

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE ALASKA STATE MEDICAL BOARD**

In the Matter of)	
)	
KENT C. HUGHES)	OAH No. 23-0557-MED
<hr style="width: 40%; margin-left: 0;"/>)	Agency No. 2023-000453

DECISION

I. Introduction

In July 2023, Dr. Kent Hughes signed a “voluntary suspension of license,” which was adopted by the Alaska State Medical Board. Four days later, Dr. Hughes asked the Board to vacate the suspension and reinstate his license. After the Board denied that request, Dr. Hughes requested a hearing.

The Board’s denial is affirmed. Dr. Hughes has not established that the agreement to suspend his license was procured through material misrepresentations or duress, or is otherwise unenforceable. And although the agreement contemplated that Dr. Hughes could seek reinstatement of his license, it is unreasonable to expect the Board to reinstate it one week after the parties agreed to forego summary suspension proceedings in exchange for the voluntary suspension.

II. Relevant factual and procedural history

A. Background

The Alaska State Medical Board is the professional licensing board that oversees physician licensure in the State of Alaska. Employees of the Division of Professional Licensing (“the Division”) (a division located in the Department of Commerce, Community, and Economic Development) serve as staff to the state’s many professional licensing boards, including the Medical Board. In that role, Division investigators screen and investigate complaints against licensed professionals, a process that can include gathering documents, conducting interviews, presenting information to a designated “reviewing board member,” and bringing complaints forward to the relevant boards.

Kent Hughes is a plastic surgeon licensed in Texas, New York, and Wisconsin. He has been practicing medicine for 32 years.¹ The Alaska State Medical Board issued him a temporary license on August 30, 2022, and he began a *locum tenens* position in Kodiak in September 2022.

¹ Hughes Affidavit (Aff.) ¶ 3.

The Board granted Dr. Hughes a full license on November 10, 2022. According to Dr. Hughes, his work in Kodiak involved working as a family medicine doctor in a clinic run by Dr. John Koller while Dr. Koller was travelling.²

B. Notice of Complaint

On Wednesday, July 12, 2023, Kendra Wardlaw, an investigator for the Division, sent Dr. Hughes a notice that a complaint had been filed against him:

This complaint alleges you may have violated the Alaska statutes and regulations related to prescriptive practice, including the use of another provider's prescription pad/authority, and prescribing without authority, unprofessional conduct, inappropriate/absent documentation, drug diversion, falsifying an application for licensure and violation of ethical standards, all of which if substantiated, could result in disciplinary action against you.

The Notice of Complaint set a deadline of Wednesday, August 2, for Dr. Hughes to provide (1) a written response to several questions, (2) information about a Texas Medical Board licensing investigation, and (3) any additional documentation he believed to be relevant.³

The Notice of Complaint also asked Dr. Hughes to schedule a telephone call with the Division's investigator, Ms. Wardlaw. On Friday, July 14, they spoke for over two hours, discussing a range of topics including:

- Various prescribing issues within the Kodiak clinic,
- Dr. Hughes's romantic relationship with and surgery on a former clinic employee,
- Practice restrictions imposed on Dr. Hughes's Texas medical license after a serious car accident,
- A new Texas disciplinary investigation, and
- Whether Dr. Hughes was required to disclose any Texas disciplinary or criminal history, and/or practice restrictions, either when he applied for licensure in Alaska or at a later time.⁴

Late in the call, Investigator Wardlaw told Dr. Hughes that, "based on the information that I have, that has been reviewed by a member of the Medical Board here in Alaska, I do want

² Hughes Aff. ¶¶ 6, 9.

³ Record (R.) 1-2. The Notice was accompanied by a Release of Information form, which Dr. Hughes signed and returned on July 14. R. 8.

⁴ R. 185-300.

you to know that your license is being considered for a summary suspension.”⁵ She also told Dr. Hughes that a request for summary suspension had not yet been filed, that she did not know with certainty whether that would happen, and that early the following week he would be getting a letter offering him the option of voluntarily suspending or surrendering his license.

C. July 17 “voluntary surrender of license” letter

On Monday, July 17, Investigator Wardlaw sent Dr. Hughes a letter bearing the heading “**VOLUNTARY SURRENDER OF LICENSE.**”⁶ This letter informed him that he was the subject of an investigation. He was further advised that the “matter was reviewed by an expert for the Board, and it was recommended to suspend your Alaska medical license based on allegations of unprofessional conduct[;] securing a license through deceit, fraud, or intentional misrepresentation[;] procuring drugs in violation of the law[;] sexual misconduct[;] and violation of ethical standards.”⁷

The letter then informed Dr. Hughes that he “currently” had “a couple of options regarding [his] Alaska medical license.” Those options were identified as either “a Surrender or Suspension of License” or the initiation of summary suspension proceedings. The surrender option was described as follows:

The license surrender would close this investigation and you would no longer hold an active license in Alaska. If you wish to reinstate your license in the future, your request will go before the Board and this investigation will be reopened.

The suspension option was laid out as:

You may also choose to voluntarily suspend your Alaska license. Your Alaska license would remain active, but suspended, and you would be required to maintain all Alaska licensing requirements during the suspension. The suspension of license would close this investigation. In the future, you may ask the Board to lift your license suspension and this investigation would be reopened.^[8]

Alternatively, the letter continued with the option of summary suspension:

⁵ When Dr. Hughes expressed surprise and asked why, Investigator Wardlaw noted “the fact that there are conditions on your licensure in Texas that we didn’t know about – that right there on its own is a violation that can result in revocation, suspension, and a litany of other potential disciplinary actions.” R. 268.

⁶ R. 11-12 (emphasis in original).

⁷ *Id.*

⁸ As discussed further below, the statement that a suspension would close the investigation was an error in the Division’s form letter. Wardlaw Aff., ¶ 10. However, later communication from the Division remedied this inaccuracy, and Dr. Hughes – in recorded calls and emails and in the language of the agreement he ultimately signed – demonstrated his understanding that the voluntary suspension would not end the investigation.

