

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE WISCONSIN MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :

LS0406162MED

DAVID C. HANES, D.O., :
APPLICANT. :

ORDER GRANTING LIMITED LICENSE

David C. Hanes, D.O, appeared before the Wisconsin Medical Examining Board on May 19, 2004, for an oral examination in support of his application for medical licensure in Wisconsin. Based upon all of the information of record, the Board makes the following findings and orders:

FINDINGS OF FACT

1. David C. Hanes, D.O., date of birth July 5, 1973, is licensed by the Ohio Medical Board as a Doctor of Osteopathy, pursuant to license #58-000532, originally issued on 12/15/00. Dr. Hanes, hereinafter referred to as the "applicant" also held a medical license in the state of Indiana which has expired.
2. The applicant's current address is 1838 Peacock Lane, Holland, Ohio 43428.

PRIOR DISCIPLINARY ACTION BY OHIO MEDICAL BOARD

3. On October 10, 2001, the Ohio Medical Board and the applicant entered into a Consent Agreement whereby a probationary license was issued to the applicant in lieu of formal disciplinary proceedings. The terms and Conditions of the applicant's probationary license included drug and alcohol therapy, urinalysis screening, and submission of reports to the Ohio Board. A true and correct copy of Ohio Consent Agreement is attached and incorporated herein as Exhibit 1.
4. The applicant has remained fully compliant with the terms and conditions of his probationary license in Ohio.

ORDER

IT IS HEREBY ORDERED that a LIMITED license to practice medicine in the state of Wisconsin shall be issued to the applicant. The terms and conditions of the limited license are set forth more fully in the following paragraphs:

IT IS FURTHER ORDERED that the license of David C. Hanes, D.O., to practice medicine in the State of Wisconsin is SUSPENDED for a period of THREE (3) years, subject to a conditional stay.

A. STAY OF SUSPENSION

1. The suspension of the applicant's limited license shall be stayed throughout the three year period, subject to reinstatement or modification by the Board, provided that the applicant submits proof of compliance with the order. The sufficiency of the proof of compliance shall be determined by the Board or its designee in its discretion.
2. The Board, or its designee, may without hearing reinstate or modify the stay upon receipt of information that the applicant is in substantial or repeated violation of any provisions of this Order.
3. This suspension becomes reinstated immediately upon notice of the removal of the stay being provided to the applicant either by:
 - (a) Mailing to the applicant's last-known address provided to the Department of Regulation and Licensing pursuant to

- (b) Actual notice to the applicant or his attorney.
4. The Board or its designee may reinstate the stay, if provided with sufficient information that the applicant is in compliance with the Order and that it is inappropriate for the suspension to remain in effect. The decision whether to reinstate the stay shall be wholly in the discretion of the Board or its designee.
 5. If the applicant requests a hearing on the reinstatement of the suspension and removal of the stay, a hearing shall be held using the procedures set forth in ch. RL 2, Wis. Adm. Code. The hearing shall be held in a timely manner with the evidentiary portion of the hearing being completed within sixty (60) days of receipt of the applicant's request, unless otherwise waived by the applicant. Requesting a hearing does not stay the suspension during the pendency of the hearing process.
 6. The Board may in its discretion determine that the length of the suspension may be decreased upon showing of good cause and that the applicant has been in substantial compliance with the terms and conditions of the order. The suspension will be tolled during any period that the applicant is not working as a physician.

CONDITION AND LIMITATIONS

B. Participation in an Approved Drug and Alcohol Treatment Program.

1. Within fourteen (14) days of this Order, the applicant shall have entered into, and shall continue, in an Approved Drug and Alcohol Treatment Program at a treatment facility (hereinafter referred to as "provider") acceptable to the Board, or its designee. The applicant shall participate in, cooperate with and follow all treatment recommended by provider.
2. The applicant shall furnish a copy of this Final Decision and Order and the Ohio Medical Board order to the provider upon commencement of his treatment.
3. The applicant shall be responsible for the payment and coordination of his rehabilitation, drug monitoring and treatment program as required under the terms of this Order and any other order, including Ohio. The applicant shall immediately report any relapse, violation of any of the terms and conditions of this Order or any other order, and any suspected unprofessional conduct, to the Department of Regulation and Licensing Monitor. If the applicant's provider is unable or unwilling to serve as the provider of these services, the applicant shall immediately seek approval of a successor provider by the Board or its designee.
4. The drug and alcohol treatment program shall include individual and/or group therapy sessions at a frequency to be determined by provider, but not less than one session per month. Therapy may end only upon a determination by the Board or its designee after receiving a petition for modification as allowed under this order.
5. The provider shall submit formal written reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess the applicant's progress in the drug and alcohol treatment program. The provider shall report immediately to the Department Monitor any violation or suspected violation of this Order.

C. Releases

The applicant shall provide and keep on file with provider, all treatment facilities and personnel, laboratories and collections sites current releases complying with state and federal laws. The releases shall allow the Board, its designee, and any employee of the Department of Regulation and Licensing, Division of Enforcement to: (a) obtain all urine, blood and hair specimen screen results and patient health care and treatment records and reports, and (b) discuss the progress of the applicant's treatment and rehabilitation. Copies of these releases shall immediately be filed with the Department Monitor.

D. AA/NA Meetings.

The applicant shall attend Alcoholic Anonymous or Narcotics Anonymous meetings or an equivalent program for recovering professionals, at the frequency recommended by provider, but not less than one meeting per week. Attendance of the applicant at such meetings shall be verified and reported by the provider to the Board Monitor on a quarterly basis.

