

BEFORE THE  
MEDICAL QUALITY HEARING PANEL  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

KIMBERLY KIRCHMEYER, Executive  
Director of the Medical Board of California,  
Department of Consumer Affairs, State of  
California,

Petitioner

v.

PAUL YEH, M.D.,

Physician's and Surgeon's Certificate  
No. A155642,

Respondent.

Case No. 800-2018-043778

OAH No. 2018050451

**INTERIM SUSPENSION ORDER**

Matthew Goldsby, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on June 4, 2018, in Los Angeles, California.

David Carr, Deputy Attorney General, appeared and represented petitioner Kimberly Kirchmeyer, Executive Director, Medical Board of California (Board).

No appearance was made by or on behalf of respondent Paul Yeh, M.D.

Before the hearing, the administrative law judge read and considered the Petition for Ex Parte Interim Suspension Order (Petition), the memorandum of points and authorities, and the affidavits presented in support of the Petition.

During the hearing, petitioner presented oral argument. Finding that good cause was shown and that notice was given as required by law, the administrative law judge granted the Petition as follows:

## FACTUAL FINDINGS

### *Jurisdiction and Procedural History*

1. On May 10, 2018, petitioner filed the Petition pursuant to Government Code section 11529, seeking to suspend the Physician's and Surgeon's Certificate issued to respondent Paul Yeh, M.D., pending a full hearing on the merits.

2. On May 11, 2018, after receiving and considering documents submitted by both parties and hearing oral argument, the administrative law judge issued an ex parte order suspending respondent's license and ordering the Petition to be set for a noticed hearing. Respondent, by and through his counsel, filed a written waiver of his right to a noticed hearing within 20 days of the issuance of the ex parte order, and the matter was scheduled for a noticed hearing on June 4, 2018.

3. On May 14, 2018, the Office of Administrative Hearings served the Ex Parte Interim Suspension Order containing the date, time, and location for the noticed hearing, and a scheduling order for supplemental documents. The order was delivered by overnight mail and electronic transmission addressed to respondent's counsel as set forth in the Notice of Representation filed by respondent.

4. On May 25, 2018, petitioner timely filed the Declaration of Frances Cain, Assistant Vice President for Assessment Services with the Federation of State Medical Boards (FSMB). (Ex. 8.)

5. Respondent filed no documents in compliance with the scheduling order and did not appear at the scheduled hearing to present written evidence.

### *Grounds for Suspension*

6. On March 27, 2018, respondent submitted an application for licensure as a physician and surgeon. The Board received transcripts confirming respondent's completion of medical school and documentation of his participation in a postgraduate training program. (Ex. 3.)

7. Before the Board will issue a physician and surgeon license, applicants must successfully complete all parts of a uniform examination designed to ascertain the applicant's fitness to practice medicine. The most common examination taken by applicants is the United States Medical Licensing Examination (USMLE). The USMLE is a four-part examination which assesses a physician's ability to apply knowledge, concepts, and principles, and to demonstrate fundamental skills. The first three parts of the USMLE are typically completed in Step 1 and Step 2 during medical school. The final part, designated as Step 3, is typically taken during the first or second year of postgraduate training. (Ex. 2; Cal. Code Regs., tit. 16, § 1328, subd. (13).)

8. On February 21, 2018, the FSMB received a request from respondent for “two hardcopy official transcripts” of his USMLE scores. On February 22, 2018, the FSMB sent the requested transcripts to respondent by first-class mail.

9. On February 27, 2018, the FSMB received a second request from respondent for “two official hardcopy transcripts to be sent to a business address in Torrance, California.” (Ex. 8.) On March 1, 2018, the FSMB delivered the requested transcripts by Federal Express to the address provided in the request.

10. On April 18, 2018, the Board received a Federal Express package containing a document purporting to be a Certified Transcript of Scores from the FSMB. April Alameda, Chief of Licensing with the Board, examined the transcript and observed respondent’s name and the following stated information at the bottom section of the transcript:

USMLE Step 3				
Test Date	Pass/Fail	Total	MP	
2/12/2018	Pass	208	(196)	

(Exs. 2 and 4.)

11. Based on the document contained in this envelope, the Board determined that respondent had passed all four parts of the USMLE examination.

12. On April 27, 2018, the Board issued to respondent Physician’s and Surgeon’s Certificate number A155642.

13. On May 4, 2018, Frances Cain of the FSMB contacted the Board to inquire about respondent’s licensure status. The Board informed Ms. Cain that a license had been issued based on the transcript described at Factual Finding 10. Ms. Cain received a scanned copy of the document relied upon by the Board, and “checked the purported transcript against the FSMB examination records and confirmed that [respondent had] yet to pass USMLE Step 3.” (Ex. 8.)

14. Ms. Cain provided the Board with an official transcript dated May 18, 2018, which reflects that respondent passed USMLE Step 1 and Step 2, but does not reflect that respondent has taken or passed USMLE Step 3. (Ex. 9.)

15. On May 7, 2018, Ms. Cain reviewed a scanned copy of the packaging in which the document described at Factual Finding 10 was mailed to the Board. She observed that the package was “shipped from Euless, Texas, which is the location of the FSMB office in Texas” and that it was “shipped from the Federal Express office in Euless on April 21, 2018, a Saturday.” (Ex. 8.) Ms. Cain declared that “FSMB does not ship on Saturdays” and that “any transcripts sent via Federal Express are shipped not from the Federal Express office in

Eules, Texas, but are tendered through a secure Federal Express pick-up box in our office.” (Ex. 8.)

