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8 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 09-2011-213287

12 **MICHAEL D. SCHULTZ, M.D.**
11479 Via Lido
13 Loma Linda, CA 92354
Physician's and Surgeon's Certificate No. G
14 42430

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]

15 Respondent.
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18 **FINDINGS OF FACT**

19 1. On or about February 8, 2013, Complainant Linda K. Whitney, in her official
20 capacity as the Executive Director of the Medical Board of California, filed Accusation No. 09-
21 2011-213287 against MICHAEL D. SCHULTZ, M.D. (Respondent) before the Medical Board of
22 California ("Board").

23 2. On or about July 7, 1980, the Medical Board of California (Board) issued Physician's
24 and Surgeon's Certificate No. G 42430 to Respondent. The Physician's and Surgeon's Certificate
25 expired on March 31, 2010, and has not been renewed.

26 3. On or about February 8, 2013, John F. Yelchak, an employee of the Complainant
27 Agency, served by Certified Mail a copy of the Accusation No. 09-2011-213287, Statement to
28 Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,

1 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is 11479
2 Via Lido, Loma Linda, CA 92354. A copy of the Accusation, the related documents, and
3 Declaration of Service are attached as exhibit A, and are incorporated herein by reference.

4 4. Service of the Accusation was effective as a matter of law under the provisions of
5 Government Code section 11505, subdivision (c).

6 5. On or about February 19, 2013, the aforementioned documents were returned by the
7 U.S. Postal Service marked "Unclaimed." A copy of the envelope returned by the post office is
8 attached as exhibit B, and is incorporated herein by reference.

9 6. Business and Professions Code section 118 states, in pertinent part:

10 "(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a
11 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by
12 order of a court of law, or its surrender without the written consent of the board, shall not, during
13 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
14 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
15 provided by law or to enter an order suspending or revoking the license or otherwise taking
16 disciplinary action against the license on any such ground."

17 7. Government Code section 11506 states, in pertinent part:

18 "(a) Within 15 days after service of the accusation the respondent may file with the agency
19 a notice of defense in which the respondent may:

20 (1) Request a hearing.

21 (2) Object to the accusation upon the ground that it does not state acts or omissions upon
22 which the agency may proceed.

23 (3) Object to the form of the accusation on the ground that it is so indefinite or uncertain
24 that the respondent cannot identify the transaction or prepare a defense.

25 (4) Admit the accusation in whole or in part.

26 (5) Present new matter by way of defense.

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1 (6) Object to the accusation upon the ground that, under the circumstances, compliance
2 with the requirements of a regulation would result in a material violation of another regulation
3 enacted by another department affecting substantive rights.

4 "(b) Within the time specified respondent may file one or more notices of defense upon any
5 or all of these grounds but all of these notices shall be filed within that period unless the agency in
6 its discretion authorizes the filing of a later notice.

7 "(c) The respondent shall be entitled to a hearing on the merits if the respondent files a
8 notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation
9 not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
10 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

11 8. Respondent failed to file a Notice of Defense within 15 days after service upon him
12 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 09-
13 2011-213287.

14 9. California Government Code section 11520 states, in pertinent part:

15 "(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the
16 agency may take action based upon the respondent's express admissions or upon other evidence
17 and affidavits may be used as evidence without any notice to respondent."

18 10. Pursuant to its authority under Government Code section 11520, the Board finds
19 Respondent is in default. The Board will take action without further hearing and, based on
20 Respondent's express admissions by way of default and the evidence before it, contained in
21 exhibits A and B, finds that the allegations in Accusation No. 09-2011-213287 are true.

22 23 **DETERMINATION OF ISSUES**

24 1. Based on the foregoing findings of fact, Respondent MICHAEL D. SCHULTZ, M.D.
25 has subjected his Physician's and Surgeon's Certificate No. G 42430 to discipline.

26 2. A copy of the Accusation and the related documents and Declaration of Service are
27 attached.

28 3. The agency has jurisdiction to adjudicate this case by default.

1 4. The Board is authorized to revoke Respondent's Physician's and Surgeon's Certificate
2 based upon the following violations alleged in the Accusation:

3 a) Section 820 of the Code states:

4 "Whenever it appears that any person holding a license, certificate or permit under this
5 division or under any initiative act referred to in this division may be unable to practice his or her
6 profession safely because the licentiate's ability to practice is impaired due to mental illness, or
7 physical illness affecting competency, the licensing agency may order the licentiate to be
8 examined by one or more physicians and surgeons or psychologists designated by the agency.
9 The report of the examiners shall be made available to the licentiate and may be received as direct
10 evidence in proceedings conducted pursuant to Section 822."

