

State Bar Court of California
Hearing Department
Los Angeles

Counsel For The State Bar Jayne Kim Assistant Chief Trial Counsel 1149 S. Hill Street Los Angeles, CA 90015 213.765.1714	Case Number (s) 07-O-10766	(for Court's use) <div align="center"> FILED OCT -2 2008 STATE BAR COURT CLERK'S OFFICE LOS ANGELES </div> <div align="center" style="font-size: 2em; margin-top: 20px;"> PUBLIC MATTER </div>
Bar # 175614 In Pro Per Respondent Bar #	Submitted to: Settlement Judge STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	
In the Matter Of: James B. Hicks 8391 Beverly Blvd., #243 Los Angeles, CA 90048 (213) 612-0007 Bar # 109117 A Member of the State Bar of California (Respondent)		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **Sept. 12, 1983**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **11** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".



- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- ☐ until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
 - ☒ costs to be paid in equal amounts prior to February 1 for the following membership years: **next three billing cycles**
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
 - ☐ costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
 - ☐ costs entirely waived

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) ☒ **Prior record of discipline** [see standard 1.2(f)]
- (a) ☒ State Bar Court case # of prior case **01-O-00645**
 - (b) ☒ Date prior discipline effective **Oct. 19, 2006**
 - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: **3-110(A)**
 - (d) ☒ Degree of prior discipline **private reproof**
 - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) ☐ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☒ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice. **Respondent's misconduct harmed the administration of justice.**
- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) ☐ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☒ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings. **Respondent displayed candor and cooperation in that he stipulated to facts, conclusions of law and disposition.**
- (4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ **Restitution:** Respondent paid \$ on in restitution to without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted in good faith.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☐ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances

D. Discipline:

(1) ☒ Stayed Suspension:

(a) ☒ Respondent must be suspended from the practice of law for a period of **ONE YEAR**.

- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. ☐ and until Respondent does the following:

(b) ☒ The above-referenced suspension is stayed.

(2) ☒ Probation:

Respondent must be placed on probation for a period of **TWO YEARS**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3) ☒ Actual Suspension:

(a) ☒ Respondent must be actually suspended from the practice of law in the State of California for a period of **30 days**.

- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. ☐ and until Respondent does the following:

E. Additional Conditions of Probation:

- (1) ☐ If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) ☒ Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and

conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.

- (5) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) ☒ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- ☐ No Ethics School recommended. Reason: **Respondent may satisfy this requirement by completing Ethics School prior to the effective date of discipline and providing satisfactory proof thereof.**
- (9) ☐ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) ☐ The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) ☒ **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**
- ☐ No MPRE recommended. Reason: **Respondent may satisfy this requirement by passing the**

MPRE prior to the effective date of discipline and providing satisfactory proof thereof .

- (2) ☐ **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule **9.20**, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) ☐ **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule **9.20**, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) ☐ **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) ☐ **Other Conditions:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: JAMES B. HICKS

CASE NO: 07-O-10766

1. At all relevant times, Respondent was lead counsel representing the plaintiff in United States District Court ("Court") case no. 2:06-CV-02114 FCD GGH, entitled Landis Revin Nutraceuticals v. Arthur Andrew Medical, Inc., Justin Marsh and Tom Aldrich ("Landis lawsuit").

2. On September 21, 2006, Respondent filed the Landis lawsuit.

3. On October 26, 2006, Respondent caused to be filed a Request for Entry of Default as to each of the defendants in the Landis lawsuit and attached three proofs of service in support thereof. In each proof of service, Respondent declared under penalty of perjury that he had caused the Summons and Complaint to be served on September 22, 2006, via first-class mail with requested return receipt. Respondent further declared that he "subsequently received the return receipt, showing that [each] defendant had signed for receipt of the envelope containing the Summons and Complaint."

4. As a result, on October 31, 2006, default was entered against the defendants.

5. On October 31, 2006, defendants' counsel, Julie Harlan ("Harlan") telephoned Respondent and left a voice-mail message advising him that the defendants had not been served with the Summons and Complaint. In her message, Harlan also asked Respondent to provide copies of the aforementioned return receipts. Respondent received Harlan's message.

6. That same day, on October 31, 2006, Harlan sent Respondent a letter via facsimile and U.S. mail asking Respondent to provide copies of the signed return receipts. In her letter, Harlan also asked Respondent to assist in setting aside the defaults if he determined that the Request for Default had been filed in error. Respondent received Harlan's letter.

7. Thereafter, Respondent and members of his law office attempted to locate the

signed return receipts but could not find them.

8. On November 8, 2006, Respondent sent an email message to Harlan, claiming that the defendants had been properly served and refusing to assist in setting aside the defaults.

9. At that time Respondent did not provide the return receipts or inform Harlan that he could not find them.

10. On December 7, 2006, Harlan filed a motion to set aside the defaults and for sanctions against Respondents.

11. On December 26, 2006, Respondent's office filed an opposition to Harlan's motion stating that proper service had been made and relying, in part, on Respondent's declarations regarding proof of service filed in support of the Request for Entry of Default. At that time, Respondent's office did not attach a copy of the aforementioned return receipts or explain that the receipts were missing.