If I have not received either the Surrender of License or the Suspension of License back from you by July 24, 2023, the Division will consider these offers rejected and this matter will move forward for Summary Suspension of License.

Attached to the letter were an unsigned “voluntary suspension of license,” and an unsigned “voluntary surrender of license.”⁹

D. Communication with Investigator Wardlaw and Division Director

Dr. Hughes called Investigator Wardlaw after receiving the July 17th letter.¹⁰ They spoke for over an hour, during which Dr. Hughes said he wanted to “have a hearing” and clear his name, but also that he had also been strongly advised by attorneys to avoid a summary suspension.¹¹

Later that week, Dr. Hughes emailed the Division Director about this matter.¹² He recounted the procedural history as follows:

I was given until August 2nd to send over my side and defend the accusations made against me as being “false, bogus and made up”. While I was preparing the rebuttal and spoke with Kendra Wardlaw on Friday July 14th she informed me I would have my license pulled by the end of next week. Low and behold Monday morning I get an [e]mail from her telling me that I need to “surrender or suspend” without even getting the opportunity to be “heard”. They gave me until Monday to reply back with what option I want to do. This is “not” by any means fair treatment, I have not been given the chance to defend myself, submit my evidence or tell my side of the story.¹³

The email requested “a phone call with you and possible help with allowing me ‘time’ for a hearing, conference call or trial to prove my innocence,” expressing concern that, “to not be able to defend my name, character and who I truly stand for is not fair and it’s very unjust. I know there is something can be done to stop this and allow me to continue practicing.”¹⁴

⁹ R. 13-14.

¹⁰ R. 302.

¹¹ R. 323, 342. Dr. Hughes told Investigator Wardlaw that he was working on hiring an attorney, and had “narrowed it down to two candidates.” R. 303.

¹² While not material to any issue currently before me, it appears this email may have been sent on Dr. Hughes’s behalf, rather than being authored by Dr. Hughes himself – a circumstance that would help explain both the tone of the email and various factual characterizations that are not supported by the communications it purports to describe. While also not material, the email was actually sent to the *former* Division Director, who forwarded it to Director Sylvan Robb, who then responded.

¹³ R. 179.

¹⁴ R. 179.

Division Director Sylvan Robb followed up with Dr. Hughes by phone, as well as responding to the email. In her July 21, 2023 email, Director Robb described the status of the matter as follows:

Dr. Hughes and Michelle – As I explained, there are two options for Dr. Hughes moving forward. Both options are reportable to the National Practitioner Data Bank (NPDB). When the matter is resolved that licensing action will also be reported to the NPDB. All reportable actions remain on your NPDB record in perpetuity.

Option 1

Voluntarily suspend your license by 5 p.m. on Monday, July 24, 2023. If you move forward with the voluntary suspension, your license will remain active until the board votes to accept that during their meeting on Thursday, the 27th. If you voluntarily suspend your license, then you will work with the board to reach a consent agreement regarding how to resolve the issues. If you are unable to reach agreement on the terms of a consent agreement, then the matter will go to a hearing with the Office of Administrative Hearings. Hearings are normally scheduled within 30 days.

Option 2

The board will vote at a meeting at 5:30 p.m. on July 27th on whether to impose a summary suspension of your license. If the board imposes a summary suspension of your license you may appeal to the Office of Administrative Hearings and the matter will be heard by an Administrative Law Judge within 7 days.¹⁵

E. Voluntary Suspension and Board Adoption

Dr. Hughes ultimately signed and returned the document titled “Voluntary Suspension of License” on Monday, July 24, 2023.¹⁶ That document contains the following:

I am voluntarily suspending my above license at this time with the understanding that the Division [of] Professional Licensing on behalf of the Alaska State Medical Board, has an open complaint stemming from the allegations of unprofessional conduct, securing a license through deceit, fraud, or intentional misrepresentation, procuring drugs in violation of the law, sexual misconduct and violation of ethical standards. I acknowledge that the above allegations provide grounds for suspension, revocation or other disciplinary sanctions of my license pursuant to AS 08.01.075, AS 08.64.326 and AS 08.64.331.

¹⁵ R. 177.

¹⁶ R. 52

I understand that my Physician license will remain suspended, and I agree to stop practicing until the Division has completed the investigation and the Board has reviewed the findings of the investigation.

....

If I make a request to vacate the suspension of my license and I am denied by the Board, I have the right to a Hearing, pursuant to AS 44.62 of the Administrative Procedure Act (APA)

....

I am agreeing to the voluntary suspension of my Physician license of my own free will.¹⁷

The Board adopted the suspension of Dr. Hughes’s license at its meeting on Thursday, July 27, 2023.¹⁸ Its Order reads:

The Medical Board for the State of Alaska, having examined the license suspension, case number 2023-000453, Kent C. Hughes, license number 194413, adopts the license suspension in this matter. This license suspension takes effect immediately upon signature of this Order in accordance with the approval of the Board.¹⁹

The Division notified Dr. Hughes of the Board’s action by email the following day, and by certified letter on Tuesday, August 1, 2023.

F. Dr. Hughes’s request to lift the suspension

On Monday, July 31, 2023, Investigator Wardlaw sent Dr. Hughes a “Notice of Investigation.” The notice stated that a reviewing board member had identified possible violations of six statutory licensing requirements, that he is currently “the subject of an official investigation,” and that “due to the Voluntary Suspension which you agreed to and was adopted by the Medical Board, your license is suspended, effective July 27, 2023.”²⁰

Investigator Wardlaw and Dr. Hughes spoke for more than an hour on the 31st.²¹ Their conversation included Dr. Hughes asking how to move the investigation along and get back to practicing. Investigator Wardlaw told Dr. Hughes that he was free to request the suspension be lifted at any time, but cautioned that the likelihood of the Board doing so with the open, investigation unresolved and ongoing was slim. That afternoon, Dr. Hughes submitted a written request that his license suspension be lifted:

¹⁷ *Id.*
¹⁸ R. 29.
¹⁹ R. 53.
²⁰ R. 20-21.
²¹ R. 381-407.

