

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

**GEORGIA COMPOSITE
MEDICAL BOARD,
Petitioner,**

v.

**A [REDACTED] C [REDACTED], M.D.,
Respondent.**



Docket No.:
OSAH-GCMB-PHY-[REDACTED] Walker

Agency Reference No.: [REDACTED]

FEB 15 2017


Kevin Westray, Legal Assistant

INITIAL DECISION

I. Introduction

On or about September 21, 2016, the Georgia Composite Medical Board (hereinafter “Petitioner” or “Board”) issued an Order of Summary Suspension, suspending the Respondent’s license to practice medicine in the State of Georgia. The Respondent requested an administrative hearing to contest the Board’s order. On October 12, 2016, the Board also issued a Statement of Matters Asserted seeking final disciplinary action against Respondent’s license to practice medicine. A hearing regarding both the Board’s Order of Summary Suspension and the Statement of Matters Asserted took place on December 7, 2016.¹ Betsy Cohen, Assistant Attorney General, represented the Board. Respondent represented himself during the proceedings. After considering the evidence presented at the hearing, the undersigned **RECOMMENDS** that the Order of Summary Suspension be **AFFIRMED** and that the Respondent’s license be **REVOKED**.

¹ An initial hearing was scheduled for November 14, 2016. The Board sought a continuance in because its counsel was unavailable on this date. The matter was then reset to December 7, 2016. Upon receipt of the hearing transcript, the record in this matter closed.

II. Findings of Fact

A. Background

1.

Respondent holds a license to practice as a physician in the State of Georgia, and has held such certificate at all times relevant to the issues presented for hearing. The Respondent's license will expire on July 31, 2017. (Statement of Matters Asserted ¶ 1; Transcript at p. 19 (hereinafter T-); Exhibit P-1).

2.

Under O.C.G.A. § 43-26-11(2) the Board may order, upon reasonable grounds, that a licensee submit to a mental or physical examination to determine whether such licensee has become unable to practice with reasonable skill and safety to patients.

3.

In June 2015, the Board received information that the Respondent might be mentally unstable. On or about May 16, 2016, the Board issued a Confidential Order for Mental/Physical Examination ("MPE order") to the Respondent. The MPE order specified that the Board had found reasonable grounds to believe that the Respondent could not practice medicine with adequate skill and safety. (Statement of Matters Asserted ¶ 2; T-23; Exhibits P-2, P-4).

4.

The Respondent failed to comply with the Board's MPE order. As a result of his failure to comply, the Board summarily suspended the Respondent's medical license. (Statement of Matters Asserted ¶ 3; T-23; Exhibit P-3). On or about August 4, 2016, after a hearing before the Board, it issued a Final Order upholding the Order of Summary Suspension and requiring the Respondent to submit to an MPE. (Statement of Matters Asserted ¶ 4; T-24; Exhibit P-4).

5.

Respondent obtained an MPE. On or about September 1, 2016, the Board received a preliminary MPE report from the evaluating facility indicating that the Respondent was not able to practice medicine with reasonable skill and safety. (Statement of Matters Asserted ¶¶ 5, 6; T-25; Exhibit P-5).

6.

On or about September 15, 2016, the Board received a final MPE report (“final report”) from the evaluating facility. The final report concluded that the Respondent’s license should remain suspended until he received treatment at a professional physician’s recovery program specializing in psychiatric disorders. (Statement of Matters Asserted ¶ 4; T-24; Exhibit P-6).

7.

On or about September 21, 2016, the Board issued an Order of Summary Suspension finding that the Respondent’s continued ability to practice medicine posed a threat to the public’s health, safety and welfare. The Respondent requested a hearing. (Statement of Matters Asserted ¶ 8; T-27-28; Exhibits P-7, P-8).

8.

On October 12, 2016, the Board issued a Statement of Matters Asserted seeking final disciplinary action against Respondent’s license to practice medicine. (Statement of Matters Asserted).²

² On November 21, 2016, the Respondent submitted a pleading styled “Motion for Pre-Hearing Review of Attached Certified Transcript for Summary Judgment.” The Board’s responsive pleading noted that the Respondent did not have right to a “pre-hearing review of attached certified transcript for summary judgment.” On December 1, 2016, the undersigned denied the Respondent’s motion.

B. Respondent's Evaluation

9.

Dr. Gary Weichbrodt is a psychiatrist certified by the American Board of Medical Specialties and a member of the American Psychiatric Association. (T-75). He has been in private practice in Atlanta since 1988. (T-77). As part of his practice, Dr. Weichbrodt both evaluates and treats health care professionals. (T-76-77).

