

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

In the Matter of the Accusation Against:)
)
)
GERARD M. SCHMIT, M.D.) Case No. 12-2012-221351
)
Physician's and Surgeon's)
Certificate No. C 26891)
)
Respondent.)
_____)

DECISION

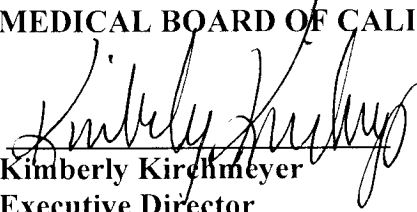
The attached Stipulation for Surrender of Certificate is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on May 1, 2014.

IT IS SO ORDERED April 22, 2014.

MEDICAL BOARD OF CALIFORNIA

By:



Kimberly Kirchmeyer
Executive Director

1 KAMALA D. HARRIS
Attorney General of California
2 JOSE R. GUERRERO
Supervising Deputy Attorney General
3 LAWRENCE MERCER
Deputy Attorney General
4 State Bar No. 111898
455 Golden Gate Avenue, Suite 11000
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Attorneys for Complainant

7
8 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 12-2012-221351

11
12 **GERARD M. SCHMIT, M.D.**
3100 Oak Road
13 **Walnut Creek, CA 94597**

**STIPULATION FOR SURRENDER OF
CERTIFICATE**

14 Physician's and Surgeon's Certificate No. C26891

15 Respondent.

16
17 In the interest of a prompt and speedy resolution of this matter, consistent with the public
18 interest and the responsibility of the Medical Board of California, Department of Consumer
19 Affairs, (hereinafter, the "Board"), the parties hereby agree to the following Stipulation for
20 Surrender of Certificate which will be submitted to the Board for its approval and adoption as the
21 final disposition of Case No. 12-2012-221351.

22
23 1. Kimberly Kirchmeyer ("Complainant") is the Executive Director of the Medical
24 Board of California, Department of Consumer Affairs, who brought this action solely in her
25 official capacity. She is represented in this matter by Kamala D. Harris, Attorney General of the
26 State of California, by Lawrence Mercer, Deputy Attorney General.

1 2. Gerard M. Schmit, M.D. ("Respondent") is represented in this matter by his
2 attorneys Ann H. Larson and McNamara, Dodge, Ney, Beatty, Slattery, Pfalzer, Borges &
3 Brothers LLP, 1211 Newell Avenue, P.O. Box 5288, Walnut Creek, CA 94596.

4 3. On December 1, 2004, the Medical Board of California issued Physician's and
5 Surgeon's Certificate Number C26891 to Gerard M. Schmit, M.D. Said certificate is renewed and
6 current, with an expiration date of November 30, 2014.

7 JURISDICTION

8
9 4. Accusation No. 12-2012-221351 ("Accusation") was filed before the board and is
10 currently pending against Respondent. The Accusation, together with all other statutorily
11 required documents, was duly served on Respondent at his address of record. A copy of
12 Accusation No. 12-2012-221351 is attached as Exhibit A and incorporated herein by reference.

13 ADVISEMENT AND WAIVERS

14 5. Respondent has carefully read and understands the charges and allegations in
15 Accusation No. 12-2012-221351. Respondent has also carefully read and understands the effects
16 of this Stipulation for Surrender of Certificate.

17 6. Respondent is fully aware of his legal rights in this matter, including the right to a
18 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
19 his own expense; the right to confront and cross-examine the witnesses against him; the right to
20 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
21 the attendance of witnesses and the production of documents; the right to reconsideration and
22 court review of an adverse decision; and all other rights accorded by the California
23 Administrative Procedure Act and other applicable laws.

24 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
25 every right set forth above.

26 ACKNOWLEDGMENTS

27 8. Respondent does not contest that, at an administrative hearing, Complainant could
28 establish a *prima facie* case with regard to the charges in the Accusation. Respondent hereby

1 gives up his right to contest these charges and he agrees that his Physician's and Surgeon's
2 Certificate is subject to discipline pursuant to section 2234 of the Business and Professions Code.

3 9. Respondent desires and agrees to surrender his Physician's and Surgeon's Certificate
4 for the Board's formal acceptance, thereby giving up his right to practice medicine in the State of
5 California.

6 **RESERVATION**

7 10. The admissions made by Respondent herein are only for the purposes of this
8 proceeding or any other proceedings in which the Medical Board of California or other
9 professional licensing agency in any state is involved, and shall not be admissible in any other
10 criminal or civil proceedings.

11 **CONTINGENCY**

12 11. This Stipulation shall be subject to the approval of the Board. Respondent
13 understands and agrees that Board staff and counsel for Complainant may communicate directly
14 with the Board regarding this Stipulation, without notice to or participation by Respondent or his
15 attorney. If the Board fails to adopt this Stipulation as its Order in this matter, the Stipulation
16 shall be of no force or effect; it shall be inadmissible in any legal action between the parties; and
17 the Board shall not be disqualified from further action in this matter by virtue of its consideration
18 of this Stipulation.

