

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

LINDA K. WHITNEY
Executive Director, Medical Board,
Department of Consumer Affairs,
State of California

Case Nos. D1-2006-175931 and
19-2010-207355

Petitioner,

v.

Michael Edward Platt, M.D.
72-785 Frank Sinatra Drive, #100
Rancho Mirage, CA 92270

Physician's and Surgeon's Certificate
No. G 23729

Respondent.

DECISION ON PETITION FOR INTERIM SUSPENSION ORDER

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in San Diego, California on August 6, 2010.

Beth Faber Jacobs, Deputy Attorney General, represented Linda Whitney, Executive Director, Medical Board of California, Department of Consumer Affairs.

Joseph P. Furman, Esq., represented Respondent, who was present during the hearing.

The petition, memorandum of points and authorities in support of the petition and attached exhibits (Exhibit A), opposition to the petition, memorandum of points and authorities and declarations and documents in support of opposition (Exhibit B), along with oral argument of the parties during the hearing, have been considered.

The matter was submitted on August 6, 2010.

FACTUAL FINDINGS

1. On July 20, 2010, Linda K. Witney, Executive Director of the Medical Board of California (Medical Board), Department of Consumer Affairs (Petitioner) filed a Petition for Interim Order of Suspension (ISO) in her official capacity.

2. On November 24, 1972, the Medical Board issued Physician's and Surgeon's Certificate No. G 23729 to Michael Edward Platt, M.D. (Respondent). At all times relevant herein, the certificate was in full force and effect and will expire on November 30, 2011, unless renewed.

3. Respondent has practiced in California for 38 years; he has worked primarily as an internist and in nursing homes/geriatric care. In 1995, he moved to Palm Desert region, California. His practice focuses on a natural hormone approach to wellness.

4. On May 2, 2008, Petitioner filed an Accusation against Respondent in the matter entitled: *In the Matter of the Accusation Against Michael Edward Platt, M.D.*, Medical Board Case No. 09-2006-175931.

The Accusation alleged that Respondent had been grossly negligent, repeatedly negligent, incompetent, furnished dangerous drugs without conducting adequate and appropriate examinations and failed to maintain adequate medical records in the care and treatment of three patients in violation of Business and Professions Code sections 2234, subdivisions (b), (c) and (d), 2242 and 2266.

More specifically, the Accusation alleged that:

- Respondent diagnosed and treated three women for incontinence without first conducting an appropriate physical examination and without consulting prior physicians or obtaining prior medical records.
- Respondent prescribed testosterone for their incontinence, though such a prescription has no scientific basis and is outside the standard of care.
- With respect to two patients, Respondent diagnosed a thyroid disorder and prescribed thyroid, even though the patient's hormone levels were normal.
- Respondent diagnosed a patient with ADHD based solely on her answer to questions about sleeping in a car and being irritable.
- Respondent failed to treat a patient for her extremely high cholesterol and LDL levels and failed to refer her to a specialist.

Finally, the Accusation alleged incompetence based on statements Respondent made during his interview with the Board – that he did not conduct physical examinations because he felt he obtained enough information by merely speaking with his patients and that physical examinations are not required by the standard of care prior to evaluation, diagnosing or commencing treatment, that he is not bound by peer-reviewed medical literature, and that he does not utilize normal and accepted laboratory values because he disagrees with them.

5. On October 17, 2008, Respondent signed a Stipulated Settlement and Disciplinary Order. He did not contest the truth of the factual allegations in the Accusation.

6. On February 5, 2009, effective March 9, 2009, the Board disciplined Respondent.

Pursuant to the terms of the stipulated disciplinary action, his certificate was revoked, the revocation was stayed, and probation was imposed for five years. Among other things, the terms and conditions of probation required that Respondent take and complete successfully the Physician Assessment and Clinical Education Program (PACE) offered at the University of California, San Diego School of Medicine (UCSD).

7. Respondent enrolled in and completed the PACE Program. He participated in the Phase I Assessment on September 29 and 30, 2009 and the Phase II assessment on February 24, 25 and 26, 2010 and March 8 and 9, 2010. By letter, dated May 25, 2010, the PACE Program Director notified the Medical Board that Respondent's overall performance was consistent with a "fail", explained the implications of this determination and stated "we have grave concerns about his ability to safely practice medicine and believe that he poses a danger to his patients."

Respondent did not successfully complete the PACE Program and therefore violated the terms and conditions of probation.