I would like to respectfully request to lift the suspension currently imposed on my medical license while the ongoing investigation is pending . I look forward to cooperating with the Board to the very best of my ability for a swift and timely resolution in this matter.²²

In the meantime, from late July into mid-August, Dr. Hughes also submitted various emails and documents to Investigator Wardlaw pertaining to the allegations identified in the Notice of Complaint and Notice of Investigation.²³

G. The Board’s denial of the request to lift the suspension

At its August 18, 2023 meeting, the Board denied Dr. Hughes’s request to lift the suspension.²⁴ In a letter dated August 22, 2023, the Board’s Executive Administrator notified Dr. Hughes of the Board’s decision, identifying as the basis for that decision:

- Dr. Hughes’s July 24 agreement to voluntarily suspend his license due to an open complaint,
- the Board’s acceptance of that agreement, “which specified that you would stop practicing until the Division has completed its investigation and the Board has reviewed the findings,” and
- the fact that the investigation into these matters is not complete.

The letter informed Dr. Hughes of his right to request a hearing under AS 44.62.370 if he disagreed with the Board’s decision.

H. Prehearing Proceedings

Dr. Hughes submitted a written request for hearing on the Board’s denial of his request to lift the suspension. The matter was referred to the Office of Administrative Hearings. At a September 18 case planning conference, the parties identified a threshold disagreement about the nature and scope of this action. Dr. Hughes contended he was entitled to a hearing on his fitness to practice, and argued that the Division should therefore be required to produce its investigative file as the agency record. The Division argued that the scope of this proceeding is limited to whether the denial of Dr. Hughes’s request to lift the suspension of his license should be affirmed

²² R. 44. Additionally, on Friday, August 4, 2023, Dr. Hughes emailed Investigator Wardlaw: “I respectfully request an administrative hearing concerning the allegations against me immediately.” R. 46. She responded on Monday, August 7, 2023, as follows: “[An] administrative hearing is not an option at this stage in your case. The hearing cannot be used to appeal your voluntary suspension, as it was signed voluntarily. The Board has not yet reviewed your request for reinstatement, which will be presented at the next scheduled Board meeting on August 18, 2023. If the Board denies the request for reinstatement, you will then be entitled to an administrative hearing. This can be a confusing process. I would remind you of the option and suggest obtaining legal counsel to guide you through the process.” R. 45.

²³ See, e.g., R. 54-72.

²⁴ R. 182.

on the bases identified in the August 22 denial letter – that is, in light of the voluntary suspension agreement he had signed just one week before seeking to vacate that suspension. As to the record, the Division contended that the agency record for purposes of this hearing is likewise limited to in scope to the circumstances surrounding Dr. Hughes’s signing of the voluntary suspension on July 24, and his July 31 request to lift that suspension.

An order issued on November 8, 2023, agreed with the Division that the scope of the current matter was limited to the validity and enforceability of the voluntary suspension document – and, by extension, whether any essential terms precedent to a request to vacate the suspension had been satisfied – and does not extend to either the underlying merits of the disciplinary investigation or fitness to practice.²⁵ By parity of reasoning, the order concluded that the agency record was appropriately limited to documents pertaining to the creation, signing, adoption, and request to vacate the voluntary suspension.

After this order was issued, and particularly because of Dr. Hughes’s strong expressed preference for finality in this matter as quickly as practicable, the parties agreed that they would not need an oral hearing. Rather, they would have this case decided on the record after both sides had submitted briefs. To the extent that facts were in dispute, the administrative law judge would determine the facts based on the evidence in the record.²⁶ The parties submitted briefing and affidavits in accordance with an agreed-upon schedule, and this decision follows.²⁷

III. Discussion

Dr. Hughes, who bears the burden of proof in this matter, argues that the Board erred in denying his request to vacate the voluntary suspension agreement and lift his suspension. He asserts four grounds for error. First, he argues that the agreement included a provision that he could apply for reinstatement at any time, and the reinstatement would be granted. Second, he alleges that the agreement is not an enforceable contract because the parties never had a meeting

²⁵ Order on Scope of Proceedings at 2, *In re Kent Hughes*, OAH No. 23-0557-MED (Nov. 8, 2023) (“The scope of this administrative hearing is limited to whether the voluntary suspension document is a valid agreement, and, if so, whether its essential terms have been satisfied.”).

²⁶ The reader should be aware that this approach is very different from the way that facts are determined in summary adjudication proceedings. That type of adjudication asserts that no facts are in dispute, so that even when viewing facts in the light most favorable to the other side, adjudication for the moving party is warranted. Here, if facts are in dispute, they will be determined based on the preponderance of the evidence, not based on the view most favorable to the nonmoving party.

²⁷ Because this proceeding is governed by the Administrative Procedure Act, the parties were provided an opportunity to request to cross examine any witness whose testimony was offered by Affidavit. Neither party elected to avail itself of this option, however, and the affidavit evidence is accordingly given the same effect as live testimony. *See* Scheduling Order issued November 16, 2023.

of the minds about the terms of their agreement. Third, he asserts that the Division breached the agreement because it had promised that the investigation would be closed but in fact, it never ceased the investigation. Fourth, he alleges that the agreement is unenforceable because of coercion or duress. Dr. Hughes also contends that due process and public policy considerations require rescission of the voluntary suspension agreement.

A. Should the voluntary suspension agreement be interpreted to require the Board to grant Dr. Hughes’s request to vacate the suspension?