19 12. The parties understand and agree that facsimile and electronic format copies of this
20 Stipulated Settlement and Disciplinary Order, including facsimile and electronic format
21 signatures thereto, shall have the same force and effect as the originals.

22 **STIPULATION AND ORDER**

23 **IT IS THEREFORE STIPULATED AND ORDERED** as follows:

24 1. **SURRENDER** Respondent hereby agrees that he will surrender his wall and wallet
25 Physician's and Surgeon's Certificates and all other indicia of his right to practice medicine in the
26 State of California to the Board or its representative on or before the effective date of this
27 decision, and the Board agrees to accept this surrender in resolution of this matter. Said surrender
28 shall be effective as of May 1, 2014.

1 2. **REINSTATEMENT** Respondent fully understands and agrees that if he ever files
2 an application for re-licensure or reinstatement in the State of California, the Board shall treat it
3 as a petition for reinstatement. Respondent must comply with all the laws, regulations and
4 procedures for reinstatement of a revoked license in effect at the time any petition is filed, and he
5 understands and agrees that all of the allegations and causes for discipline contained in
6 Accusation No. 12-2012-221351 will be deemed to be true, correct and admitted by him for
7 purposes of the Board's determination whether to grant or deny the petition. Respondent agrees
8 that he will not petition for reinstatement for at least three (3) years following the effective date of
9 this decision. Respondent hereby waives any time-based defense he might otherwise have to the
10 charges contained in Accusation No. 12-2012-221351 including, but not limited to, the equitable
11 defense of laches.

12 3. Respondent understands that by signing this Stipulation, he is enabling the Board to
13 issue its order accepting the surrender of his license without further process. He further
14 understands that upon acceptance of this Stipulation by the Board, he will no longer be permitted
15 to practice as a physician and surgeon in California.

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ACCEPTANCE

I, GERARD M. SCHMIT, M.D., have carefully read the above Stipulation for Surrender of Certificate, have fully discussed it with my attorneys, and enter into it freely and voluntarily and with full knowledge of its force and effect, do hereby agree to surrender my Physician's and Surgeon's Certificate no. C26891 to the Medical Board of California for its formal acceptance. By signing this Stipulation to surrender my license, I recognize that as of the effective date of this Decision on May 1, 2014, I will lose all rights and privileges to practice as a physician and surgeon in the State of California and, if I have not already done so, I also will cause to be delivered to the Board both my license and wallet certificates on or before the effective date of the decision.

Dated: 4, 10, 14

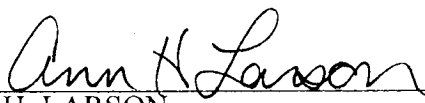


GERARD M. SCHMIT, M.D.
Respondent

I have read and fully discussed with Respondent GERARD M. SCHMIT, M.D. the terms and conditions and other matters contained in the above Stipulation for Surrender of Certificate. I approve its form and content.

Dated: 4-10-14

McNAMARA, DODGE, NEY, BEATTY, PFALZER,
BORGES & BROTHERS, LLP


ANN H. LARSON
Attorney for Respondent

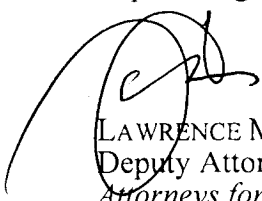
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ENDORSEMENT

The foregoing Stipulation for Surrender of Certificate is respectfully submitted for consideration by the Medical Board of California, Department of Consumer Affairs.

Dated: *April 16, 2014*

KAMALA D. HARRIS
Attorney General of California
JOSE R. GUERRERO
Supervising Deputy Attorney General



LAWRENCE MERCER
Deputy Attorney General
Attorneys for Complainant

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Exhibit A - Accusation No. 12-2012-221351

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2 JOSE R. GUERRERO
Supervising Deputy Attorney General
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7 *Attorneys for Complainant*
Medical Board of California

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO *January 16, 2014*
BY: *J. KELMAK* ANALYST

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

12 In the Matter of the Accusation Against:

Case No. 12-2012-221351

13 **GERARD M. SCHMIT, M.D.**
14 **3100 Oak Road, Ste. 270**
15 **Walnut Creek, CA 94597**

ACCUSATION

16 Physician's and Surgeon's Certificate No. C26891,

17 Respondent.

18 Complainant alleges:

PARTIES

19 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
20 capacity as the Interim Executive Director of the Medical Board of California, Department of
21 Consumer Affairs.

22 2. On December 1, 2004, the Medical Board of California issued Physician's and
23 Surgeon's Certificate Number C26891 to Gerard M. Schmit, M.D. (Respondent). Said certificate
24 is renewed and current, with an expiration date of November 30, 2014.

25 //

26 //

27 //

1 **JURISDICTION**

2 3. This Accusation is brought before the Medical Board of California¹ (Board),
3 Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code unless otherwise indicated.

5 A. Section 2227 of the Code provides that a licensee who is found guilty under the
6 Medical Practice Act may have his or her license revoked or suspended for a period not to exceed
7 one year; or the licensee may be placed on probation and may be required to pay the costs of
8 probation monitoring or may have such other action taken in relation to discipline as the Division
9 deems proper.

