

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

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

ROBERT T. PEREZ, M.D.,

Physician's and Surgeon's Certificate
No. G 80178,

Respondent.

Case No. 800-2018-043220

OAH No. 2018071148

ORDER ON NOTICED PETITION

FOR ORDER OF INTERIM SUSPENSION

On August 24, 2018, at Los Angeles, California, the Petition of Kimberly Kirchmeyer (Petitioner), Executive Director of the Medical Board, Department of Consumer Affairs, State of California (Board) for issuance of an interim order of suspension, came on for hearing before H. Stuart Waxman, Administrative Law Judge with the Office of Administrative Hearings.

Chris Leong, Deputy Attorney General, represented Petitioner.

No appearance was made by or on behalf of Respondent despite his having been properly served with notice of the date, time, and location of the hearing.¹

The written evidence and legal argument submitted by Petitioner² having been read, and oral argument having been heard, the Administrative Law Judge makes the following Order:

¹ Respondent was personally served at the Santa Ana City Jail in Santa Ana, California, with the moving papers and notice of the date, time, and location of the hearing.

² Respondent did not file a written response to the Petition for Interim Suspension Order.

FACTUAL FINDINGS

1. On November 2, 1994, the Board issued Physician's and Surgeon's Certificate No. G 80178 to Respondent. The license was in full force and effect at all relevant times. It will expire on February 29, 2020, unless renewed. Respondent specializes in psychiatry.

2. On May 5, 2015, an Accusation entitled *In the Matter of the Accusation Against Robert T. Perez, M.D.*, Case No. 04-2013-234367, was filed with the Board. The Accusation contained causes for discipline which included Gross Negligence (Bus. & Prof. Code, § 2234, subd. (b)), Repeated Negligent Acts (Bus. & Prof. Code, § 2234, subd. (c)), Dishonest Acts (Bus. & Prof. Code, § 2234, subd. (e)), Failure to Maintain Adequate and Accurate Records (Bus. & Prof. Code, § 2266), and Unprofessional Conduct (Bus. & Prof. Code, § 2234). The allegations in that Accusation relate primarily to Respondent's treatment and termination of treatment of a female patient, and his alleged inappropriate affect and use of inappropriate language toward her, her husband, her son, her friend, and a Medical Board investigator. In addition, during the course of treatment, Respondent allegedly spoke to the patient regarding events in his personal life, and he allegedly refused to provide her with her clinical records when she and her husband requested them. The Accusation also alleges Respondent's inappropriate conduct and language toward a former girlfriend and a Superior Court judge.

3. In a Decision effective November 8, 2017, the Board adopted a Stipulated Settlement and Disciplinary Order in the above-referenced case. According to that settlement, Respondent's license to practice medicine was revoked. The revocation was stayed, and Respondent was placed on probation for a period of 35 months under various terms and conditions including completion of an education course, a prescribing practices course, a professionalism program (ethics course), and a professional boundaries program. Respondent also agreed to undergo a psychiatric evaluation.

4. The Stipulated Settlement and Disciplinary Order contained the following clauses:

10. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest those charges.

11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

12. Respondent agrees that if he ever petitions for early termination of probation or modification of probation, or if the Board ever petitions for revocation of probation, all of the charges and allegations contained in Accusation No. 04-2013-234367, shall be deemed true, correct and fully admitted by Respondent for purpose of that proceeding or any other licensing proceeding involving Respondent in the State of California.

5. On August 22, 2017, an Accusation entitled *In the Matter of the Accusation Against Robert T. Perez, M.D.*, Case No. 800-2014-007888, was filed with the Board. The Accusation contained causes for discipline which included Sexual Exploitation (Bus. & Prof. Code, § 729), Sexual Misconduct (Bus. & Prof. Code, § 726), and Unprofessional Conduct (Bus. & Prof. Code, § 2234). The gravamen of that Accusation involved Respondent's alleged romantic relationship with, and subsequent marriage to one of his patients.

6. Instead of sending Respondent to a psychiatric evaluation by a board-certified psychiatrist as set forth in the Stipulated Settlement and Disciplinary Order, Respondent's probation monitor erroneously sent him to a psychiatric evaluation by James L. Gagné, M.D., who was board-certified in internal medicine, addiction medicine, and pain medicine. No evidence was offered to establish that Dr. Gagné had any expertise in psychiatry. Nonetheless, on January 16, 2018, Dr. Gagné conducted an evaluation of Respondent which included a history and physical, but which did not contain a mental status examination or any other evaluations appropriate for a psychiatric examination. Based on his conversation with Respondent, Dr. Gagné decided that, because some of Respondent's statements seemed far-fetched, Respondent was dishonest, that he had "engaged in egregious violations of professional ethics and conduct," that he had engaged in behavior "highly inappropriate for a medical professional," and that, therefore, he should not be treating patients.

7. On February 2, 2018, Respondent's probation monitor wrote to Respondent stating:

On January 26, 2018, the Board referred you for an evaluation with an Internal Medicine physician, Dr. Gagne (*sic*). Your order calls for a Psychiatric Evaluation conducted by a Board certified psychiatrist. I inadvertently sent you to the wrong evaluator. I do apologize for the inconvenience this may have caused you. You are *not required* to pay for the evaluation with Dr. Gagne, (*sic*) you completed on January 26, 2018.

