

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 99-519V

July 17, 2007

To be Published

ANNE E. OTTENWELLER,

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Petitioner,

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v.

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Dr. Andrew W. Campbell's

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medical license suspended

SECRETARY OF THE DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

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Respondent.

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REPORT TO THE PARTIES

On December 15, 2006, the undersigned issued an Order to Show Cause to petitioner to show cause why this case should not be dismissed, mentioning that one of petitioner's treating physicians, Dr. Andrew W. Campbell, was about to have his medical license suspended.

On June 6, 2007, the Texas Medical Board issued a 26-page Final Order in In the Matter of the Complaint Against Andrew William Campbell, M.D., SOAH Docket No. 503-04-5717, License No. G-7790, suspending Dr. Campbell's medical license until February 8, 2008, at which point his suspension will end if he fulfills a number of requirements and pays an administrative penalty of \$210,000.00 plus transcription costs. If he satisfies these requirements, he will be placed on probation for five years under the close supervision of another medical doctor for whose services he would have to pay. If he does not satisfy the listed requirements, the Board

will revoke his medical license as of February 8, 2008. The Board states that its Final Order constitutes a PUBLIC REPRIMAND (the capital letters are in the Final Order) of Dr. Campbell. The pages cited below are from the Final Order.

The Board reached the following conclusions:

1. Dr. Campbell failed "to practice medicine in an acceptable professional manner consistent with public health and welfare." (p. 18).
2. "Dr. Campbell's failure to practice medicine in an acceptable manner consistent with public health and welfare includes the failure to treat a patient according to the generally accepted standard of care." (p. 18).
3. "Dr. Campbell engaged in a prohibited act or practice...by prescribing or administering a drug or treatment that was nontherapeutic in the manner the drug or treatment was administered or prescribed." (p. 18).
4. "Dr. Campbell engaged in a prohibited act or practice...in engaging in unprofessional or dishonorable conduct that is likely to deceive or defraud the public or injure the public." (p. 18).
5. "Dr. Campbell committed a prohibited act or practice...by the commission of an act that violates any law of this state if the act is connected with [his] practice of medicine." (p. 18).
6. "Dr. Campbell committed a prohibited act or practice...by violating Section 311.0025 of the Texas Health and Safety Code, which provides that a health care professional may not submit to a patient or a third party payor a bill for a treatment that professional knows was not provided or knows was improper, unreasonable, or medically or clinically unnecessary." (p. 18).

7. "Reliance upon antibody testing--at its substantial cost to the patient and insurers--in the absence of testing first for other, more probable causes of illness and without established ranges of values, is not within the standard of care." (p. 19).

8. "The use of a diagnostic test on a trial basis without prior disclosure to the patient of the unaccepted status of the test is not within the standard of care." (p. 19).

9. "Quantitative electroencephalographic tests may be of investigational value for scientific purposes but are not within the standard of medical care absent a showing of a particular need, coupled with the skill of the physicians involved in the administration and interpretation of the test's results." (p. 19).

10. "The use of IVIg by [Dr. Campbell] in four patients was not appropriate because [Dr. Campbell] failed to do adequate clinical examinations and electro-diagnostic testing to determine if the patients had neuropathy or polyneuropathy, which made the use of IVIg medically unnecessary and unreasonable, and was not within the standard of medical care." (p. 19).

The Texas Board of Medicine believes that Dr. Campbell can be rehabilitated, although the first step in rehabilitation "is an acknowledgment of wrongdoing and a willingness to implement changes that will conform the physician's practice to that of a reasonable and prudent physician." (p. 20). Dr. Campbell has not demonstrated such an acknowledgment so far in the record.

The Board suspended Dr. Campbell's Texas license until February 8, 2008. (p. 20).

The Board ordered Dr. Campbell to enroll in and successfully complete one or more educational courses totaling at least 25 hours in duration on "the legal obligations of a physician that accompany the physician-patient relationship." (p. 20). The Board also ordered Dr.

Campbell to enroll in and successfully complete one or more educational courses totaling at least 25 hours on "the standard of care for a physician to use newly available techniques or medications or use existing techniques and medications in new ways." (p. 21).

The Board ordered Dr. Campbell to prepare a paper relating to the standard of care for a physician using newly available techniques or medications or use existing techniques and medications in new ways, sufficient in quality to meet the content and format requirements for publication in a scholarly medical journal. The paper must demonstrate Dr. Campbell's understanding and acceptance of the Board's findings of fact and conclusions of law and his commitment to rehabilitation. (p. 21). Dr. Campbell shall transfer all rights to the paper to the Board, including intellectual property rights, so that the Board may publish the paper if deemed appropriate. (p. 21).

The Board ordered Dr. Campbell to pay an administrative penalty of \$210,000.00 on or before February 8, 2008. (p. 21). The Board calculated the amount by assessing a penalty of \$5,000.00 for each of 42 violations of the Medical Practice Act, as itemized in Attachment A to the Final Order. (p. 21).

The Board ordered Dr. Campbell to appear before it at its meeting to be held on February 8, 2008 to show he has complied with the requirements of the Board's Final Order. (p. 22). If Dr. Campbell has complied with all the requirements of the Board's Final Order, the Board will place Dr. Campbell on probation for five years from February 8, 2008 under the following conditions:

- (a) A physician shall monitor Dr. Campbell's practice. (p. 22).

(b) Dr. Campbell shall prepare and provide complete legible copies of selected patient medical and billing records for at least 30 patients during each three-month period following the last day of the month of entry of the Final Order. (p. 22).

(c) The monitor physician shall personally review the selected records, and prepare written reports documenting any perceived deficiencies and any recommendations to improve Dr. Campbell's practice of medicine. Dr. Campbell shall compensate the monitor physician through the Board. Dr. Campbell shall not charge the monitor's compensation and costs to Dr. Campbell's patients. (p. 23).

(d) Dr. Campbell's medical records shall include a written consent from each patient to proceed with diagnostic testing and/or treatment. The informed consent form shall state whether the laboratory tests include established ranges recognized generally within the medical community; whether the laboratories and tests to be used have state regulatory approval; whether the laboratory tests to be used have general acceptance in the medical community as a valid basis upon which diagnoses may be made; whether the utility and results of the neurological tests and testing equipment to be used have been accepted by professional associations of neurologists; whether the dosage or administration of IVIG used by Dr. Campbell is generally recognized by the medical community; Dr. Campbell's average charge for all diagnostic tests and treatments (this disclosure must be accurate, clear, and in writing); and the risk that insurance may not pay for these charges. (pp. 23-24).

If at the Texas Board meeting to be held on February 8, 2007, the Board determines that Dr. Campbell has not complied with the requirements in the Final Order, then the Board will revoke Dr. Campbell's medical license, effective February 8, 2008.

The entry of the Final Order "shall constitute a PUBLIC REPRIMAND by the Board."
(p. 24—emphasis included).

The Board assessed Dr. Campbell the costs of transcription in the amount of \$8,396.50.
(p. 24).

Attachment A lists all 42 of Dr. Campbell's violations and the amount of penalties assessed therefor. (p. 26). They include improperly coded initial office visits, unnecessary initial blood tests ordered, unnecessary initial neurological tests ordered, unnecessary and unsupported prescriptions of IVIG treatment, improperly coded follow-up office visits, and unnecessary follow-up blood tests. (p. 26).

July 17, 2007

DATE

s/ Laura D. Millman

Laura D. Millman
Special Master