8. In support of its Petition, Petitioner submitted:

- Declaration of William Norcross, M.D. (Dr. Norcross), his resume, forms completed by physicians during Phase II, his report to the Medical Board, dated May 26, 2010;
- Declaration of Jennifer Wu, M.D. (Dr. Wu), her resume, her oral clinical examination of Respondent, her audit of his medical records and the evaluation form completed by Dr. Wu during Phase II;
- Declaration of Carlos Rojas, M.D. (Dr. Rojas), his resume and the evaluation form completed by Dr. Rojas during Phase II; and
- Declaration of Suraj Achar, M.D. (Dr. Achar), his resume and the evaluation form completed by Dr. Achar during Phase II.

9. In his declaration, Dr. Norcross describes his qualifications, the PACE Program, his role in the PACE Program, a brief history of Respondent's medical career, a summary of Respondent's evaluations and results obtained during the PACE Program, and his opinion regarding Respondent's ability to practice medicine safely.

10. Dr. Norcross has been licensed since 1975 and has practiced family medicine since 1977. He was the director of the UCSD family medicine residency program from 1986

through 1999 and has been the PACE program director since its inception in 1996. Regarding his qualifications, in his Declaration, Dr. Norcross stated, in pertinent part:

“As the Director of the PACE throughout its existence, I have been personally involved with the clinical competency assessment of over 1000 physicians of all specialties, including internists and alternative medicine practitioners. For the past thirteen years, I have been using state-of-the-art techniques for assessing competency. As the Director of PACE, I am responsible for assuring the quality of our assessment methods; tracking the performance of all doctors participating in PACE; and reviewing, summarizing, and reporting the overall evaluations for all participating physicians. In addition to my role at PACE, I have had extensive experience as a faculty member of the UCSD School of Medicine, in the comprehensive clinical competency assessment of approximately 150 family medicine residents, 80 faculty physicians, and several hundred medical students.” (Norcross Declaration, para.3)

11. The UCSD PACE Program was created in 1996 to provide comprehensive clinical competency assessment services for physicians in need and to deliver remedial education for all detected deficiencies in competency, where possible. PACE does this through multilevel, multimodality assessment techniques, including standardized written examinations, an oral clinical examination, observation of a comprehensive history and physical examination, a series of case-based computerized, “real time” clinical scenarios (Primum®, NBME) followed by a faculty-mentored transaction stimulated recall (Phase I) and the 5-day on-site clinical education and assessment (Phase II).

12. Respondent’s performance on Phase I assessment was unsatisfactory.

Respondent was asked to complete a history and perform a physical examination on a mock patient, observed by PACE faculty member Martin Schulman, M.D. (Dr. Schulman). He performed an incomplete history and physical examination and did not address any of the preventive care issues. In Dr. Norcross’ opinion, lack of thoroughness in performing a history and physical examination by a general practitioner or someone who treats with hormones is a potential cause of patient harm and represents a threat to the public safety.

Dr. Wu, Associate Clinical Professor of Family Medicine, UCSD School of Medicine, administered Respondent’s oral clinical examination, an assessment of his basic clinical knowledge. She assessed his management of six case scenarios. Among other things, she reported that Respondent showed profound knowledge deficits in several basic areas relevant to the practice of medicine as well as a severe lack of understanding regarding the importance of conducting physical examinations and work-ups; and, Respondent’s liberal use of progesterone and testosterone could be potentially dangerous. Based on a 10-point grading scale with 10 being perfect and 7.0 being the grade required to pass, Respondent received a failing grade of 6.9.

In addition, Dr. Wu performed an audit of Respondent’s medical records. She randomly selected seven chart notes. In her opinion, all were below the standard of care.

On the PRIMUM computer simulation program, Respondent correctly diagnosed six of the eight cases; however he ordered some unnecessary tests in one case; and, in another case, his examinations and laboratory tests were deemed inadequate. He scored in the 67th percentile on the Internal Medicine examination, in the 54th percentile on the Mechanisms of Disease examination and in the 26th and 1st percentiles respectively on the Pharmacotherapeutics, and Ethics and Communications examinations.

13. During Phase II, six physicians, including Doctors Wu, Rojas and Achar, evaluated Respondent. In accordance with PACE policy, none of the clinical faculty members had prior information as to why Respondent was participating in the PACE.

After evaluation, each faculty member electronically completed a UCSD PACE Phase II Clinical Education Evaluation Form; upon completion, the form is sent to Dr. Rojas and Dr. Norcross for review.

14. Respondent's performance during Phase II was unsatisfactory.

Respondent performed poorly during his time with UCSD Family Medicine faculty. He demonstrated poor skills in the care of common outpatient problems encountered in a Family Medicine Clinic. He told many of the evaluators that he does not examine any of his regular patients; instead he uses handshakes and examinations of the pulse to determine if a patient is suffering from endocrine imbalances. He repeatedly stated that he does not need to follow the standard of care because he is the only practitioner who really understands the disease process. Respondent acknowledged that his theories were not proven and cannot be established through modern medical techniques. He acknowledged that he does not use an evidence-based approach to medicine. His medical knowledge was difficult to assess as he reported basing much of his patient care decisions on personal experiences and on very limited numbers of patient outcomes.

