

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

**In the Matter of the Petition for Interim  
Suspension Order Against:**

**JAMES HIRTLE, M.D.**

**Physician's and Surgeon's Certificate No. A24439**

**Respondent.**

**Case No. 06-2009-200515**

**OAH No. 2010011291**

**ORDER GRANTING PETITION FOR INTERIM SUSPENSION**

On January 29, 2010, Barbara Johnston (Petitioner), Executive Director of the Medical Board of California (Board), Department of Consumer Affairs, filed a Petition for Interim Order of Suspension (Petition), to be heard on an ex parte basis pursuant to Government Code section 11529, seeking to summarily suspend Physician's and Surgeon's Certificate Number A24439, issued to James Hirtle, M.D.

On February 2, 2010, at Los Angeles, California, the Petition came on regularly for hearing on an ex parte basis before Janis S. Rovner, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, in Los Angeles, California. Abraham Levy, Deputy Attorney General, represented Petitioner. James Hirtle, M.D. (Respondent) did not appear at the hearing nor did anyone appear on his behalf, although he received proper notice of the Petition and ex parte hearing pursuant to Government Code section 11529 and California Code of Regulations, title 1, section 1012.<sup>1</sup>

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A person who described himself as a friend of Respondent called the Office of Administrative Hearings in Los Angeles at approximately 12:30 p.m. on February 2, 2010, about an hour before the Petition hearing was scheduled to commence. The friend told Presiding Administrative Law Judge (PALJ) Michael Scarlett that Respondent's spouse had fallen as he and his spouse were coming to the hearing, and that Respondent would not appear because he was taking his spouse to the hospital. PALJ Scarlett told the caller the hearing would not be postponed, and would proceed as scheduled.

On February 5, 2010, ALJ Rovner granted the ex parte Petition suspending Respondent Hirtle's Physician's and Surgeon's Certificate Number A24439 (ex parte ISO), and ordered a noticed hearing on the Petition to be held on February 18, 2010, pursuant to Government Code section 11529, subdivision (c).

The noticed hearing on the Petition came on regularly for hearing before Janis S. Rovner, Administrative Law Judge, Office of Administrative Hearings, on February 18, 2010. Abraham Levy, Deputy Attorney General, represented Petitioner. Respondent James Hirtle, M.D. did not appear at the hearing nor did anyone appear on his behalf, although he was properly notified of the February 18, 2010 hearing date.

The Administrative Law Judge (ALJ) read and considered the Petition and the declarations, and the points and authorities filed in support thereof, and heard and considered Petitioner's oral argument made at the hearing. The matter was submitted on February 18, 2010.

### FACTUAL FINDINGS

1. Petitioner filed the Petition for Interim Suspension Order (Petition) while acting in her official capacity as the Executive Director of the Board.
2. On September 7, 1971, the Board issued Physician's and Surgeon's Certificate No. A24439, to Respondent. Respondent's certificate will expire on January 31, 2011, unless renewed.
3. The Petition and supporting documents, notice of the February 18, 2010 hearing, and the ex parte ISO were properly served on Respondent Hirtle on February 5, 2010 and again on February 8, 2010. Respondent received timely and proper notice of the ex parte ISO and the February 18, 2010 hearing date.
4. On September 15, 2009, Board Investigator Aracely Villalobos (Villalobos) called Respondent to schedule him for an interview at the Board's Glendale District Office the next day. The investigator provided Respondent with the address and directions. According to the investigator, Respondent seemed confused by the directions she gave him to the district office. The investigator had to give him the address of the district office four times and Respondent did not seem to understand the directions. She described Respondent's speech as much slower and slurred that day than in other previous conversations she had with him.
5. On October 6, 2009, a Petition for an Order Compelling Mental and Physical Examination was filed, seeking to compel Respondent to undergo mental and physical examinations pursuant to Business and Professions Code section 820. Thereafter, an Order Compelling Mental and Physical Examination was issued.

6. On November 7, 2009, Nehal Patel, M.D. performed a physical examination of Respondent at his residence. Respondent was practicing medicine out of his residence, an apartment. Following that examination, Dr. Patel concluded that Respondent was unsafe to practice medicine. During the examination, Respondent explained that he was being treated by two physicians. Pursuant to one of his physician's orders, Respondent takes 8 milligrams of Subutex twice per day. Subutex is primarily a medicine for people suffering from opioid withdrawal and is used less commonly for pain management. Respondent also takes Adderal, an amphetamine, at 30 milligrams per dose three times per day, which he self-prescribes.<sup>2</sup> The Adderal is for his attention deficit hyperactivity disorder (ADHD). Respondent takes Xanax, a benzodiazepene, at two milligrams three times per day, which is a particularly strong dose. Respondent's other doctor prescribes the Xanax for anxiety. According to Dr. Patel, these three drugs are powerful medications and should be administered by one doctor to ensure that Respondent is being properly monitored. The use of the drugs in combination would affect Respondent's judgment and impair his clinical skills. Dr. Patel opined that Respondent is not able to practice medicine and represents a danger to himself and his patients because of the medications he is taking and their combination.

7. On November 5, 2009, Timothy Botello, M.D., performed a psychiatric examination of Respondent. Following that examination, Dr. Botello opined that Respondent is impaired and a danger to himself due to major mental health disorders, based on his use of Xanax, Adderal, and Subutex, without the direction of a treating psychiatrist. Dr. Botello believes that Respondent suffers from the following: Axis I: History of Bipolar II Disorder; History of Adjustment Deficit Disorder with anxious mood, and history of Alcohol Use Disorder; Axis II (no disorder); Axis III: chronic Pain Syndrome from back pain/myofascitis, on Subutex. Given the combination and interaction of medications that Respondent is taking, along with Respondent's major mental disorders, Dr. Botello believes that Respondent is impaired and unable to practice medicine safely. The medications can affect his ability to make sound medical and clinical judgments.

8. Respondent continues in the practice of medicine from his residence. Respondent has recently been through very difficult financial times. He lost his office lease and his home was foreclosed.

9. The evidence established that Respondent suffers from physical and mental impairment that interfere with his ability to practice medicine safely.

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<sup>2</sup> In the past, Adderal has also been prescribed by one of his other doctors.

### LEGAL CONCLUSIONS

1. Respondent suffers from physical and mental impairment that interfere with his ability to practice medicine safely.
2. Petitioner established that permitting Respondent to continue to engage in the practice of medicine will endanger the public health, safety, or welfare, and poses a risk of serious injury to the public justifying the issuance of an Interim Suspension Order pursuant to Government Code section 11529.
3. Petitioner established that the likelihood of injury to the public in not issuing the order outweighs the likelihood of injury to the licensee in issuing the order.
4. There is a reasonable probability that Petitioner will prevail on the merits based on the evidence.
5. Based on the evidence and the argument presented, the issuance of an Interim Suspension Order is warranted at this time.

### ORDER

1. The Petition is granted.
2. Physician's and Surgeon's Certificate number A24439 issued to Respondent James Hirtle, M.D., and all licensing rights appurtenant thereto, are hereby suspended pending a full administrative determination of Respondent's ability to practice medicine safely.
3. Respondent shall not:
  - a. Practice or attempt to practice any aspect of medicine in the State of California;
  - b. Be present in any location which is maintained for the purpose of practicing medicine, or at which medicine is practiced, for any purpose except as a patient or as a visitor of family or friends;
  - c. Advertise, by any means, or hold himself out, as practicing or available to practice medicine;

d. Possess, order, purchase, receive, prescribe for himself or others, furnish, administer, or otherwise distribute controlled substances or dangerous drugs as defined by federal or state law, except as prescribed for Respondent by Respondent's treating physician, who shall be licensed in the State of California;


e. Respondent shall immediately deliver to the Medical Board of California, or its agent, for safekeeping pending the effective date of the Board's final administrative order in this matter, all indicia of his licensure as a physician and surgeon, as contemplated by Business and Professions code section 119, including but not limited to his wall certificate and wallet card issued by the Medical Board of California.

4. Pursuant to Government Code section 11529, an Accusation in this matter shall be filed and served not later than 15 days from the date of this Order.

5. The Office of the Attorney General shall serve written notice of this Order on Respondent Hirtle by 24-hour delivery service and certified mail.

IT IS SO ORDERED.

DATED: February 26, 2010

  
JANIS S. ROVNER  
Administrative Law Judge  
Office of Administrative Hearings