The written agreement provides that Dr. Hughes may ask the Board to vacate the suspension of his license. It does not specify what circumstances would warrant a lifting of the suspension. Dr. Hughes asks that we interpret the agreement to mean that he “could withdraw my voluntary suspension and be reinstated at any time.”²⁸ That, however, is not what the agreement says, nor what it means.

The Alaska Supreme Court having explained many times that “settlement agreements are, at base, merely a species of contract,” this decision will analyze Dr. Hughes’s request under contract principles.²⁹ “Courts look to the language of the contract as a whole, the objects sought to be accomplished by the contract, the circumstances surrounding its adoption, and case law interpreting its provisions to ascertain the reasonable expectations of the parties.”³⁰ In addition, “[o]ne important guide to the meaning of a contract is that interpretations that give a reasonable meaning to a contract are preferred to those that impart an unreasonable meaning.”³¹

Applying these principles, there was no promise that Dr. Hughes would be given his license back upon request. First, the agreement clearly contemplates that the Board might deny a request for reinstatement because the agreement provides a right to a hearing *if* the Board *denies* the request. This shows that there was an expectation that the Board might deny the reinstatement—the opposite of what Dr. Hughes urges. These words of the contract are the most important evidence of the party’s intent.³²

Dr. Hughes relies on “extrinsic evidence” of intent to argue that the contract included a promise that he could be reinstated at any time. Under contract law, extrinsic evidence, such as,

²⁸ Hughes Aff., ¶ 16; Hughes Brief, p. 21 (“the terms of Dr. Hughes’ “Voluntary Suspension” entitled him to withdraw it and obtain reinstatement at any time”).

²⁹ *Colton v. Colton*, 244 P.3d 1121, 1127–28 (Alaska 2010).

³⁰ *Monzingo v. Alaska Air Grp., Inc.*, 112 P.3d 655, 660 (Alaska 2005).

³¹ *Est. of Polushkin ex rel. Polushkin v. Maw*, 170 P.3d 162, 172 (Alaska 2007).

³² *K & K Recycling, Inc. v. Alaska Gold Co.*, 80 P.3d 702, 712 (Alaska 2003) (“The words of the contract are nevertheless the most important evidence of intention.”).

in this case, the conversations between Investigator Wardlaw and Dr. Hughes, can be used to help determine the parties' intent at the time of the agreement.³³ The problem for Dr. Hughes, however, is that Investigator Wardlaw never said that his license could be reinstated upon request. As Dr. Hughes admits, what she told him was, "You can petition the board at any time as far as I know – to ask for that the suspension be lifted."³⁴

This statement is true, and was reflected in the agreement. It does not help us understand, however, under what circumstances the Board would grant reinstatement.

When interpreting contracts, the reviewing tribunal often encounters terms that are not fully fleshed out. Under contract principles, "courts should fill gaps in contracts to ensure fairness where the reasonable expectations of the parties are fairly clear."³⁵

Here, simply put, it is not reasonable or fair to request or expect the Board to lift the suspension under the agreement four days after it was entered. Nothing changed during this time. Simply vacating the suspension would either mean (1) allowing Dr. Hughes to resume practice notwithstanding whatever concerns that have been raised about his fitness, or (2) now requiring the Division to either (a) accelerate Dr. Hughes's hearing on the merits regardless of whether the investigation was complete or (b) initiate summary suspension proceedings. None of these is reasonable in these circumstances.

To the extent that Dr. Hughes's interpretation would allow him to sidestep a possible summary suspension and then regain his license at any time and without regard to any concerns about his fitness to practice, such an interpretation is not reasonable, nor is it a reasonable effectuation of the parties' objectives in entering into the agreement.

As to accelerating a hearing on the merits, while Dr. Hughes's desire for a hearing on the merits as soon as possible is reasonable and understandable, it does not mean that he can force the Division to a hearing before it has completed its investigation. It is noteworthy, here, that the entire premise underlying the summary suspension mechanism is a perceived need to protect

³³ *K & K Recycling, Inc.*, 80 P.3d at 712.

³⁴ Hughes Brief at 22 (citing Hughes Ex. A-1 at 13-14).

³⁵ *Rego v. Decker*, 482 P.2d 834, 837 (Alaska 1971). The court further explained that:
The parties to a contract often cannot negotiate and draft solutions to all the problems which may arise. Except in transactions involving very large amounts of money or adhesion contracts to be imposed on many parties, contracts tend to be skeletal, because the amount of time and money needed to produce a more complete contract would be disproportionate to the value of the transaction to the parties. Courts would impose too great a burden on the business community if the standards of certainty were set too high.
Id.

public health and safety from imminent danger even before a final decision on the merits.³⁶ Here, of course, no summary suspension proceeding was initiated – and that is precisely because Dr. Hughes bargained a voluntary suspension in order to avoid the possibility of a summary suspension. But the record supports that the Division intended to petition the Board for a summary suspension of Dr. Hughes’s license – a step that necessarily implies the Division believed there was a need to protect against a safety risk while its investigation was still underway.³⁷ While the Division must now act diligently to complete its investigation, it is not a reasonable interpretation of the agreement to conclude that Dr. Hughes can dictate the timing of that the process by agreeing to a suspension and then immediately seeking reinstatement.

With regard to allowing him to vacate the agreement and force the Division to initiate summary suspension proceedings if it still contends a suspension should be in place, both the Division and Dr. Hughes made the agreement in part to avoid undertaking summary suspension proceedings. To require the Division to change course and initiate summary suspension proceedings (or otherwise just allow him to practice when nothing had changed) would be to deny the Division – and ultimately Board – the benefit of the bargain it made.

Dr. Hughes is correct, however, that at some point it could be reasonable for him to ask that the agreement be vacated. For example, if circumstances changed, if new evidence came to light, or if the Division was being dilatory in its investigation, the outcome of the request to vacate might be different. To request vacation of the suspension one week after signing the agreement, and just four days after its adoption by the Board, however, is not reasonable.