Consistently Respondent demonstrated poor professional boundaries with patients and faculty throughout his Phase II experience: on multiple occasions, he touched patients after he was told not to do so. On several occasions, he was asked to limit his participation to role of observer but he continued to ask questions of patients and offer unsolicited and sometimes potentially harmful advice.

Respondent's performance was uniformly poor. Based on his performance on the NBME multiple choice examinations during Phase I, his discussions with some of the UCSD Family Medicine PACT faculty and performance on the standardized patient examination in Phase II, it appears that Respondent has a solid foundation of medical knowledge in allopathic medicine; however, he does not apply this information to his own practice and has no intention of doing so. In the face of solid clinical data that dictates a particular course of action, Respondent chooses to base patient care decisions on personal experience, which was potentially dangerous on multiple occasions.

Even more concerning was that Respondent lacked insight into the fact that many of the treatments recommended during Phase II were not only unconventional but potentially dangerous, such as recommending that a diabetic patient be taken off all of his medications.

15. After completing the PACE Program, PACE faculty determined that Respondent is unsafe to practice medicine and that he demonstrated deficiencies in the areas of clinical reasoning and judgment and performance. In his declaration, Dr. Norcross stated, in pertinent part:

“The deficiencies documented during this two-phase PACE Assessment, if applied in the real world of medical practice, would almost certainly result in patient harm, and perhaps even death. He does not believe in performing physical exams. He eschews the standard of care and evidence based medicine. Taking the constellation of his deficiencies into account, the faculty of the UCSF PACE Program have grave concerns regarding the quality of Dr. Platt’s clinical practice, all of which leads us to the opinion that Dr. Platt is not competent to practice medicine safely. Dr. Platt has failed the PACE Assessment and will not be granted a certificate indicating that he has successfully demonstrated the minimum requirement of a clinical practice commensurate with safe clinical practice.” (Norcross Declaration, para. 39.)

Further, because of Respondent’s lack of insight into his deficiencies, Dr. Norcross opined that even a three to six month intensive study would not be sufficient to bring Respondent up to the level of a competent physician who is safe to practice medicine.

16. Respondent opposes the issuance of the ISO. In support of his position, Respondent filed his opposition to the petition for interim order of suspension, memorandum of points and authorities, his declaration and his attorney’s declaration and a copy of his book.

17. In Respondent’s opinion, PACE improperly assessed him. He is not a primary care provider but a wellness doctor, an alternative medicine practitioner¹ and therefore should have been evaluated as such. Further, the physicians who evaluated him were not qualified to do so.

18. Also, Respondent argues that, as an alternative medicine physician, pursuant to Business and Professions Code section 2234.1, he cannot be charged with violation of Business and Professions Code sections 2234, subdivisions (b), (c), and (d).

1 “Alternative or complementary medicine” is defined in Business and Professions Code section 2234.1 subdivision (b) as:

“those health care methods of diagnosis, treatment or healing that are not generally used but that provide a reasonable potential for therapeutic gain in a patient’s medical condition that is not outweighed by the risk of the health care method.”

19. Respondent argues that there are disputed issues of fact in this matter.

He asserts that some statements made by PACE physicians are false or inaccurate. In his declaration, Respondent provided a number of examples and clarified. Among other things, Respondent stated that the allegation that he uses testosterone for patients with uterine bleeding is false; the allegation that he takes diabetics off insulin is false; the allegation that he told a patient with diabetes to stop his medication and instead take progesterone is false.

Respondent asserts that he believes in physical examinations and therefore routinely performs appropriate physical examinations; in addition he reviews all records that are available to him. He argues that it is wrong to say that he discards standard laboratory tests; he utilizes these tests and interprets them in conjunction with the patient's history and vital signs. He states he is not a primary care physician for his patients; his patients have primary physicians and/or gynecologists who have performed physical examinations on his patients in addition to any that he has performed.

20. Respondent argues that there is no imminent threat of harm to the public because, by September 30, 2009, PACE faculty had determined that he did not successfully complete Phase I of PACE but the ISO Petition was not filed until July 20, 2010, almost 10 months later. Further he has practiced medicine for 38 years, and there is no allegation that he has caused patient injury or harm.

21. In his opinion, a suspension will be devastating to his practice, and his patients will suffer greater harm if his license is suspended if they elect to continue treatment without follow-up visits and consultation with him.

In addition, Respondent is concerned about his employees. He employs 12 people who have families to support. All would suffer "tremendous and devastating hardships" particularly in this economy.