11 b) Section 822 of the Code states:

12 "If a licensing agency determines that its licentiate's ability to practice his or her profession
13 safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the
14 licensing agency may take action by any one of the following methods:

15 (a) Revoking the licentiate's certificate or license.

16 (b) Suspending the licentiate's right to practice.

17 (c) Placing the licentiate on probation.

18 (d) Taking such other action in relation to the licentiate as the licensing agency in its
19 discretion deems proper.

20 "The licensing agency shall not reinstate a revoked or suspended certificate or license
21 until it has received competent evidence of the absence or control of the condition which caused
22 its action and until it is satisfied that with due regard for the public health and safety the person's
23 right to practice his or her profession may be safely reinstated."

24 c) Section 823 of the Code states:

25 "Notwithstanding any other provisions of law, reinstatement of a licentiate against whom
26 action has been taken pursuant to Section 822 shall be governed by the procedures in this article.
27 In reinstating a certificate or license which has been revoked or suspended under Section 822, the
28 licensing agency may impose terms and conditions to be complied with by the licentiate after the

1 certificate or license has been reinstated. The authority of the licensing agency to impose terms
2 and conditions includes, but is not limited to, the following:

3 “(a) Requiring the licentiate to obtain additional professional training and to pass an
4 examination upon the completion of the training.

5 “(b) Requiring the licentiate to pass an oral, written, practical, or clinical examination, or
6 any combination thereof to determine his or her present fitness to engage in the practice of his or
7 her profession.

8 “(c) Requiring the licentiate to submit to a complete diagnostic examination by one or
9 more physicians and surgeons or psychologists appointed by the licensing agency. If the
10 licensing agency requires the licentiate to submit to such an examination, the licensing agency
11 shall receive and consider any other report of a complete diagnostic examination given by one or
12 more physicians and surgeons or psychologists of the licentiate's choice.

13 “(d) Requiring the licentiate to undergo continuing treatment.

14 “(e) Restricting or limiting the extent, scope or type of practice of the licentiate.”

15 d) Section 824 of the Code states:

16 “The licensing agency may proceed against a licentiate under either Section 820, or 822, or
17 under both sections.”

18 e) Section 2227 of the Code states:

19 “(a) A licensee whose matter has been heard by an administrative law judge of the Medical
20 Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default
21 has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary
22 action with the board, may, in accordance with the provisions of this chapter:

23 “(1) Have his or her license revoked upon order of the board.

24 “(2) Have his or her right to practice suspended for a period not to exceed one year upon
25 order of the board.

26 “(3) Be placed on probation and be required to pay the costs of probation monitoring upon
27 order of the board.

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1 "(4) Be publicly reprimanded by the board. The public reprimand may include a
2 requirement that the licensee complete relevant educational courses approved by the board.

3 "(5) Have any other action taken in relation to discipline as part of an order of probation, as
4 the board or an administrative law judge may deem proper.

5 "(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical
6 review or advisory conferences, professional competency examinations, continuing education
7 activities, and cost reimbursement associated therewith that are agreed to with the board and
8 successfully completed by the licensee, or other matters made confidential or privileged by
9 existing law, is deemed public, and shall be made available to the public by the board pursuant to
10 Section 803.1."

11 f) Section 2234 of the Code, states:

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

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

17 "(b) Gross negligence.

18 "(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or
19 omissions. An initial negligent act or omission followed by a separate and distinct departure from
20 the applicable standard of care shall constitute repeated negligent acts.

21 "(1) An initial negligent diagnosis followed by an act or omission medically appropriate
22 for that negligent diagnosis of the patient shall constitute a single negligent act.

23 "(2) When the standard of care requires a change in the diagnosis, act, or omission that
24 constitutes the negligent act described in paragraph (1), including, but not limited to, a
25 reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the
26 applicable standard of care, each departure constitutes a separate and distinct breach of the
27 standard of care.

28 "(d) Incompetence.

1 "(e) The commission of any act involving dishonesty or corruption which is substantially
2 related to the qualifications, functions, or duties of a physician and surgeon.

3 "(f) Any action or conduct which would have warranted the denial of a certificate.