B. Was the Division’s continuation of the investigation either a breach of the agreement or evidence that the parties did not have an agreement?

In both conversation and a letter, the Division informed Dr. Hughes that if he voluntarily suspended his license, the investigation would close.³⁸ This, however, did not happen. The investigation ultimately continued after the voluntary suspension.

³⁶ AS 08.01.075(c) (“A board may summarily suspend a licensee from the practice of the profession before a final hearing is held or during an appeal if the board finds that the licensee poses a clear and immediate danger to the public health and safety”); AS 08.64.331(c) (“The board may summarily suspend a license before final hearing or during the appeals process if the board finds that the licensee poses a clear and immediate danger to the public health and safety if the licensee continues to practice”).

³⁷ Again, all of these are allegations that the Board would have had to accept in order for a summary suspension to be entered, and which Dr. Hughes would have had the right to challenge in an expedited hearing had the Board done so. No conclusions as to the likelihood of either such event is suggested here. Rather, the discussion is simply intended to contextualize the parties’ agreement and the choices that were made.

³⁸ R. 11-12 (July 17, 2023 letter: “You may also choose to voluntarily suspend your Alaska license. ... The suspension of license would close this investigation.”); R. 280-281 (recorded July 19, 2023, conversation between

Dr. Hughes makes two arguments regarding the continuation of the investigation. First, he asserts that it was a breach of bargained-for terms. In the alternative, he argues that if there was no breach, then the parties never had a contract at all, because he thought one thing would happen and the Division and the Board were thinking something else. Because these separate arguments are both analyzed under the same contract principles that require giving effect to the reasonable expectations of the parties, the two arguments will be analyzed together.

As noted above in the discussion about the use of extrinsic evidence to show intent, Dr. Hughes is correct that bargained-for terms may be part of the agreement even if not included in the written agreement.³⁹ He is also correct that if the parties do not have a meeting of the minds regarding an essential term of the contract, then the parties have not formed a contract, at all.⁴⁰ Under contract law, however, “when interpreting contract language, our goal is to give effect to the reasonable expectations of the parties.”⁴¹

Here, the extrinsic evidence does not support Dr. Hughes’s narrative about the continued investigation; instead, the evidence shows that the reasonable expectations of the parties at the time the agreement was made was that the Division’s investigation would continue.

Any expectation that the investigation would end (which may have been true at one time) was superseded because Dr. Hughes made clear before well before signing the voluntary suspension agreement he wanted to be on a reinstatement or hearing track (but not a summary suspension track).⁴² Dr. Hughes was aware that being on the hearing track would mean that the investigation would continue. This is clear from the agreement signed by Dr. Hughes, which states unambiguously:

Dr. Hughes and Investigator Wardlaw, in which Inv. Wardlaw states: “If you are to voluntarily surrender -- surrender or suspend your license, then my investigation would stop, and things would just kind of be where they are”).

³⁹ See, e.g., *Yost v. State, Div. of Corps., Bus., and Prof. Licensing*, 234 P.3d 1264, 1277 (Alaska 2010) (holding that “whether an additional term exists” in settlement agreement on licensing matter is factual question requiring inquiry into whether division made unwritten promise that was enforceable as condition precedent).

⁴⁰ See, e.g., *Davis v. Dykman*, 938 P.2d 1002, 1006 (Alaska 1997) (“The formation of a valid contract requires an offer encompassing all essential terms, unequivocal acceptance by the offeree, consideration, and an intent to be bound.” *Childs v. Kalgin Island Lodge*, 779 P.2d 310, 314 (Alaska 1989). An agreement is unenforceable if its terms are not reasonably certain.” (citation omitted)).

⁴¹ *Yost*, 234 P.3d at 1272; see also, e.g., *Rego*, 482 P.2d at 837 (“the primary underlying purpose of the law of contracts is the attempted ‘realization of reasonable expectations that have been induced by the making of a promise.’” (quoting 1 A. Corbin, *Contracts* § 1, at 2 (1963))).

⁴² See, e.g., R.360 (recorded July 19, 2023, conversation between Dr. Hughes and Investigator Wardlaw, in which Hughes states: “And so I -- I was hoping for a hearing somehow, some way, like even just an administrative hearing. But without doing a -- without doing a summary suspension.”).

I understand that my Physician license will remain suspended, and I agree to stop practicing until the Division has completed the investigation and the Board has reviewed the findings of the investigation.⁴³

Thus, to the extent that discontinuing an investigation is ever be a possible outcome following a voluntary suspension (or may have initially been anticipated here),⁴⁴ if the respondent wants his license back, and wants the matter to remain on the hearing track, the only way for *that* to happen is for the investigation to continue.

Because Dr. Hughes wanted a hearing, he expressly agreed that the investigation would continue. Accordingly, there is no merit to Dr. Hughes's argument that the eventual agreement included a promise that the investigation would stop. It follows that the Division's continuation of the investigation was neither a breach of the agreement nor evidence that the parties had a fundamental misunderstanding about an essential term.

Moreover, even if the Division's continuation of the investigation were a breach – which it was not – the remedy for breach under contract principles would be to enforce the parties' reasonable expectations. Thus, if the Division had breached an agreement to stop the investigation, the remedy would be to order the Division to stop the investigation. This, however, would mean that Dr. Hughes would no longer be on a track for either a consent decree allowing him to practice or a hearing regarding his fitness to practice. This is not the remedy that Dr. Hughes wants (indeed, he has repeatedly said that he wants a hearing on the merits). As discussed above, the remedies Dr. Hughes seeks here — either reinstatement of his license or ordering the Division to initiate summary suspension proceedings—are neither reasonable nor appropriate remedies for the claimed breach.⁴⁵

In short, a review of the contract, including extrinsic evidence, supports a finding that both parties contemplated and agreed that the investigation would not stop as a result of the voluntary suspension; to the contrary, the parties understood that the investigation would carry forward at a reasonable pace.