(Emphasis in text.)

8. For the reasons set forth in Factual Findings 6 and 7, Dr. Gagné's findings and opinions are given no weight.

9. On March 8, 2018, Respondent underwent a psychiatric evaluation by Richard J. Moldawsky, M.D., a board-certified psychiatrist. Upon arriving at Dr. Moldawsky's office, Respondent disclosed to Dr. Moldawsky that the stress of the ongoing process involving his medical license was taking a physical and emotional toll on him, and that, as of two weeks prior to their meeting, he had taken steps to close his practice.

10. After conducting a psychiatric evaluation, Dr. Moldawsky wrote a report in which he found the following with respect to Respondent:

Mental Status Examination

Dr. Perez was casually dressed, and quite cooperative. He was respectful and even deferential with me to a degree. He displayed neither psychomotor agitation nor retardation, and engaged directly with good eye contact without any apparent attempt to be evasive. A few of his answers were tangential, but this wasn't a consistent occurrence. He spoke in a normal tone, rate and rhythm, and there was no overt disorganization of thought. That said, he expressed, as noted above, a set of fixed beliefs that he is the victim of a great injustice, that he's been exploited by his wife and the MBC, especially the initial investigator, and that the Board's demands on him are unjustified. Asked directly, he believes there is no alternative way to explain what has happened, that he could not be wrong. Asked directly, he does not see this as at all associated with any ethnic prejudice. There was no evidence of hallucinations. His thought processes were internally consistent (once one accepts his premises as fact). His mood was anxious, and he was a bit fidgety on a few occasions. He became tearful at a few moments, appropriate to the content. Though he is apprehensive about his future, [he] expresses a bland optimism and has no current thoughts of self-harm, suicide, or harm to others. A formal cognitive screening was not done, but there was nothing to suggest cognitive impairment.

Diagnosis/Prognosis

Most probably, Dr. Perez meets criteria for Paranoid Personality Disorder, and, possibly, Delusional Disorder as well. Both of these somewhat hinge on whether there is external credible evidence to support or refute his fixed beliefs. Based on the MBC information provided me, his beliefs seem to be unfounded, and his rigid inability and/or unwillingness to consider alternate ideas, in combination with the significant impact on his emotional state, behavior, and level of functioning

all support one or both of these diagnoses. At this point, he may have some degree of a separate depressive disorder as well.

Summary and Recommendations

I do not think that Dr. Perez is a danger to himself, or to patients, or the public. He has no history of violence or physical aggression. His isolation and his having minimal outside supports is a source of concern, but he otherwise has little in the way of the usual risk factors for imminent risk of harm to self or others.

Dr. Perez's ability to practice medicine safely is impaired by his mental condition, something he himself appears to recognize enough to have taken action to discontinue his practice. Though that decision could be, in a sense, a way to save face, it is still in the best interests of all that he not practice now.

I recommend that he continue his psychotherapy, mostly as a way to provide some emotional support. In general, people with the diagnoses I have assigned to him do not improve significantly with either psychotherapy or psychotropic medication. That his symptoms are so intricately intertwined with the MBC and his marital situation make it unlikely, in my view, that he'll be able to set them aside enough so as to not interfere with his ability to practice. In other words, I doubt that treatment will restore his health to a point at which he can be entrusted to practice medicine.

11. Dr. Moldawsky was subsequently provided with a California Department of Justice Controlled Substance Utilization Review & Evaluation System (CURES) report which indicated that Respondent was still engaged in the practice of medicine. This prompted Dr. Moldawsky to write an addendum to his report in which he stated:

My statement that Dr. Perez was not a danger to himself or others was intended solely to reflect that he had no active suicidal or homicidal thoughts, nor any conscious intent or wish to harm himself or others, either on its own or as a symptom or a psychiatric disorder.

Nevertheless, his behavior patterns and current condition do, in my opinion as stated, do (*sic*) impact his judgment to the extent that he should not be allowed to practice medicine. The reports of his behaviors with patients and with others are spelled out in the MBC reports and referred to in my report.

Dr. Perez told me, as previously noted, that he had decided to discontinue seeing patients. To whatever extent he continues to do so, despite what he told me, he does pose a danger to the public, ie, his ability to practice medicine safely is significantly impaired.

12. On May 30, 2018, a Second Amended Accusation and Petition to Revoke Probation entitled *In the Matter of the Second Amended Accusation and Petition to Revoke Probation Against Robert T. Perez, M.D.*, Case No. 800-2014-007888, was filed with the Board.³ The Accusation contained causes for discipline which included Sexual Exploitation (Bus. & Prof. Code, § 729), Sexual Misconduct (Bus. & Prof. Code, § 726), and Unprofessional Conduct (Bus. & Prof. Code, § 2234), and causes to revoke probation which included Failure to Participate in Education Course, Failure to Participate in a Prescribing Practices Course, Failure to Participate in Professionalism Program (Ethics Course), Failure to Participate in Professional Boundaries Program, and Failure to Submit Quarterly Declarations). In the Second Amended Accusation and Petition to Revoke Probation, the allegations regarding Respondent's romantic relationship with, and subsequent marriage to one of his patients was repeated, and several failures to comply with the terms and conditions of his probation were alleged.