12. On January 5, 2008, Harlan filed a Reply Memorandum arguing, among other things, that the aforementioned return receipts did not exist.

13. On January 8, 2008, the Court ordered Respondent to appear for hearing on January 12, 2007. Due to Respondent's unavailability, the Court continued the hearing to January 26, 2007.

14. On January 24, 2008, Respondent's law firm filed a sur-reply stating, for the first time, that the aforementioned signed return receipts had been "inadvertently misplaced" by a secretary.

15. On or about January 26, 2007, Respondent appeared for hearing before the Court and stated that he had seen the return receipts before signing his declarations regarding service. Respondent further admitted that he had realized the receipts were missing when Harlan first contacted him about service, in late October or early November 2006.

16. Respondent explained to the Court that he did not inform Harlan of the missing

receipts because Respondent believed he could rely on his declaration regarding service and that return receipts were not required. Respondent always maintained that the return receipts had been returned to his office.

17. At all times, Respondent should have disclosed to Harlan and to the Court that return receipts were missing. By failing to do so, Respondent acted with recklessness.

18. By order dated February 1, 2007, the Court granted Harlan's motion to set aside the defaults and sanctioned Respondent \$10,716.00. The Court found that Respondent engaged in the reckless disregard of the duty owed to the court and that his actions "unnecessarily and unreasonably multiplied [the] proceedings."

19. By failing to disclose the fact that the return receipts were missing and by unnecessarily and unreasonably multiplying the Landis lawsuit, Respondent acted recklessly and thereby committed acts involving "moral turpitude, dishonesty or corruption," in willful violation of Business and Professions Code section 6106.

SUPPORTING AUTHORITIES FOR LEVEL OF DISCIPLINE:

In *In re Silvertown* (2005) 36 Cal. 4th 81, 92, the California Supreme Court held that the Standards for Attorney Sanctions for Professional Misconduct are entitled to "great weight" and the Court will "not reject a recommendation arising from the Standards unless [it has] grave doubts as to the propriety of the recommended discipline." The Standards are not binding but "they promote the consistent and uniform application of disciplinary measures." (*Id.*) The "presumptively appropriate level of discipline" for any misconduct is as set forth in the standards (*See Morgan v. State Bar* (1990) 51 Cal.3d 598, 607.)

Std 1.3 provides that the primary purposes of disciplinary proceedings are the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys; and the preservation of public confidence in the legal profession. Std 1.7(a) provides that the degree of discipline shall be greater than that imposed in a prior proceeding unless the prior was so remote in time and the office was so minimal in severity that imposing greater discipline would be manifestly unjust.

Std 2.6 provides for a range of discipline from **suspension to disbarment** for a violation of Business and Profession Code sections 6068(c). Std. 2.3 provides for a range of discipline from **actual suspension to disbarment** for an act of moral turpitude.

PENDING PROCEEDINGS:

The disclosure date referred to, on page one, paragraph A.(7) was August 22, 2008.

COSTS:

Respondent acknowledges that the Office of Chief Trial Counsel has informed Respondent that as of August 22, 2008, the estimated prosecution costs in this matter are approximately \$1,983.00. Respondent acknowledges that this figure is an estimate only. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

If Respondent fails to pay any installment within the time provided herein or as may be modified by the State Bar Court pursuant to section 6068.10, subdivision (c), the remaining balance of the costs is due and payable immediately and enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment unless relief has been granted under the Rules of Procedure of the State Bar of California. (Rules Proc. of State Bar, rule 286.)

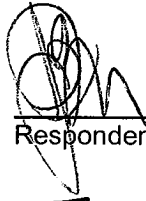
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In the Matter of James B. Hicks	Case number(s): 07-O-10766
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Fact, Conclusions of Law and Disposition.

9/2/08
Date



Respondent's Signature

James B. Hicks
Print Name

~~9/2/08~~
Date

Respondent's Counsel Signature

Print Name

9/3/08
Date


Deputy Trial Counsel's Signature
Assistant Chief Trial Counsel

Jayne Kim
Print Name

(Do not write above this line.)

In the Matter Of
James B. Hicks

Case Number(s):
07-O-10766

ORDER


Finding the stipulation to be fair to the parties and that it adequately protects the public,
IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without
prejudice, and:

- ☒ The stipulated facts and disposition are APPROVED and the DISCIPLINE
RECOMMENDED to the Supreme Court.
- ☐ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth
below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- ☐ All Hearing dates are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify
the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies
or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) **The
effective date of this disposition is the effective date of the Supreme Court order herein,
normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

Date

10/2/08


Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on October 2, 2008, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND
ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

JAMES B. HICKS
8391 BEVERLY BLVD #243
LOS ANGELES, CA 90048

- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

JAYNE KIM, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 2, 2008.



Tammy Cleaver
Case Administrator
State Bar Court