10.

Typically, an MPE is “performed by a psychiatrist and several corollary staff as well as a psychologist . . . and a board-certified internist that completes a physical exam” (T-79). In late August 2016, Dr. Weichbrodt was the attending psychiatrist assigned to Respondent’s MPE. (T-78).

11.

After speaking with the Respondent, Dr. Weichbrodt concluded that he held “nutritional beliefs” consistent with a delusional disorder. (T-81, 170-171).³ For example, the Respondent weighed his food, believing that every individual, whether infant, child or adult, should consume “32 ounces [of food per day because it has] a magical quality that is necessary for health” (T-84, 156-158, 162). To the contrary, nutritional needs must be calibrated to the individual. (T-162). In Dr. Weichbrodt’s opinion, the Respondent’s delusional belief system would compromise his ability to diagnose and treat patients. (T-81, 170-171).

12.

The Respondent also demonstrated “a compulsive sort of driven belief to repeat certain phrases” (T-83). Before proceeding with a conversation or interaction during the MPE,

³ Collateral sources interviewed by Dr. Weichbrodt indicated that the Respondent developed an obsessive focus on nutrition following a head injury. (T-85; Exhibit P-7).

the Respondent insisted on staff repeating the phrase “wonderfully hungry.” (T-114; Exhibit P-6).⁴ Dr. Weichbrodt concluded that the Respondent’s obsessive need to hear individuals repeat the phrase “wonderfully hungry” before discussing matters at hand is “at odds with the kind of neutral information one must gather to do a physical exam or provide medical care.” (T-83).

13.

The Respondent maintained that if an individual proved “wonderfully hungry” or had a “healthy appetite,” he would know that “through our ability to eat, our healthy appetite . . . we’re both not having a heart attack at the moment.” (T-11, 31-32, 92). “[C]orrelating a phrase with not having a heart attack” was another example of “magical thinking” that would adversely affect a patient’s medical care. (T-163).

14.

In addition to finding that the Respondent suffered from a delusional disorder, Dr. Weichbrodt’s final report includes a diagnosis of schizotypal personality disorder. (Exhibit P-6). Personality disorders interfere with social interaction. (T-88). Information from collateral sources indicated that the Respondent had a history of social awkwardness and difficulty with interpersonal relationships and personality disorders . (T-87, 88).

15.

Concluding that the Respondent had a “delusional disorder mixed type continuous with grandiose features” and a “schizotypal personality disorder,” Dr. Weichbrodt’s preliminary and final reports indicated that the Respondent was not able to practice medicine with reasonable skill and safety. (T-79; Exhibit P-6). The final report recommended that the Board restrict the Respondent from medical practice until he undergoes treatment at a professional physician’s

⁴ At the administrative hearing, the Respondent repeatedly asked witnesses, and the undersigned, if they were “wonderfully hungry” or had a “healthy appetite.” (T-11, 31-32, 92).

recovery program specializing in psychiatric disorders. Brain injuries can lead to psychotic beliefs and symptoms. (T-147). Based on information that the Respondent had suffered a brain injury in 1997, the final report also directed that the Board require medical follow-up regarding lab abnormalities and neurologic consultation with imaging studies. Should the Respondent return to practice, Dr. Weichbrodt urged that the Board actively monitor patient feedback regarding their medical care. (T-82, 87; Exhibit P-6).

C. Respondent's Testimony

16.

The Respondent testified that he has registered in the Federal Election Commission's database as a 2020 nonpartisan candidate for president under the name "[REDACTED]" (T-192). As part of his presidential campaign platform, the Respondent believes that he must "say I'm wonderfully hungry" (T-96, 107). According to Respondent, the Medical Board is trying to revoke his license for "saying I'm wonderfully hungry;" however, he maintains that this is protected political speech under his presidential campaign platform. (T-123, 140, 192).

17.

The Respondent rejects the determination that he suffers from a delusional disorder. Asserting that he is the only physician researching the phrase "wonderfully hungry," he argued that "it should be concerning to [the undersigned] that the state medical board's expert witness admitted he didn't do such research." (T-93, 187).⁵

⁵ The Respondent also accused the Board, and/or individuals associated with the Board, of having a financial interest in this matter. (T-214).

18.

Respondent proposed that the psychological testing performed as part of the MPE was invalid, suggesting that a diagnosis of schizotypal personality disorder and psychotic disorders, such as delusional disorder, were inherently incompatible. (T-103, 118-119; Exhibit R-2). The undersigned credits Dr. Weichbrodt's testimony that it is possible to have both disorders, and in any event "the focus of concerns would be on the delusional disorder in terms of medical practice." (T-120, 122).

