative complications in December 2021.

Following the Medical Executive Committee's recommendation to revoke Dr. Hughes's privileges, two more recent cases of post-operative complications were discovered. One involved a patient developing a severe liver bleed which Dr. Hughes failed to address until it was cauterized by an interventional radiologist one month later. The second involved a patient who had an outpatient pyloroplasty performed by Dr. Hughes two days before returning to Jewish Hospital with signs of septic shock, and ultimately suffered a cardiac arrest in the operating room, who expired the next day.

[...]

The Ad-Hoc Appellate Review Panel was provided the transcripts and exhibits from the hearing, the recommendation of the hearing panel, and the appeal statements submitted by counsel for Dr. Hughes and by counsel for the MEC. After careful review and discussion of the grounds for appeal asserted by Dr. Hughes, the Ad-hoc Appellate Review Panel finds that he has failed to show any of the above grounds for overturning the recommendation of the Medical Executive Committee.

Although Dr. Hughes has alleged a failure to comply with the medical staff bylaws, he has been afforded all the procedures provided for. The only provision of the bylaws specifically referenced in Dr. Hughes's Statement in Support of Appeal is the requirement in Article IX.C of the bylaws requiring a "careful and detailed investigation of the matter," which counsel alleges was violated because "Dr. Hughes was never allowed an opportunity to explain his clinical decision-making." However, Dr. Hughes had multiple opportunities to explain his decisions. Concerning the first two patients, the record includes written correspondence in which he was asked to provide, and did provide, his rationale for his decisions. He also presented a detailed account of all four patients at issue in the Medical Executive Committee meeting reviewing his summary suspension, and again at the January 25 hearing, including the introduction of testimony and a report from an expert. Dr. Hughes was not denied the opportunity to explain his medical decisions.

Concerning the alleged conflicts of interest of Dr. Saad and Dr. Bennis, neither physician was involved in care of a patient during the critical post-operative moments when Dr. Hughes failed to address signs of post-operative complications, and there is no reason to believe their objectivity was affected by any peripheral involvement in any patient's care. Further, for each of the four patients in question, there were other reviewers who reached the same conclusions that Dr. Bennis testified to in the hearing. The hearing panel that affirmed the MEC's recommendation heard the evidence about the alleged conflicts of interest at the January 25 hearing and did not find that it met the standard to overturn the MEC's recommendation. Dr. Hughes has not challenged the qualifications or objectivity of the hearing panel. Also, Dr. Saad was not present and did not vote at the February 14 MEC meeting that made the committee's recommendation to revoke Dr. Hughes's privileges final.

Dr. Hughes challenges the accuracy or completeness of the mortality data that were provided to him, which were also referenced in the minutes of the November 21, 2023 Medical Executive Committee meeting when it decided to impose summary suspension. However, the mortality data does not appear to have been material to the committee's decisions given the evidence of three patient deaths, two of which followed outpatient surgeries. In any event, this committee does not deem it to be material to its review.

Finally, although Dr. Hughes challenges the qualifications of the various reviewers who have commented on his care of the patients at issue, they are all accomplished surgeons who are qualified to comment on the appropriate response to post-surgical complications. The hearing panel and MEC did not find the difference in surgical specialties to be significant.

[...] We accept and endorse the judgment of the Medical Executive Committee that Dr. Hughes does not meet the standards to practice at Jewish Hospital given his pattern of failing to address post-surgical complications on a timely basis and failure to acknowledge opportunities for improvement. [...]

10. On or about May 20, 2024, the matter was presented to the Hospital's Board of Directors. At that meeting, the Board of Directors voted to accept the recommendation that the licensee's clinical privileges to practice at the Hospital be revoked. The decision was final and took immediate effect.

11. The licensee agreed to enter into this Agreed Order in lieu of the issuance of a Complaint and Emergency Order of Restriction.