E. Sobriety

1. The applicant shall abstain from all personal use of alcohol.
2. The applicant shall abstain from all personal use of controlled substances as defined in § 961.01(4), Stats., except when prescribed, dispensed or administered by a practitioner for a legitimate medical condition. The applicant shall disclose his drug and alcohol history and the existence and nature of this Order to the practitioner prior to the practitioner ordering the controlled substance. The applicant shall at the time the controlled substance is ordered immediately sign a release in compliance with state and federal laws authorizing the practitioner to discuss the applicant's treatment with, and provide copies of treatment records to, the provider and the Board or its designee.
3. The applicant shall refrain from the consumption of over-the-counter medications or other substances which may mask consumption of controlled substances or of alcohol, create false positive screening results, or interfere with the applicant's treatment and rehabilitation.
4. The applicant shall report all medications and drugs, over-the-counter or prescription, taken by him to the provider within 24 hours of ingestion or administration, and shall identify the person or persons who prescribed, dispensed, administered or ordered said medications or drugs. If the applicant has not provided a release within 24 hours of a request by the provider or the Board or its designee, the applicant shall provide releases in compliance with state and federal laws. The releases shall authorize the person who prescribed, dispensed, administered or ordered the medication to discuss the applicant's treatment with, and provide copies of treatment records to, the requester.

F. Drug and Alcohol Screens

1. Within fourteen (14) days of this Order, the applicant shall enroll and begin participation in a drug and alcohol monitoring program which is approved by the Department pursuant to Wis. Adm. Code § RL 7.11, (hereinafter referred to as "approved program"). A list of approved programs is available from the Department Monitor.
2. When the applicant enrolls in the approved program, he shall review all of the rules and procedures made available by the program. Failure to comply with all requirements for participation in drug and alcohol monitoring established by the approved program is a violation of this Order. The requirements shall include:
 - (a.) Contact with the approved program as directed on a daily basis, including vacations, weekends and holidays.
 - (b.) Production of a urine specimen at a collection site designated by the approved program within five (5) hours of notification of a test.
3. The approved program shall require the testing of urine specimens at a frequency of not less than **24** times per year for the first year of this Order. After the first year, the frequency may be reduced only upon a determination by the Board or its designee after receiving a petition for modification.
4. If any urine, blood or hair specimen is positive or suspected positive for any controlled substances or alcohol, the applicant shall promptly submit to additional tests or examinations as the provider or the Board or its designee shall determine to be appropriate to clarify or confirm the positive or suspected positive test results.
5. In addition to any requirement of the approved program, the Board or its designee may require the applicant to: (a) submit additional urine specimens, (b) submit blood, hair or breath specimens, (c) furnish any specimen in a directly

witnessed manner.

6. All confirmed positive test results shall be presumed to be valid. The applicant must prove by a preponderance of the evidence an error in collection, testing or other fault in the chain of custody.
7. The approved program shall submit information and reports to the Department Monitor in compliance with the requirements of Wis. Adm. Code § RL 7.11. The approved program shall immediately report to the provider all specimens suspected to have been tampered with or which are positive or suspected positive for controlled substances or alcohol.

G. Practice Limitations

1. The applicant shall provide a copy of this Final Decision and Order immediately to his employer and any health care facility where the applicant is permitted to practice.
2. The applicant shall report to the Board any change of employment status, residence, address or telephone number within five (5) days of the date of a change.

H. Department Monitor

Any requests, petitions, reports and other information required by this Order shall be mailed, e-mailed, faxed or delivered to:

Department Monitor
Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Ave.
P.O. Box 8935
Madison, WI 53708-8935
Fax: (608) 266-2264
Telephone: (608) 267-3817
department.monitor@drl.state.wi.us

I. Required Reporting

The applicant is responsible for compliance with all of the terms and conditions of this Order, including the timely submission of reports by others. The applicant shall promptly notify the Department Monitor of any suspected violations of any of the terms and conditions of this Order by the applicant and any failures of the provider, treatment facility, approved program or collection sites to conform to the terms and conditions of this Order.

J. Change of Provider or Approved Program by Board

If the Board or its designee determines the provider or approved program has performed inadequately or has failed to satisfy the terms and conditions of this Order, the Board or its designee may direct that the provider continue treatment and rehabilitation under the direction of another provider or approved program.

K. Petitions for Modification

The applicant may petition the Board for modification of the terms of this Order after the first year of the order. Any such petition shall be accompanied by a written recommendation from the applicant's provider expressly supporting the specific modifications sought. Denial of a petition in whole or in part shall not be considered a denial of a license within the meaning of §227.01(3)(a), Stats., and the applicant shall not have a right to any further hearings or proceedings on the denial.

L. Costs of Compliance

The applicant shall be responsible for all costs and expenses incurred in conjunction with the monitoring, screening, supervision and any other expenses associated with compliance with the terms of this Order. If the applicant is dismissed from a program for non-payment, such conduct is a violation of this Order.

M. Annual Appearance

The applicant shall make an annual personal appearance before the Board to answer any questions that the Board may have concerning the applicant's compliance with the order or his recovery or rehabilitation. The Board, in its discretion, may modify the terms of the order, based on any information received at the annual appearance from the applicant, the Department Monitor or any other credible source.

N. Additional Discipline

1. In addition to a basis for removal of the stay of this suspension, violation of any term of this Order may be the basis for a separate disciplinary action under § 441.07, Stats. The rights of a party aggrieved by this Decision to petition the Section for rehearing and to petition for judicial review are set forth on the attached "Notice of Appeal Information".

Dated at Madison, Wisconsin this 16th day of June, 2004.

Lief W. Erickson, Jr., M.D.
Secretary of the Board