C. Should the agreement be rescinded based on a material misrepresentation,

⁴³ R. 52.

⁴⁴ See *Wardlaw Aff.*, p. 2 (“Procedurally, investigations close once a Voluntary Surrender is ordered, because the licensee does not intend to resume practice. In the case of a Voluntary Suspension, the licensee is suspended, and the investigation continues. I did not notice the letter was not clear on that point before I sent it to Dr. Hughes.”)

⁴⁵ To the extent that Dr. Hughes is also arguing that the settlement agreement included a term that he would be reinstated upon request, that argument has been fully addressed, and rejected, in Section A above.

duress, or coercion?

Dr. Hughes argues that his voluntary suspension agreement should be rescinded under equitable principles. He claims that the Division made material misrepresentations regarding the continuation of the investigation, his ability to request reinstatement, and the certainty that the Board had already decided to summarily suspend his license. He also asserts that he was under duress because the Division caused him extreme stress. He then argues that he was coerced into signing the agreement.⁴⁶

Misrepresentation, coercion, and duress are all issues that can be considered as grounds for rescinding or reforming a contract.⁴⁷ In general, however, duress is not easily proved, and the courts advise that policy favors enforcement of settlement agreements.⁴⁸ I have listened to and read through the transcripts of all conversations between Investigator Wardlaw and Dr. Hughes, and have reviewed the email correspondence, including that between Dr. Hughes and Division Director Robb. I find that, taken as a whole, there was no material misrepresentation, coercion, or duress.

1. *Whether Dr. Hughes was misled to believe that a voluntary suspension would halt the investigation.*

The issues of whether the investigation would stop and Dr. Hughes's ability to apply for reinstatement have been discussed above. Although the precise procedural path could at times have been made clearer, Division Director Robb's email communication was clear and authoritative that the process would continue following the voluntary suspension: "If you voluntarily suspend your license, then you will work with the board to reach a consent agreement regarding how to resolve the issues. If you are unable to reach agreement on the terms of a consent agreement, then the matter will go to a hearing with the Office of Administrative Hearings."⁴⁹ Further, the Agreement Dr. Hughes signed likewise clearly contemplated an ongoing investigation. These documents, the full text and recordings of the calls between

⁴⁶ Hughes Brief at 26-38.

⁴⁷ See, e.g., *Helstrom v. North Slope Bor.*, 797 P.2d 1192 (Alaska 1990) (reversing summary judgment denying rescission of settlement agreement on the basis of duress); *Cousineau v. Walker*, 613 P.2d 608 (Alaska 1980) (rescinding a contract regarding real property based on misrepresentation by seller).

⁴⁸ E.g., *Mullins v. Oates*, 179 P.3d 930, 937 (Alaska 2008) (noting that "duress generally requires a threat that arouses such a fear as to preclude a party from exercising free will and judgment" and that "[c]oercion . . . implies compulsion or constraint"); see also *id.* (explaining that public policy favors settlement agreements and agreement "should not lightly set aside").

⁴⁹ R. 177.

Investigator Wardlaw and Dr. Hughes, and Dr. Hughes’s own conduct belie his material misrepresentation claim.

2. *Whether the Division misrepresented that the Board had already made a decision to impose a summary suspension*

With regard to whether the Division misrepresented that the Board had already determined that summary suspension would be imposed, Dr. Hughes testifies in his affidavit that Investigator Wardlaw told him on July 21st that “it was not just one person but the Medical Board itself had already decided to summarily suspend my license.”⁵⁰ In his brief, he attempts to prove this allegation by quoting from the transcript of Investigator Wardlaw’s statement as follows: “yes, this is kind of an intermediate, not every single detail has been ironed out but the board has determined that there’s enough concern that they don’t believe it’s in the realm of public safety to wait till the end of the investigation to make that decision.”⁵¹ He characterizes this statement as a “threat” that “bended the truth” (sic) and was made with the intent to “close the deal.”⁵²

Dr. Hughes’s testimony and briefing is not accurate. Investigator Wardlaw’s quoted statement is taken out of context. Review of the actual conversation reveals that Investigator Wardlaw was describing what summary suspension is—she explains that it is an intermediate step and that, when it occurs, it is a statement of the Board regarding its concern about the urgency of a situation. She was not saying that the Board had, in fact, made that determination about Dr. Hughes—she was describing a hypothetical summary suspension and what the Board would be saying about “this person”—the hypothetical doctor whose license had been suspended.⁵³

Put in context, Investigator Wardlaw’s comment was as follows:

And it's not like when a summary suspension is filed that things stop there. That's just an intermediate place for a decision to be made of – ‘should this person have a license that's – that’s valid while we continue to look into this?’ The alternative, certainly, is that at the – at the end of – of an investigation, when everything has been collected of a decision, like that maybe being made at that point. But, yes, this is kind of an intermediate, not every single detail has been ironed out, but the board has determined that there's enough concern that they

⁵⁰ Hughes Aff. ¶ 15.

⁵¹ Hughes Brief at 34 (citing Hughes Ex. A-1 at 4).

⁵² *Id.*

⁵³ R. 313.

don't believe it's – it's in the realm of public safety to wait until the end of the investigation to make that decision.

She made clear that “this, of course, in theory, is only – if a suspension was to occur.”⁵⁴

The full recordings support a finding that, contrary to his testimony, Dr. Hughes understood that Investigator Wardlaw was not saying that Board had already made a decision on whether he was safe to practice. Moreover, the authoritative guidance he received from a higher authority in the Division, Director Robb, also told him that the Board's decision on his summary suspension had not yet occurred—that, in fact, it was scheduled for a vote: “The board will vote at a meeting at 5:30 p.m. on July 27th on whether to impose a summary suspension of your license.”⁵⁵ In the face of this evidence, Dr. Hughes's claim of misrepresentation and coercion has no merit.