4 "(g) The practice of medicine from this state into another state or country without meeting
5 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not
6 apply to this subdivision. This subdivision shall become operative upon the implementation of the
7 proposed registration program described in Section 2052.5.

8 "(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and
9 participate in an interview scheduled by the mutual agreement of the certificate holder and the
10 board. This subdivision shall only apply to a certificate holder who is the subject of an
11 investigation by the board."

12 g) Section 2221 of the Code states:

13 "(a) The Division of Licensing may deny a physician's and surgeon's license to any
14 applicant guilty of unprofessional conduct or of any cause that would subject a licensee to
15 revocation or suspension of his or her license; or, the division in its sole discretion, may issue a
16 probationary license to an applicant subject to terms and conditions, including, but not limited to,
17 any of the following conditions of probation:

18 "(1) Practice limited to a supervised, structured environment where the licensee's activities
19 shall be supervised by another physician and surgeon.

20 "(2) Total or partial restrictions on drug prescribing privileges for controlled substances.

21 "(3) Continuing medical or psychiatric treatment.

22 "(4) Ongoing participation in a specified rehabilitation program.

23 "(5) Enrollment and successful completion of a clinical training program.

24 "(6) Abstention from the use of alcohol or drugs.

25 "(7) Restrictions against engaging in certain types of medical practice.

26 "(8) Compliance with all provisions this chapter.

27 "(b) The Division of Licensing may modify or terminate the terms and conditions imposed
28 on the probationary license upon receipt of a petition from the licensee.

1 "(c) Enforcement and monitoring of the probationary conditions shall be under the
2 jurisdiction of the Division of Medical Quality in conjunction with the administrative hearing
3 procedures established pursuant to Sections 11371, 11372, 11373, and 11529 of the Government
4 Code, and the review procedures set forth in Section 2335.

5 "(d) The Division of Licensing shall deny a physician's and surgeon's license to an applicant
6 who is required to register pursuant to Section 290 of the Penal Code. This subdivision does not
7 apply to an applicant who is required to register as a sex offender pursuant to Section 290 of the
8 Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code."

9 5. Respondent is subject to disciplinary action under Code sections 820, 822 and
10 2234(d) in that Respondent is physically and mentally incapacitated due to illness and is therefore
11 unable to practice medicine. The facts and circumstances are as follows:

12 A. On or about April 13, 2005, Respondent's driver license was suspended due to
13 disability.

14 B. Nonetheless, on March 11, 2010, Respondent was stopped and arrested for operating
15 a motor vehicle under the influence of drugs or alcohol and driving on a suspended license. A
16 blood test administered that day resulted in a positive test for opiates. Respondent then failed to
17 appear for a hearing in that case on November 30, 2010, and a warrant was issued for his arrest; it
18 is still outstanding.

19 C. On August 24, 2012, Respondent was contacted by Medical Board Investigator Steve
20 Richter and Jennifer Doll at Loma Linda Medical Center where Respondent was a patient.
21 Respondent conceded that he was unfit to practice medicine due to his uncontrolled diabetes and
22 other medical issues, and did not know when he would be able to return to practice, if ever. He
23 executed an agreement to undergo physical and mental examinations, although he has not
24 completed them.

25 D. On September 11, 2012, Investigator Doll again spoke with Respondent, who
26 indicated he wished to surrender his medical license due to his medical disability. However, he
27 has not done so. On September 21, 2012, Investigator Doll received a signed release of medical
28 records from Respondent.

1 E. During September and October, 2012, Respondent's medical records were obtained
2 from St. Bernardine Medical Center, Western Healthcare, Citrus Valley Retirement Center, and
3 Loma Linda University Medical Center.

4 F. On October 17, 2012, Medical Board District Medical Consultant Jason Black, M.D.,
5 having reviewed the medical records of Respondent and the notes of the interviews of
6 Respondent by Investigators Richter and Doll, issued his opinion that Respondent was unsafe to
7 practice medicine.

8
9 **ORDER**

10 IT IS SO ORDERED that Physician's and Surgeon's Certificate No. G 42430, heretofore
11 issued to Respondent MICHAEL D. SCHULTZ, M.D., is revoked.

12 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
13 written motion requesting that the Decision be vacated and stating the grounds relied on within
14 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
15 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

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17 This Decision shall become effective on April 19, 2013.

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19 It is so ORDERED March 22, 2013

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22 FOR THE MEDICAL BOARD OF CALIFORNIA
23 LINDA K. WHITNEY *for*
24 EXECUTIVE DIRECTOR

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