22. Respondent's arguments lack merit for a number of reasons.

- Respondent's competence as a physician was extensively and thoroughly assessed (Findings 9 through 15). The declarations and resumes attached to the petition establish that the physicians who evaluated him were competent to do so. It is noted that, in his declaration, Dr. Norcross stated "I have been personally involved with the clinical competency assessment of over 1000 physicians of all specialties, including internists and alternative medicine practitioners." Respondent offered no declaration that refutes the foregoing.
- At no time has Respondent's treatment and advice met the criteria set forth in Business and Professions Code section 2234.1.
- Typically credibility is not considered when evaluating affidavits. In this case, however, some of the statements in Respondent's declaration are

contrary to statements that he made to the Medical Board and to several PACE faculty.

- There is no dispute that there were 45 days between the time that the Medical Board received notice of PACE faculty's findings and the filing of the Petition. However, considering the potential public danger established in the declarations, Petitioner's delay was not unreasonable.

LEGAL CONCLUSIONS

1. *Burden of Proof.* The burden of proof in this case is on Petitioner to establish the requested relief by substantial evidence. (Gov. Code, § 11529, subd. (e).)

2. *Standard of Review.* Government Code section 11529, subdivision (a), provides that an ISO may issue against a licensee in an allied health profession (1) if the licensee (a) has or is about to engage in acts or omissions in violation of the profession's governing statutes or (b) is unable to practice safely because of a physical or mental impairment, and (2) if permitting the licensee to continue practicing will endanger the public health, safety or welfare. According to Government Code section 11529, subdivision (e), and consistent with the standards relative to a preliminary injunction issued under Code of Civil Procedure section 527, an ISO shall issue where, in the exercise of discretion, the administrative law judge concludes: (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.

3. *Cause for Interim Suspension.* Cause was established for the interim suspension of Respondent's license pursuant to Government Code section 11529, as follows:

A. There is a reasonable probability that Petitioner will prevail in the underlying action. Business and Professions Code section 2234 provides that the Board shall take action against any licensee who is charged with unprofessional conduct. Section 2234 provides in pertinent part that unprofessional conduct includes, but is not limited to "... (b) Gross negligence, (c) Repeated negligent acts, (c) Incompetence..." In addition, under Business and Professions Code section 2266, it is a violation of the Medical Practice Act for a physician to fail to maintain adequate and accurate records. The four declarations attached to the petition support the conclusion that Respondent has engaged in acts or omissions that constitute a violation of the Medical Practice Act; moreover, if the ISO is not issued, he will continue to violate the Medical Practice Act in his medical practice; thus he is about to engage in acts or omissions that will violate the Medical Practice Act. Further, Respondent failed PACE; this constitutes a violation of his probationary terms. Therefore, there is a reasonable probability that Petitioner will prevail on the merits.

B1. It was established by substantial evidence that the likelihood of injury to the public in not issuing a suspension order outweighs the likelihood of injury to

Respondent in issuing such an order. In considering preliminary injunctive relief, it has been held that where the government has shown the probability of success in proving a statutory violation, "the court is justified in presuming that public harm will result if an injunction is not issued." (*IT Corporation v. County of Imperial* (1983) 35 Cal.3d 63, 69-70.) "[A] rebuttable presumption arises that the potential harm to the public outweighs the potential harm to the defendant." (*Id.*, at 72.) Income loss is not considered to be an injury so grave or irreparable as to overcome such a presumption. (*Id.*, at 75.) Respondent does not intend to comply with the standard of care and does not believe in evidence-based medicine. He believes that he is the only practitioner who truly understands the disease process. This attitude is cause for great concern. Doctors Norcross, Wu, Rojas and Archer concluded that Respondent is a serious risk to his patients.

B2. In this case, Respondent has not rebutted the aforementioned presumption that public harm will result from his not being suspended. The fact that he is the source of income for his employees is insufficient to overcome the presumption that he poses a threat to the public.

ORDER

1. Physician's and Surgeon's Certificate No. G 23729, issued to Respondent Michael Edward Platt, M.D., is suspended pending a full administrative determination of Respondent's fitness to practice medicine.

2. Until the decision of the Medical Board of California following a full administrative hearing, Respondent shall not:

A. Practice or attempt to practice any aspect of medicine in the State of California.

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

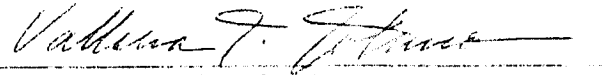
C. Be present in any location or office which is maintained for the practice of medicine, or at which medicine is practiced, for any purpose except as a patient or as a visitor of family or friends.

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

3. Pending a final administrative order of the Medical Board in this matter, Respondent shall immediately deliver to the Medical Board or its agent, for safekeeping, 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, 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.

DATED: August 20, 2010


VALLERA J. JOHNSON
Administrative Law Judge
Office of Administrative Hearings