

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

In the Matter of the Accusation Against:)	Case No.: 18-1999-101122
)	OAH No.: L-2001070507
ANDREW RUTLAND, M.D.)	
)	
Physician's and Surgeon's)	
Certificate No. C24947,)	
)	
Respondent.)	
_____)	

INTERIM ORDER OF SUSPENSION

This matter came on regularly for hearing before Ralph B. Dash, Administrative Law Judge, Medical Quality Hearing Panel, Office of Administrative Hearings, on April 12, 2002, at Los Angeles, California.

Steven H. Zeigen, Deputy Attorney General, represented Petitioner.

Peter R. Osinoff, Attorney at Law, represented Respondent, who was present for the hearing.

Submission of the matter was deferred until April 22, 2002, to permit Respondent the opportunity to submit an affidavit of an expert in rebuttal to affidavits which were late filed by Complainant, as well as provide a complete autopsy of Baby B.H. Counsel for Petitioner was requested to and did submit a copy of a video tape regarding patient K.B. and three pages of hospital records which had been omitted from an expert's declaration. The affidavit, video tape and documents were all timely received, read, viewed and considered.

Evidence having been received and the matter submitted, the Administrative Law Judge hereby issues the following Interim Order of Suspension:

FINDINGS OF FACT

1. Petitioner Ron Joseph filed a noticed Petition for issuance of an Interim Order of Suspension on behalf of the Division of Medical Quality, Medical Board of California ("Board") in his official capacity as Executive Director of the Board.

2. At all times pertinent hereto, Respondent Andrew Rutland was and now is licensed by the Board as a physician and surgeon, certificate number C 24947.

3. As set forth in the Second Amended Accusation, filed March 17, 2002, this matter involves 12 patients. For ease of reference herein, the patients are divided into two groups according to the nature of the complaints. The first group consists of two patients and involves, among other things, alleged failures by Respondent to properly manage a patient's (T.H.) diabetes during the course of her pregnancy, and Respondent's misuse of forceps and other wrongful acts in the delivery of a baby born to patient K.B. The second group involves eight patients who, in addition to having complaints of mistreatment gynecologically, complain in general Respondent lied to them regarding their medical condition and or coerced them with lies into having unnecessary surgery. Two patients did not file declarations, and for purpose of this grouping are not considered.

4. Numerous declarations of medical experts were filed, each designed to counteract the declarations of the other side. Indeed, the conflicting medical opinions put most of the allegations of the Second Amended Accusation in serious dispute. This proceeding is not designed to be a full trial on the merits of the accusatory pleadings, which will be left to the trial judge. The trial judge will have the opportunity to review all of the medical records (only a very few pages of records were filed here) and listen to all evidence presented by both sides and can then assess credibility issues. Credibility of the medical experts, except as noted below, cannot be determined from the declarations alone. Respondent's assertion of prejudice on the part of some of Complainant's experts is given no weight. Whether Complainant's experts were "competitors" of Respondent, and therefore had financial motivation behind their opinions, is of no moment. Respondent and these experts are competitors of each other, giving Respondent himself the same alleged prejudice.

While virtually the entirety of the Second Amended Accusation was addressed in the declarations of the experts and lay witnesses, it is only possible, for purposes of these proceedings, to make Findings of Fact on a limited number of issues. These Findings support the below order.

5. With respect to patient K.B., the video tape was viewed and reviewed several times. Contrary to the declaration of Respondent's expert, the video taped clearly showed Respondent's overuse of forceps, and failure to deliver the baby by C-section in a timely manner. Respondent applied the forceps and, during each of Respondent's contractions, pulled the forceps and rocked them. He used 3 sets of ten side to side rocking motions (while pulling) for each contraction. He used the forceps on more than ten contractions. On no less than five occasions, he told K.B. that the next contraction "would be the last one".

No doctor can predict the number of contractions a birth mother will have. However Respondent repeated these statements long after he had already told the patient that if the next contraction did not produce the baby, Respondent would perform a C-section. He did not do so, but persisted in pulling on the baby excessively. When the baby was finally delivered, Respondent almost dropped it, then placed it on the mother's abdomen, and thereafter took the baby to a warming table while attempting resuscitation. The baby was slapped six separate times in groups of three to six rapid slaps, one group of slaps while the baby was on K.B.'s abdomen. The video shows Respondent doing the slapping on at least two of the six groups of slaps. From viewing Respondent's position at the warming table, it is unlikely anyone else around the baby did the slapping. Respondent did not call for a neonatologist until after delivery, and it took that doctor approximately five minutes to arrive. During the hearing of this matter, it was represented that Respondent no longer uses forceps in his deliveries. In his declaration, Respondent admitted a "bad outcome" in this case, and further admitted he settled the civil lawsuit brought by K.B. At the hearing it became evident during argument, the settlement was for a substantial sum, albeit it was the only case Respondent admitted having paid money to settle. It is found that Respondent's conduct in the delivery of K.B.'s baby was below the standard of care.