13. The hearing on the Second Amended Accusation and Petition to Revoke Probation is presently scheduled for November 19 and 20, 2018. Complainant is contemplating filing a Third Amended Accusation and Petition to Revoke Probation to include a mental impairment pursuant to Business and Professions Code section 822.

14. The filing of the Second Amended Accusation and Petition to Revoke Probation triggered paragraph 12 of the Settlement Agreement and Disciplinary Order in case number 04-2013-234367. (See Factual Finding 4.) Accordingly, the following charges and allegations are deemed true, correct, and admitted:

1. During the course of treatment with a female patient, Respondent discussed events occurring in his personal life.
2. During the course of treatment of the same female patient, Respondent used inappropriate language that made the patient feel uncomfortable.
3. In connection with the termination of treatment by the same patient, Respondent exhibited inappropriate affect and used inappropriate language toward the patient, her husband, her son, her friend, and a Medical Board investigator.

³ No evidence was offered regarding a First Amended Accusation or an initial Petition to Revoke Probation.

4. Respondent refused to provide the patient with her clinical records.

5. Respondent made false, threatening, and harmful statements regarding his former girlfriend, thereby exhibiting an unprofessional demeanor, which was unbecoming to a member in good standing of the medical profession, including:

a. making multiple threats to call the immigration service to have her deported;

b. threatening to refuse to pay child support for their daughter;

c. threatening to obtain full custody of their daughter;

d. making an anonymous tip to the Orange County Police Department to report her for not having a driver's license and for working illegally;

e. writing numerous letters of a threatening nature alleging she was mentally ill and suffering from Bipolar Disorder;

f. altering her medical records after his last session with her.

LEGAL CONCLUSIONS

1. Cause exists to issue an interim suspension order.

2. Respondent has engaged in acts constituting violations of the Medical Practice Act in that he has been determined to be mentally incompetent to practice medicine safely (Bus. & Prof. Code, §§ 820 and 822) by reason of Findings 4, 5, 9, 10, 11, 12, 13, and 14.

3. Permitting Respondent to continue to engage in the unrestricted practice of medicine will endanger the public health, safety and welfare by reason of Findings 4, 5, 9, 10, 11, 12, 13, and 14.

4. There is a reasonable probability that Petitioner will prevail in the underlying action by reason of Findings 4, 5, 9, 10, 11, 12, 13, and 14.

5. The likelihood of injury to the public in not issuing the below order outweighs the likelihood of injury to Respondent in issuing the order by reason of Findings 4, 5, 9, 10, 11, 12, 13, and 14.

6. Although Dr. Moldawsky's diagnoses were equivocal, his opinion as to whether Respondent is capable of safely practicing medicine was not. The fact that Respondent chose to continue to practice medicine instead of closing his practice, as evidenced by the CURES report, prompted Dr. Moldawsky to write an addendum to his initial report, in order to make it clear that, although Respondent was neither homicidal nor suicidal, he was also not capable of practicing medicine safely. Respondent's license is not being suspended because he changed his mind about continuing to practice medicine. It is being suspended because his ability to engage in the safe practice of medicine is significantly impaired.

7. Given Respondent's absence from the hearing and the lack of opposition papers, there was no evidence submitted to contradict that offered by Petitioner. Given the modest standard of proof for petitions brought pursuant to Government Code section 11529, this petition must be granted.

ORDER

1. The petition for an interim order of suspension of Respondent's physician's and surgeon's certificate is granted.

2. Physician's and Surgeon's Certificate No. G 80178, issued to Respondent, Robert T. Perez, M.D., and all licensing rights appurtenant thereto, are suspended pending a full administrative determination of Respondent's fitness to practice medicine.

3. Respondent shall not:

a. Practice or attempt to practice any aspect of medicine in the State of California until the decision of the Board following an administrative hearing.

b. Advertise, by any means, or hold himself out as practicing or available to practice medicine or to supervise assistants.

c. Be present in any location or office which is maintained for the practice of medicine, or at which medicine is practiced, for any purpose except as a patient or as a visitor of family or friends.

d. Possess, order, purchase, receive, prescribe, furnish, administer, or otherwise distribute controlled substances or dangerous drugs as defined by federal or state law.

4. Respondent shall immediately deliver to the Medical Board of California, or its agent, for safekeeping pending a final administrative order of the Division 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, as well as all prescription forms, all prescription drugs not legally prescribed to Respondent by his treating physician and surgeon, all Drug Enforcement Administration Drug Order forms, and all Drug Enforcement Administration permits.

5. The operative pleading is already filed. However, should Petitioner choose to file another amended pleading, she shall serve and file the pleading pursuant to Government Code sections 11503 and 11505 within 30 days of the date on which this Petition was submitted. (Govt. Code, § 11529, subd. (f).)

DATED: August 27, 2018

DocuSigned by:
H. Stuart Waxman
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H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings