

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Ex Parte Application for
Interim Suspension Order Against:

MARCO ANTONIO CHAVEZ, M.D.

Physician and Surgeon's Certificate No.
115932,

Respondent.

Case No. 800-2017-030714

OAH No. 2018041292

**ORDER GRANTING PETITION
FOR EX PARTE INTERIM
SUSPENSION**

Susan J. Boyle, Administrative Law Judge, Office of Administrative Hearings, heard the Petition for Ex Parte Interim Suspension Order on May 3, 2018, in San Diego, California.

Giovanni Mejia, Deputy Attorney General, appeared on behalf of petitioner, Kimberly Kirchmeyer, Executive Director of the Medical Board of California, Department of Consumer Affairs, State of California.

Respondent appeared and represented himself.

The matter was submitted on May 3, 2018.

1. The following documents were read and considered in issuing this Ex Parte Interim Suspension Order:

- a. Certificate of Licensure
- b. Declaration of Division of Investigation Investigator Steven Brewer
- c. Declaration of San Diego Police Department Officer Dean Bishop

Additionally, consideration was given to respondent's sworn testimony and the legal arguments presented by Deputy Attorney General Mejia and respondent.

FACTUAL FINDINGS

2. On February 25, 2011, the board issued physician and surgeon's License Number 115932 to respondent. The license was in full force and effect at all relevant times. It will expire on June 30, 2018, unless renewed. Respondent practices psychiatry.

3. On February 21, 2017, the board received a complaint from one of respondent's patients alleging that respondent sent a sample box of medication to the patient that also contained an empty vodka bottle. Steven Brewer, Investigator, Division of Investigation, Health Quality Investigation Unit, was assigned to investigate the complaint.

4. In the course of his investigation, Investigator Brewer visited respondent's medical office on January 30, February 2 and April 18, 2018. During the April 18, 2018, office visit, at approximately 10:00 a.m., Investigator Brewer observed signs and symptoms that caused him to suspect respondent was intoxicated. He noted that two patients were in the waiting room of respondent's medical office. Investigator Brewer went with respondent to respondent's office and saw that the office was in complete disarray.

5. In response to questions from Investigator Brewer, respondent stated he had not had an alcoholic beverage since February 24, 2018, when his parents arrived from Texas. Respondent said his mother does not allow alcohol in respondent's home because his father is (or was) an alcoholic and she is concerned that respondent may also become an alcoholic. Respondent denied he had a problem with alcohol and stated he did not have any alcoholic beverages in his home or office. While in Investigator Brewer's presence, respondent told two other individuals he had not consumed alcohol that day.

6. Later in the April 18, 2018 office visit, respondent told Investigator Brewer that his mother gave him a Mexican home remedy to stop his drinking. The remedy consisted of approximately eight ounces of vodka mixed with cloves. Respondent stated he had two of these remedies that morning – one at 6:00 a.m. and one at 7:00 a.m. At the hearing, respondent testified the vodka/clove drink tasted bad, and it was part of an aversion-type therapy.

7. At one point in the office visit, respondent opened the drawer of a piece of furniture. Inside the drawer was a "mostly empty 750 ml bottle" of vodka.

8. Respondent alluded to medical conditions he had and prescription medication he took that impacted him; however, there were no medical records or reports submitted to allow for the conclusion that any medical conditions or medications had an effect on respondent's ability to safely practice medicine.

9. Investigator Brewer advised respondent that he believed respondent was so intoxicated that he could not safely practice medicine. Respondent informed the two patients in the waiting room that he had to reschedule their appointments, and he telephoned other patients to cancel their appointments for that day and the following two days.

10. At approximately noon on April 18, 2018, Dean Bishop, an officer with the San Diego Police Department arrived at respondent's medical office to administer a preliminary alcohol screening (PAS) test to respondent. Officer Bishop confirmed that his PAS device was properly calibrated. He administered two PAS tests on respondent; the first yielded a blood alcohol content (BAC) of .216 percent and the second yielded a blood alcohol content (BAC) of .201 percent.

11. At the hearing, respondent asserted he drank to excess with his friends on Sundays which he called "Sunday Funday, and knowing he would do so, he does not schedule patients on Mondays. He asserted he was in his office on April 18, 2018, which he asserted was a Monday, only out of concern for a patient and that he was not planning to work that day. Official notice was taken that April 18, 2018, was a Wednesday. Respondent stated he now attends mass for two hours on Sunday afternoons so that he will not be drinking on Sunday Funday. Respondent's testimony was not persuasive evidence of rehabilitation.

LEGAL CONCLUSIONS

Statutory Authority

1. Under Government Code section 11529, an interim order of suspension may be issued if it is established that (1) the licensee has engaged in, or is about to engage in, acts or omissions constituting a violation of the Medical Practice Act or the appropriate practice act governing each allied health profession, or (2) the licensee is unable to continue practice safely due to a mental or physical condition, and (3) permitting the licensee to continue to engage in the licensed activity will endanger the public health, safety, or welfare.

The standard of proof required to obtain such an order is a preponderance of the evidence.

2. Business and Professions Code section 2239, subsection (a), provides:

(a) The use or prescribing for or administering to himself or herself, of any controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely or more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination thereof, constitutes unprofessional conduct. The record of

the conviction is conclusive evidence of such unprofessional conduct.

3. Business and Professions Code section 2280 states that “[n]o licensee shall practice medicine while under the influence of any narcotic drug or alcohol to such an extent as to impair his or her ability to conduct the practice of medicine with safety to the public and his or her patients. Violation of this section constitutes unprofessional conduct and is a misdemeanor.”

4. Business and Professions Code section 2234, subdivision (a) provides:

The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

[¶] . . . [¶]

Evaluation

5. A preponderance of the evidence established that respondent has engaged in, and will engage in, acts or omissions constituting a violation of the Medical Practice Act by treating patients while under the influence of alcohol.

6. A preponderance of the evidence established that permitting respondent to continue to engage in his licensed activity would endanger the public health safety and/or welfare.

7. It appears from the petition and supporting documents that serious injury will result to the public if the below Order is not issued on an ex parte basis.

8. There is a reasonable probability that the petitioner will prevail in the underlying action.

9. The likelihood of injury to the public in not issuing this order outweighs the likelihood of injury to the licensee in issuing this order.

ORDER

1. The Ex Parte Petition for Interim Order of Suspension is granted.

2. Physician and Surgeon's Certificate No. 115932, issued to respondent, Marco Antonio Chavez, M.D., and all licensing rights appurtenant thereto, are suspended pending a full administrative determination of respondent's fitness to practice medicine, unless otherwise ordered following the noticed hearing on the Petition for Interim Order of Suspension.

3. A noticed hearing on this Ex Parte Interim Suspension Order shall be held on May 23, 2018, at 10:00 a.m. at the Office of Administrative Hearings, located at 1350 Front Street, Suite 3005, San Diego, California. Petitioner shall serve this Ex Parte Interim Order of Suspension with all supporting documents and a Notice of Hearing on respondent by 24-hour delivery service as required by Government Code section 11529.

4. In accordance with this Ex Parte Interim of Suspension Order, Respondent shall not:

- a. Practice or attempt to practice any aspect of medicine or psychiatry in the State of California until the decision of the Board following an administrative hearing;
- b. Be present in any location which is maintained for the purpose of practicing medicine or psychiatry, or at which medicine or psychiatry 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 or psychiatry.

Dated: May 7, 2018

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Susan J. Boyle
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SUSAN J. BOYLE
Administrative Law Judge
Office of Administrative Hearings