

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

In the Matter of the Petition For  
Interim Order of Suspension:

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

Petitioner,

v.

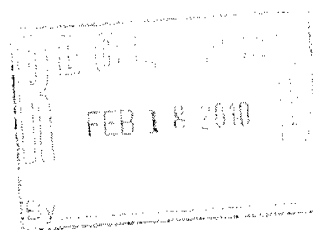
ANDREW RUTLAND, M.D.

Physician and Surgeon's Certificate No. A 24947,

Respondent.

Case Nos. 19-2009-198804, 19-  
2009-202486

OAH No. 2009120690



**FIRST AMENDED INTERIM ORDER IMPOSING LICENSE RESTRICTIONS**

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard the First Supplemental Petition for Interim Order of Suspension in this matter on February 18, 2010, in San Diego, California.

Harinder Kapur, Deputy Attorney General, appeared on behalf of petitioner.

Paul M. Hittelman, Attorney at Law, appeared on behalf of respondent Andrew Rutland, M.D., who was ~~also~~ present.  
~~not~~

The matter was submitted for decision on February 18, 2010.

The matter was reopened following receipt of the First Supplemental Petition for Interim Order of Suspension (the petition) filed with the Office of Administrative Hearings on February 15, 2010. That amended order provided:

“Respondent Andrew Rutland, M.D. shall be and hereby is immediately restrained and prohibited from performing any kind of surgery, defined as a procedure involving cutting, abrading, suturing, laser or otherwise physically

changing body tissues and organs, from performing first trimester abortions and endometrial curettage procedures, and from delivering babies.”

The petition alleged that on February 6, 2010, Dr. Rutland violated the Amended Interim Order Imposing License Restrictions by educating an undercover operative posing patient, being ready, willing and capable of prescribing the necessary medications for an abortion, and determining whether the patient was a candidate for a medical abortion.” Thus, petitioner understood the amended order to prohibit Dr. Rutland from performing any abortions, not just surgical abortions, even though this matter had its genesis in Dr. Rutland’s performing a surgical abortion for patient YC on July 28, 2009, and the inability to provide appropriate post-surgical care. No issue was raised regarding the danger of a medical abortion, a chemical abortion, or inducing a miscarriage in the moving papers, nor was there any evidence presented in those papers that Dr. Rutland’s conduct on February 6, 2010, resulted in any danger to the patient or to the public.

Respondent opposed the petition on the basis that complainant wholly misinterpreted the amended order.

*Standard of Proof and Issues*

Business and Professions Code section 11529 provides in part:

“(a) The administrative law judge of the Medical Quality Hearing Panel . . . may issue an interim order suspending a license, or imposing . . . other license restrictions. Interim orders may be issued only if the affidavits in support of the petition show that 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 is unable to practice safely due to a mental or physical condition, 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.

...

(e) Consistent with the burden and standards of proof applicable to a preliminary injunction entered under Section 527 of the Code of Civil Procedure, the administrative law judge shall grant the interim order where, in the exercise of discretion, the administrative law judge concludes that:

(1) There is not a reasonable probability that the petitioner will prevail in the underlying action as it relates to the incident occurring on February 6, 2010.

(2) The likelihood of injury to the public in not issuing the order of a full and immediate suspension does not outweigh the likelihood of injury to the licensee in issuing the order. . . .”

When a governmental entity seeks to enjoin a statutory violation, evidence that it is reasonably probable that the agency will prevail on the merits gives rise to a rebuttable presumption that the potential harm to the public outweighs the potential harm to the defendant. (*IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 72-73.)

### *Conclusions*

The preponderance of the evidence did not establish that Dr. Rutland violated or intended to violate the amended interim order imposing restrictions. To the contrary, Dr. Rutland refused to perform a surgical abortion when asked to do so by the undercover operative several times. He offered to provide a chemical or medical abortion, which was not prohibited by the amended interim order imposing restrictions.

By reason of the matters set forth herein and which are set forth in the decisions in this matter, it is concluded that petitioner failed demonstrated that an interim suspension order prohibiting Dr. Rutland from practicing medicine is necessary to protect the public health, safety and welfare, and that Dr. Rutland did not violate the previous order. Imposition of a full practice suspension is not warranted at this time. To put the issue to rest, counsel were asked to draft an order that eliminated any confusion regarding what Dr. Rutland was permitted to do and not do. Counsel could not agree on the specific language, so the following order is issued.

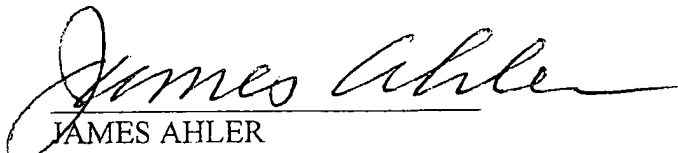
### FIRST AMENDED INTERIM ORDER IMPOSING LICENSE RESTRICTIONS

Respondent Andrew Rutland, M.D. shall be and hereby is immediately restrained and prohibited from performing any kind of surgery (defined as a procedure involving cutting, abrading, suturing, laser or otherwise physically changing body tissues and organs, and from performing first trimester surgical abortions and endometrial curettage procedures) and from delivering babies. Nothing in this order shall restrain or prohibit respondent from performing first trimester non-surgical abortions or from inducing miscarriages by medical or chemical means.

The Office of the Attorney General shall cause this order to be served upon respondent.

The parties shall contact the Office of Administrative Hearings to schedule further proceedings according to law.

DATED: February 18, 2010

  
JAMES AHLER  
Administrative Law Judge  
Office of Administrative Hearings