3. *Whether the expedited timeline supports a finding of duress*

Citing to the pace at which the events of the investigation unfolded, Dr. Hughes also argues that “the Division's pressure was the source of duress.”⁵⁶ A party seeking to void a contract on the basis of duress must show by clear and convincing evidence that the party (1)

⁵⁴ R.314. Further, in a follow up conversation, Dr. Hughes acknowledged that he had understood that Investigator Wardlaw had not threatened him or misrepresented the posture of the summary suspension decision:

INVESTIGATOR WARDLAW: Well, I mean, I think that's – that's a presumption that -- that I think you're making, though, that -- I -- I explained, I think very clearly, that the case would go to an administrative law judge, and that administrative law judge would hear what was involved and make recommendation to the board related to whether or not a summary suspension should occur. It wasn't a, 'If you don't do this, we're doing this' kind of thing. It wasn't a, 'If you don't give us your license, we're taking it.' It was, 'If you'd like to voluntarily surrender or suspend on your own volition, you may. In the event that you don't accept either of those offers, then the case will go to an administrative law judge for a hearing for a determination to be made on whether or not a summary suspension should occur.' So, I mean, I -- I think we were pretty clear on that. Is that accurate?

DR. HUGHES: Yes.

INVESTIGATOR WARDLAW: Okay.

DR. HUGHES: Yes, it is accurate.

INVESTIGATOR WARDLAW: Okay.

R. 384. It is difficult to square Dr. Hughes's sworn affidavit testimony with his recorded statements to Investigator Wardlaw at the time of the events.

⁵⁵ R. 177. In addition, to the extent that Dr. Hughes is alleging that Investigator Wardlaw represented that a voluntary suspension would solve the issue of his not being able to work elsewhere as a doctor, *see, e.g.*, Hughes brief at 31, that also is not true. As Dr. Hughes admits in his affidavit, the Division told him that the voluntary suspension was a reportable event. Hughes Aff. ¶ 15. *See also* R. 331 (Inv. Wardlaw: “— with a summary suspension or – or a voluntary surrender or a voluntary suspension. All of those things are reportable.”); R. 177 (email from Director Robb to Dr. Hughes explaining, “here are two options for Dr. Hughes moving forward. Both options are reportable to the National Practitioner Data Bank (NPDB).”).

⁵⁶ Hughes Brief at 31 (capitalization removed).

involuntarily accepted the terms of another, (2) that circumstances objectively permitted no other alternative, and that (3) such circumstances were the result of coercive acts by the other party.⁵⁷

Without question, being the subject of any professional licensing investigation is likely to be a stressful experience, and the specter of a summary license suspension is surely even more stressful. Avoidance of that stress may well have been a consideration for Dr. Hughes's decision to voluntarily suspend his license. But neither those facts, nor any other evidence presented, support a finding that the Division acted improperly in establishing and adhering to an expedited timeframe in this matter, or that the pressures of that timeframe warrant rescission of the agreement.

As a threshold matter, the statutory basis for summary suspension proceedings recognizes the need for expediency in such proceedings. As noted above, it is the very fact of a perceived "clear and immediate" threat to public health or safety that drives the summary suspension statute.⁵⁸ To suggest that the Division, having developed a concern that such a threat might exist, cannot swiftly move towards resolution – whether by a voluntary agreement or a summary suspension petition – undermines the statutory scheme that creates the summary suspension mechanism.⁵⁹

As a factual matter, Dr. Hughes's characterizations of the timeline are not quite accurate. While his brief and affidavit suggest that he was only given "a weekend" to decide whether to sign the voluntary suspension,⁶⁰ Inv. Wardlaw informed Dr. Hughes in their first conversation on July 14 that a summary suspension petition was on the table, and that she would be sending him a letter offering him an opportunity to voluntarily suspend his license.⁶¹ While a ten-day

⁵⁷ *Helstrom v. North Slope Borough*, 797 P.2d 1192, at 1197-1198 (Alaska 1990), quoting *Totem Marine Tug & Barge, Inc. v. Alyeska Pipeline Serv. Co.*, 584 P.2d 15, 21-23 (Alaska 1978).

⁵⁸ AS 08.01.075(c); AS 08.64.331(c).

⁵⁹ As also noted above, this is not meant to suggest that such a threat in fact exists, just that the Division believed that to be the case. The summary suspension process requires that the Division petition the Board for summary suspension order, and, if the Board enters such an order, allows a licensee a highly expedited hearing. As Dr. Hughes elected to forego that process, the Board has not made an initial determination whether the circumstances here would in fact support summary suspension. But a discussion of the circumstances of contract formation cannot ignore the legal context in which summary suspension proceedings arise.

⁶⁰ See Br., p. 32 ("Instead of the original 20 days the Division had giving him to respond to a complaint, Dr. Hughes was given just a few days to make up his mind without a meaningful extension. He had no choice, and he clearly could not retain an attorney over the weekend when weighing the terms that the Division proposed to him[.]"); Aff., ¶ 16 ("I knew that if I had time and access to counsel, that I could actually contest such a recommendation. But at the time, with only the weekend to consider it, I did not have the option to contest a summary suspension").

⁶¹ R. 266-270 (July 14, 2023 recording, Inv. Wardlaw: "I do want you to know that your license is being considered for a summary suspension . . . I would say that the request for summary suspension has not been filed

window (between first learning about the possibility of a summary suspension and the forthcoming voluntary suspension offer and the eventual deadline for Dr. Hughes's decision on how to proceed) is undoubtedly expedited, it is not the "weekend" Dr. Hughes implies, and does not support his claim of duress.