III. Conclusions of Law

1.

The Board bears the burden of proof both regarding the Order of Suspension and Statement of Matters Asserted. Ga. Comp. R. & Regs. r. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. r. 616-1-2-.21(4).

2.

Pursuant to O.C.G.A. § 43-1-19(a), a professional licensing board shall have the authority to revoke or discipline the license of a person upon a finding that the licensee has:

(10) Displayed an inability to practice a business or profession licensed under this title with reasonable skill and safety to the public or has become unable to practice the licensed business or profession with reasonable skill and safety to the public

3.

Additionally, the Board may sanction a licensee upon a finding that the licensee is unable to practice with "reasonable skill and safety" by reason of illness, the use of alcohol, drugs, or other substances, or as a result of any mental or physical condition. O.C.G.A. § 43-34-8(a)(13). In enforcing this paragraph, the Board may require the licensee to submit to a mental or physical examination, the results of which "shall be admissible in any hearing before the board,

notwithstanding any claim of privilege under a contrary rule of law or statute, including, but not limited to, Code Section 24-5-501.”⁶ O.C.G.A. § 43-34-8(a)(13)(A).

4.

If the Board finds cause for discipline, it may deny, revoke, suspend, fine, reprimand, or otherwise limit the license of a physician. O.C.G.A. § 43-34-8(b)(1), see also O.C.G.A. § 43-1-19(d), . Ga. Comp. R. & Regs. r. 360-3-.02.

5.

Based on the aforementioned Findings of Fact, the Board has proven by a preponderance of the evidence that the Respondent is unable to practice with reasonable skill and safety as a result of his mental illness. The undersigned finds the testimony of Dr. Weichbrodt that the Respondent suffers from a delusional disorder to be persuasive. As a result of this disorder, the Respondent adheres to certain beliefs and rituals that compromise his ability to practice medicine with reasonable skill and safety. Although the Respondent maintains that the Board’s action is an attempt to interfere with his constitutional right to freedom of speech, there was no credible support for the Respondent’s position presented at the hearing. To the contrary, the Board proved that Respondent’s bizarre nutritional and medical beliefs, coupled with his obsessive

⁶ O.C.G.A. § 43-34-8(a)(13)(C) specifies the following:

If any licensee . . . could, in the absence of this paragraph, invoke a privilege to prevent the disclosure of the results of the examination provided for in subparagraph (A) of this paragraph . . . , all such information ***shall be received by the board in camera and shall not be disclosed to the public***, nor shall any part of the record containing such information be used against any licensee, certificate holder, or permit holder or applicant in any other type of proceeding[.]

At the hearing, the Respondent indicated he wished to waive disclosure of the record. A plain reading of this provision indicates that, so long as the licensee could raise a privilege of confidentiality notwithstanding the statute’s provisions, then such evidence “***shall be***” reviewed in camera and “***shall not***” be disclosed to the public. Id.; see Currid v. DeKalb State Court Probation Dep’t, 285 Ga. 184, 187 (2009) (stating that fundamental statutory construction requires words be given “their plain and ordinary meaning”). For the purposes of statutory construction, the word “shall” is to be generally construed as a mandatory directive. Lewis v. State, 283 Ga. 191, 194 (2008); see also Garrison v. Perkins, 137 Ga. 744, 755 (1912) (“[I]n its ordinary signification ‘shall’ is a word of command . . .”). Thus, the *in camera* review and nondisclosure to the public appear to be mandatory acts and Respondent may not exercise any privilege to waive a portion of the record.

need to question others as to whether they were “wonderfully hungry” or had a “healthy appetite,” would interfere with his ability to practice medicine with reasonable skill and safety.

IV. Decision

Pursuant to O.C.G.A. § 43-34-8(b)(1), if the Board finds cause for discipline, it may deny, revoke, suspend, fine, reprimand, or otherwise limit the license of a physician. See also O.C.G.A. § 43-1-19(d). Based on the evidence presented at the hearing that the Respondent is unable to practice medicine with reasonable skill and safety due to mental illness, the undersigned finds that the Board had good cause to issue its Order of Summary Suspension and **AFFIRMS** the Order. For the same reasons, the undersigned **RECOMMENDS** that the Respondent’s license be **REVOKED**.

SO ORDERED, this 15 day of February, 2017.



RONIT WALKER
Administrative Law Judge