16. In addition, Ms. Cain observed the following disparities between the Federal Express envelope received by the Board and the Federal Express envelopes sent by the FSMB in the regular course of its business:

(A) The FSMB designates “Assessment Services” on its Federal Express shipping label, whereas, on the envelope received by the Board, “much of the shipper’s information was whited out, . . . the word ‘Paul’ does appear above ‘FSMB’ . . . [and] ‘Assessment Services’ does not appear on the questioned envelope.” (Ex. 8.)

(B) The FSMB Federal Express equipment is set to “a default weight of 1.00 lbs” and “does not allow a lower weight to be entered;” Ms. Cain observed that the “indicated weight for the questioned envelope was 0.10 lbs.” (Ex. 8.)

(C) The FSMB addresses any Federal Express mailing to a specific person at the Board, whereas “the questioned envelope was addressed alternatively to ‘CASB Medical Board of Cal’ and ‘CASB Medical Board of California,’ with no person named as a recipient.” (Ex. 8.)

(D) The FSMB Federal Express mailings to the Board list the Board’s street number and suite number on the same line, whereas “the questioned envelope places them on separate lines.” (Ex. 8.)

(E) The FSMB inserts the telephone number (916) 263-2389 as the Board’s contact number for Federal Express shipments, whereas Ms. Cain observed that the questioned envelope provides the telephone number (916) 263-2382 as the Board’s contact number. (Ex. 8.)

(F) The FSMB includes “a numerical internal code for the Assessment Services department at FSMB” in two sections on its Federal Express shipping labels, whereas “no reference number appears in either section on the questioned envelope.” (Ex. 8.)

#### *Ultimate Findings*

17. Respondent has not completed or passed Step 3 of the USMLE.

18. The FSMB did not prepare the purported transcript described at Factual Finding 10.

19. The FSMB did not deliver to the Board the purported transcript described at Factual Finding 10.

## LEGAL CONCLUSIONS

1. An administrative law judge may issue an interim order suspending a license or imposing license restrictions if affidavits in support of a petition for such an order show that the licensee has engaged in, or is about to engage in, acts constituting a violation of the Medical Practice Act, and that permitting the licensee to continue to engage in the profession for which the license was issued will endanger the public health, safety, or welfare. (Gov. Code, § 11529, subd. (a).)

2. Consistent with the burden and standards of proof applicable to a preliminary injunction in civil actions, an administrative law judge shall issue an interim order upon concluding that (1) there is a reasonable probability that the petitioner will prevail in the underlying action, and (2) the likelihood of injury to the public in not issuing the order outweighs the likelihood of injury to the licensee in issuing the order. (Gov. Code, § 11529, subd. (e); Code Civ. Proc., § 527.)

3. In all cases in which an interim order is issued, and an accusation or petition to revoke probation is not filed and served pursuant to Government Code sections 11503 and 11505 within 30 days of the date on which the parties to the hearing on the interim order have submitted the matter, the order dissolves. (Gov. Code, § 11529, subd. (f).)

4. Petitioner has established that cause exists under Government Code section 11529, subdivisions (a) and (e), to suspend respondent's license pending an administrative hearing on the merits of an accusation to be filed and served pursuant to Government Code sections 11503 and 11505 within the time provided in Government Code section 11529, subdivision (f).

5. There is a reasonable probability that petitioner will prevail in the underlying action. The affidavits presented in support of the Petition establish that respondent has not met the criteria for licensure; respondent presented no evidence to the contrary. Accordingly, respondent is engaging in acts constituting a violation of the Medical Practice Act, and permitting him to continue to practice as a physician and surgeon will endanger the public health, safety, or welfare.

6. Serious injury would result to the public from respondent's unauthorized and unqualified practice of medicine. Accordingly, the likelihood of injury to the public in not issuing the order outweighs the likelihood of injury to respondent in issuing the order.

## ORDER

1. The Petition is granted. Respondent's Physician's and Surgeon's Certificate number A155642 is suspended pending a full hearing on the merits.

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2. Petitioner shall file and serve an accusation pursuant to Government Code sections 11503 and 11505 on or before July 5, 2018. This order shall be dissolved pursuant to Government Code section 11529, subdivision (f), if petitioner fails to comply with this order.

3. This order shall remain in full force and effect until such time as an accusation is timely filed and served, and a decision is rendered thereon. During the time that this order is in effect, respondent shall not:

(A) Practice or attempt to practice any aspect of medicine or surgery;

(B) Advertise, by any means, or hold himself out as practicing or available to practice medicine to supervise assistance;

(C) Be present in any location or office which is maintained in the practice of medicine, or at which medicine is practiced, for any purpose except as a patient or as a visitor of family and friends: and

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

4. Upon receipt of this order, respondent shall immediately deliver to the Board for safekeeping pending a 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 Board, as well as all prescription forms, all prescription drugs not legally prescribed to respondent by his treating physician or surgeon, all Drug Enforcement Administration Drug Order forms, and all Drug Enforcement Administration registrations and permits.

DATED: June 6, 2018

DocuSigned by:  
*Matthew Goldsby*  
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MATTHEW GOLDSBY  
Administrative Law Judge  
Office of Administrative Hearings