Further, even a cursory examination of the conversations between Dr. Hughes and Investigator Wardlaw reveals that he had been told by attorneys whom he consulted – not by the Division – that summary suspension was "truly a death spiral" and extremely expensive to litigate.⁶² Whatever perceived pressures the situation may have created in Dr. Hughes's mind appear to have been largely created by professionals Dr. Hughes consulted, and not by wrongful "coercive acts" by the Division.⁶³

Moreover – in terms of the larger context of Division investigations and the Board's regulation of the profession, including imposition of professional discipline – voluntary suspensions or surrenders are often negotiated in the shadow of a looming possible summary suspension. If we accept Dr. Hughes's argument here, then many, if not all, voluntary suspensions would be susceptible to the same findings.⁶⁴ This is not a reasonable outcome. Public policy does not support finding that a licensee's discomfort over the possible consequences of a potential summary suspension constitutes "duress," under which the "circumstances permitted no other alternative" than the licensee signing an voluntary suspension. Of course the circumstances provided another alternative: the alternative for the Division to petition the Board for a summary suspension, and for Dr. Hughes to avail himself of the statutory right to challenge such an order if it were in fact entered.

In short, the facts in this record prove that Dr. Hughes voluntarily and knowingly agreed to suspend his license, and that the formation of that agreement was not tainted by material misrepresentation or duress.

yet, and I don't know -- I don't know 100 percent that that is happening or not. It's been recommended. · But, I mean, if -- if you have -- if a request for summary suspension is filed, you'll have seven days to request a hearing.")

⁶² R. 347, 349.

⁶³ See *Helstrom v. North Slope Borough*, 797 P.2d 1192, 1198 (Alaska 1990) (describing coercive acts prong as "requiring that the strained circumstances be the result of acts which are criminal, tortious, or even merely 'wrongful in the moral sense.'").

⁶⁴ For example, there is no merit to the suggestion that offering a licensee a limited timeframe for resolution before seeking summary suspension makes such a resolution "coercive." See *Hughes Br.*, at 32. When issues sufficiently grave to potentially implicate a summary suspension petition arise, they will, by the very nature of the summary suspension statute, require swift action. To the extent that it benefits licensees and the Division to be able to engage in alternative dispute resolution of such concerns, the timeframe for those efforts will necessarily be expedited.

D. Whether public policy or due process concerns require rescission of the agreement

Lastly, Dr. Hughes argues that his due process rights have been impinged because, in his view, he was denied a hearing.⁶⁵ That, however, is not the case. First, had Dr. Hughes elected to allow the summary suspension process continue, he would have been able to request an expedited hearing if the Board had ultimately decided to impose a summary suspension.⁶⁶ He chose to instead voluntarily suspend because he did not want a summary suspension. But the circumstances under which Dr. Hughes elected to voluntarily suspend do not constitute denial of a hearing.

As for a hearing on the merits of the underlying allegations that led to the Notice of Complaint, that will be made available to him. As Director Robb's email makes clear, if he is unable to reach a satisfactory consent agreement as the Division's investigation unfolds, he is on the hearing track. That it takes a reasonable time to complete the investigation and arrive at the hearing stage is not a denial of due process.

To the extent that Dr. Hughes contends that public policy requires rescission here because he is being unduly harmed by a potentially "indefinite" investigation, that argument is premature at best in a case that arose because he sought reinstatement less than a week after the Board adopted the agreed-upon suspension-during-investigation. As the agreement between the Division and Dr. Hughes allows him to ask the Board to vacate the voluntary suspension, that provision is interpreted to mean that the parties intended that the suspension would be vacated whenever it is reasonable to do so. While it is certainly possible that at some point an ongoing investigation could become so protracted that a continued suspension under the existing voluntary suspension would be unreasonable, that point is not "four days after the voluntary suspension is entered."

In arguing that public policy favors (or, in his view, requires) allowing him to rescind the contract, Dr. Hughes notes that the suspension has now been in place more than 120 days, and notes the significant collateral impacts this has had on his livelihood. Many of the points made by Dr. Hughes here are well taken. His need to earn a living, the possible benefit to the community of having an additional licensed physician (assuming fitness to practice), and the need for finality (even if it does not result in licensure) are all reasons for moving this process

⁶⁵ Hughes Brief at 36-38.

⁶⁶ AS 08.01.075(c), AS 08.64.331(c).

quickly. In addition, the uncertainty about the definition and consequences of a voluntary suspension (for example, the initial confusion regarding whether the investigation would end, the lack of a defined timeline, and the lack of clarity as to how the process for reinstatement would work) provides additional impetus for seeking resolution on a reasonably fast track. These issues do not, however, mean that it would be reasonable to vacate the voluntary suspension four days after it was entered. The agreement contemplates an investigation followed by either a disciplinary accusation or a consent agreement process. Although many of Dr. Hughes's arguments here bolster the conclusion that this process should be moving along at a reasonable pace, they do not provide grounds for requiring the voluntary suspension be lifted.

IV. Conclusion

The Division and Dr. Hughes entered into a valid agreement under which Dr. Hughes voluntarily suspended his license until the Division completes its investigation into the facts regarding allegations that he violated laws and standards governing licensure and the practice of medicine. As a result of the voluntary suspension, Dr. Hughes stopped practicing and the Division did not pursue summary suspension proceedings.

When Dr. Hughes requested that the Board vacate his voluntary suspension four days after it was accepted, however, the Division had not had a reasonable opportunity to complete its investigation. Dr. Hughes did not come forward with any additional information regarding a change in circumstances or other grounds for requiring rescission of the voluntary suspension agreement.

Accordingly, the denial of Dr. Hughes's request to vacate the voluntary suspension is affirmed.

DATED: December 22, 2023.

By:



Cheryl Mandala
Administrative Law Judge

Adoption

The Alaska State Medical Board adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of distribution of this decision.

DATED this 16th day of February, 2024.

By: ___



RICHARD WEIN
Name

Chairman ASMB
Title