

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

In the Matter of the *Ex Parte* 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 INTERIM SUSPENSION

On February 2, 2010, at Los Angeles, California, the Petition of Barbara Johnston (Petitioner), Executive Director of the Medical Board of California (Board), Department of Consumer Affairs, for issuance, on an *ex parte* basis, of an Interim Order of Suspension, pursuant to Government Code section 11529, came on for hearing before Janis S. Rovner, Administrative Law Judge 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.¹

The Administrative Law Judge (ALJ) read and considered the *ex parte* 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 2, 2010.

¹ 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.

FACTUAL FINDINGS

1. Petitioner filed the *Ex Parte* 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. Service of the Petition was made on Respondent by 24-hour overnight delivery on January 29, 2010. On that same day, a copy of the Petition was left at Respondent's residence, after personal service was attempted. Additionally, on January 29, 2010, Petitioner informed Respondent by telephone of the time and date of the Petition hearing. Given the foregoing, Respondent received adequate notice of the Petition.
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 to meet with Villalobos. 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.² 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

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

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, 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 of medications that Respondent is taking, Dr. Botello believes that Respondent is impaired and unable to practice medicine safely due to the combination of major mental disorders and the effects of the medication in combination with each other. The medications can affect the 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.

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 on an *ex parte* basis.

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 in the underlying action.

5. Based on the evidence and the argument presented, the issuance of an Order of Interim Suspension, on an *ex parte* basis, is warranted at this time.

ORDER


1. The Petition is granted.
2. Petitioner shall serve Respondent with a copy of this Order, the Petition, and all documents supporting the Petition in accordance with Government Code section 11529, subdivision (c).
3. Physician's and Surgeon's Certificate number A24439 issued to Respondent James Hirtle, M.D., and all licensing rights appurtenant thereto, is hereby suspended pending a full administrative determination of Respondent's ability to practice medicine safely due to physical and mental impairment, unless otherwise ordered following the noticed hearing on the Petition for Interim Order of Suspension.
4. Respondent shall not:
 - a. Practice or attempt to practice any aspect of medicine in the State of California until the final decision of the Board following an administrative hearing;
 - b. Be present in any location which is maintained for the purpose of practicing medicine, except as a patient;
 - c. Advertise, by any means, or hold himself out as practicing or available to practice medicine.
5. A noticed hearing on the Petition for Interim Order of Suspension shall be held on **February 18, 2010, at 1:30 p.m.**, at the Office of Administrative Hearings, located at 320 West Fourth Street, Suite 630, Los Angeles, California.

6. Petitioner shall give notice of the hearing in compliance with the provisions of Business and Professions Code section 11529, subdivision (c).

7. Any further documents offered in support of the Petition for Interim Order of Suspension and any documents offered in opposition to the Petition for Interim Order of Suspension shall be served and filed no later five calendar days prior to the date set for the hearing on the Petition for Interim Order of Suspension.

IT IS SO ORDERED.

DATED: February 5, 2010


JANIS S. ROVNER
Administrative Law Judge
Office of Administrative Hearings