STIPULATED CONCLUSIONS OF LAW

The parties stipulate the following Conclusions of Law, which serve as the legal bases for this Agreed Order:

1. The licensee's Kentucky medical license is subject to regulation and discipline by the Board.
2. Based upon the Stipulations of Fact, the licensee has engaged in conduct which violates the provisions of KRS 311.595(21). Accordingly, there are legal grounds for the parties to enter into this Agreed Order.
3. Pursuant to KRS 311.591(6) and 201 KAR 9:082, the parties may fully and finally resolve this pending matter without an evidentiary hearing by entering into an informal resolution such as this Agreed Order.

AGREED ORDER

Based upon the foregoing Stipulations of Fact and Stipulated Conclusions of Law, and, based upon their mutual desire to fully and finally resolve the pending investigation, the parties hereby ENTER INTO the following AGREED ORDER:

1. The license to practice medicine within the Commonwealth of Kentucky held by Michael G. Hughes, M.D., is RESTRICTED/LIMITED FOR AN INDEFINITE PERIOD OF TIME, effective immediately upon the filing of this Agreed Order.
2. During the effective period of this Agreed Order, the licensee's medical license SHALL BE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:
 - a. The licensee SHALL NOT perform any surgical procedures within any setting - unless and until approved to do so by the Panel;
 - b. The licensee shall not request and the Panel shall not consider a request to resume the unrestricted performance of surgical procedures until the licensee has received an assessment report and educational or remediation plan (if recommended), following the licensee's completion of a clinical

skills assessment(s) in the specialty of surgery, at his expense, from LifeGuard, 400 Winding Creek Boulevard, Mechanicsburg, Pennsylvania, 17050, Tel. (717) 909-2590.

- i. Further, the licensee understands and agrees that both the licensee and the Board may provide relevant information to LifeGuard for consideration as part of the clinical skills assessment. In order to permit the Board to provide such relevant information, the licensee shall immediately notify the Board's Legal Department of any scheduled assessment dates once an assessment is scheduled, and the licensee shall complete any necessary waiver/release to facilitate communication between the Board and LifeGuard.
 - ii. If the Assessment Report recommends development of an Educational Plan, the licensee shall take all necessary steps to arrange for LifeGuard to immediately develop such a plan, at the licensee's expense, so that the proposed Educational Plan may be presented to the Panel for review along with the Assessment Report;
 - iii. The licensee shall take all necessary steps, including the execution of waivers and/or releases, to ensure that LifeGuard provides timely written reports to the Board; and
 - c. The licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.
3. The licensee expressly agrees that if he should violate any term or condition of this Agreed Order, the licensee's practice will constitute an immediate danger to the public health, safety, or welfare, as provided in KRS 311.592 and 13B.125. The parties further agree that if the Board should receive information that he has violated any term or condition of this Order, the Panel Chair is authorized by law to enter an Emergency Order of Suspension or Restriction immediately upon a finding of probable cause that a violation has occurred, after an *ex parte* presentation of the relevant facts by the Board's General Counsel or Assistant General Counsel. If the Panel Chair should issue such an Emergency Order, the parties agree and stipulate that a violation of any term or condition of this Agreed Order would render the licensee's practice an immediate danger to the health,

welfare and safety of patients and the general public, pursuant to KRS 311.592 and 13B.125; accordingly, the only relevant question for any emergency hearing conducted pursuant to KRS 13B.125 would be whether the licensee violated a term or condition of this Agreed Order.

4. The licensee understands and agrees that any violation of the terms of this Agreed Order would provide a legal basis for additional disciplinary action, including revocation, pursuant to KRS 311.595(13).

SO AGREED on this 6th day of August, 2024.

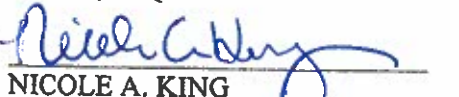
FOR THE LICENSEE:


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FOR THE BOARD:


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