5. With respect to T.H., a diabetic, Respondent consulted once with an expert regarding management of this disease for her. This consultation was 27 weeks into T.H.'s pregnancy. It is not clear what, if anything, the consultant suggested Respondent should do to manage the patient's diabetes. Complaint's expert's opinion regarding Respondent's mismanagement of T.H.'s diabetes was very specific, noting exactly what Respondent should have done to control this condition, yet failed to do. As just one example, Respondent failed to ensure the patient had her blood sugar monitored several times per day. He further failed to increase insulin dosing to twice per day. As a result of these failures, the patient developed persistent high fasting blood sugar levels. Respondent's expert was very ambiguous as to Respondent's care, stating that from his review of the record "it appears" Respondent acted appropriately. This expert failed to contradict Complainant's expert with any specificity at all. Thus Complainant's expert's opinion regarding Respondent's failure in managing diabetes is given far greater weight than the opinion of Respondent's expert, and leads to the conclusion that Respondent mis-managed T.H.'s diabetes during the course of her pregnancy. Respondent's conduct fell below the standard of care.

7. Eight patients filed declarations in support of this Petition. As noted above, Findings on the "medical" issues raised in their declarations cannot be determined in these proceedings. However, the declarations also allege a second, and more serious charge. The declarations have a common thread--that Respondent lied to them regarding their medical condition and/or otherwise coerced or intimidated them into having unnecessary procedures. Respondent's defense to this particular contention is two-fold: he denies the conduct (which is to be expected), and he impugns the integrity of his former patients. Respondent in essence contends that these eight patients entered into a conspiracy to extort money from Respondent; that these patients were goaded into making complaints at the behest of a disgruntled former employee, and have one of their group as a ringleader. No weight is given to Respondent's contention that financial gain has driven these patients to file perjured

affidavits. Respondent has a far greater financial incentive than all of these patients combined. His very livelihood may be at stake. Respondent makes another, albeit unstated, argument regarding the credibility of these patients. Respondent essentially asks the Administrative Law Judge to believe that these eight patients are mindless automatons, making allegations not of their own free will, but at the direction of others who are working on a separate agenda. Respondent can make this argument at trial; it is utterly rejected here. The commonality of the nature of these patients' allegations cannot be ignored and are taken very seriously. On balance, the declarations of the eight patients are found to be more probative than the declaration of Respondent. The acts complained of constitute unprofessional conduct.

3. At oral argument, much was made of the fact that all of the misconduct alleged in the Second Amended Accusation occurred in 1999 or earlier (except for one instance in January, 2000), and there have been no subsequent charges. During the course of this argument, it was represented that for the past 29 months (since approximately December, 1999) Respondent has been "proctored" at Anaheim Memorial Hospital, where Respondent performs 20% of his surgeries. The proctorship was instituted by the hospital. This proctorship prohibits Respondent from performing surgery unless another doctor (not an assistant surgeon) is present. The proctor monitors Respondent's performance, and assures that Respondent meets the standard of care in performing the surgery, as well as assuring the medical necessity therefor. The proctors are unpaid volunteers. The timing of the institution of this proctoring program and the alleged cessation of complaints against Respondent cannot be ignored. The program has clearly served its purpose for the past two and one-half years.

CONCLUSIONS OF LAW

1. Based on all of the evidence presented at the hearing and all reasonable inferences to be drawn therefrom, it is found that Respondent has violated the provisions of the Medical Practice Act, within the meaning of Government Code Section 11529(a), by reason of Findings 5, 6 and 7.

2. There is a reasonable probability that Petitioner will prevail at trial on the charges delineated in the Second Amended Accusation.

3. The acts complained of occurred more than three years ago. Respondent has no prior disciplinary history. These proceedings undoubtedly will have an *in terrorem* effect on Respondent, who most assuredly will be on his best behavior until they are concluded. However, in light of the Findings of Fact and Conclusions of Law set forth above, it is also found that permitting Respondent's continued unrestricted licensure pending trial would endanger the public health, safety and welfare. The likelihood of injury to the public in not issuing the below order is outweighed by the likelihood of injury to the Respondent in issuing it.

Accordingly, the following Order is hereby made:


1. Subject to the provisions of Government Code Section 11529(f), Respondent's Physician and Surgeon's Certificate No. C-24947 is restricted as set forth below, pending a final determination by the Medical Board of California on the charges set forth in the Second Amended Accusation. Trial on the Second Amended Accusation is now set to begin October 1, 2002. Counsel for the parties shall, within five days of the date of this order, contact the OAH case management coordinator with respect to obtaining new trial dates to comply with Section 11529(f).

2. Respondent shall not perform any surgical procedure at any hospital, unless there is an independent medical doctor present at all times to observe and proctor Respondent. The proctor must have unrestricted surgical privileges at the hospital, and must be competent in the relevant field of surgery. If a volunteer doctor cannot be found, Respondent shall bear the cost of the proctor.

3. Within five days of the date of this Order, Respondent shall notify and provide copies of this Order to all hospitals where he currently has surgical privileges. In the event Respondent seeks surgical privileges at any other hospital, his application for privileges must be accompanied by a copy of this Order.

IT IS SO ORDERED.

Date: 4-29-02


RALPH B. DASH
Administrative Law Judge
Medical Quality Hearing Panel
Office of Administrative Hearings