10 B. Section 2234 of the Code provides that the Medical Board shall take action against
11 any licensee who is charged with unprofessional conduct. Unprofessional conduct includes, but
12 is not limited to:

13 (a) Violating or attempting to violate, directly or indirectly, assisting in or abetting
14 the violation of, or conspiring to violate, any provision of this chapter [Chapter 5, the Medical
15 Practice Act]

16 (b) Gross negligence

17 (c) Repeated negligent acts

18 (d) Incompetence

19 C. Section 2242 of the Code provides that it is unprofessional conduct to prescribe
20 without an appropriate examination and/or medical indication.

21 **ETHICAL PRINCIPLES**

22 4. The medical profession has long subscribed to a body of ethical statements, set forth
23 and adopted by the American Medical Association and known as *The Principles of Medical*
24 *Ethics*. *The Principles of Medical Ethics* represent standards of conduct which define the
25 essentials of honorable behavior for a physician. The American Psychiatric Association has
26

27 ¹ The term "Board" means the Medical Board of California. "Division of Medical
28 Quality" shall also be deemed to refer to the Board.

1 developed and adopted *Principles of Medical Ethics with Annotations Especially Applicable to*
2 *Psychiatry (2009 Edition)* which state:

3
4 “All physicians should practice in accordance with the medical code of ethics
5 set forth in the Principles of Medical Ethics of the American Medical Association. An
6 up-to-date expression and elaboration of these statements is found in the Opinions
7 and Reports of the Council on Ethical and Judicial Affairs of the American Medical
8 Association. Psychiatrists are strongly advised to be familiar with these documents.
9 ... While psychiatrists have the same goals as all physicians, there are special ethical
10 problems in psychiatric practice that differ in coloring and degree from ethical
11 problems in other branches of medical practice, even though the basic principles are
12 the same.” (Foreword)

13
14 The following specific parts of the adopted *Principles of Medical Ethics with Annotations*
15 *Especially Applicable to Psychiatry (2009 Edition)* are applicable:

16 A. Section 1 states:

17 “A psychiatrist shall not gratify his or her own needs by exploiting the patient.
18 The psychiatrist shall be ever vigilant in the impact that his or her conduct has upon
19 the boundaries of the doctor-patient relationship, and thus upon the well-being of the
20 patient. These requirements become particularly important because of the essentially
21 private, highly personal and sometimes intensely emotional nature of the relationship
22 established with the psychiatrist.”

23 B. Section 2 states:

24 “A physician shall uphold the standards of professionalism, be honest in all
25 professional interactions, and strive to report physicians deficient in character or
26 competency, or engaging in fraud or deception, to appropriate entities.”

27 The Principles of Medical Ethics with Annotations Especially Applicable to
28 Psychiatry stated the following in 1993 and in all subsequent updates:

“The requirement that the physician conduct himself/herself with propriety in
his or her profession and in all the actions of his or her life is especially important in
the case of the psychiatrist because the patient tends to model his or her behavior after
that of his or her psychiatrist by identification. Further, the necessary intensity of the
treatment relationship may tend to activate sexual and other needs and fantasies on
the part of both patient and psychiatrist, while weakening the objectivity necessary
for control. Additionally, the inherent inequality in the doctor-patient relationship
may lead to exploitation of the patient. Sexual activity with a current or former
patient is unethical.”

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FACTS COMMON TO ALL CAUSES FOR DISCIPLINE

1
2 5. At all relevant times, respondent was a physician and surgeon with a specialization in
3 psychiatry.

4 6. Beginning approximately May 14, 2007 and continuing until August 15, 2013, Patient
5 C.B.², a 31 year old female, was under respondent's care for treatment of depression and, later,
6 alcoholism. At the first visit, C.B. reported to respondent that she had been consuming a bottle of
7 wine per day for several months and respondent's diagnoses included "rule out alcohol abuse."
8 Respondent started the patient on Ativan and Prozac.

9 7. After initially decreasing her alcohol consumption, in July 2007 Patient C.B. reported
10 that her use had increased to 1-2 bottles of wine per night. Respondent began prescribing
11 Antabuse to help the patient control her alcohol intake.

12 8. The patient continued on respondent's care for diagnoses of depression and
13 alcoholism. When Antabuse proved ineffective in controlling the patient's desire for alcohol,
14 respondent began prescribing Campral. Respondent also continued prescribing anti-depressants,
15 including Prozac and then Wellbutrin. He also prescribed benzodiazepines, including Ambien
16 and Lunesta, which were contraindicated given the patient's inability to abstain from alcohol.

17 9. Over time, respondent began assuming additional roles in his psychiatrist-patient
18 relationship with C.B. He wrote a letter to the court on her behalf after she was arrested for a
19 DUI in mid-2010. He also undertook to find outpatient rehabilitation programs to treat her
20 alcoholism and he paid for two such programs himself.

21 10. On September 19, 2010, Patient C.B. was rushed to John Muir Medical Center after
22 becoming extremely intoxicated at a local hotel. A blood test revealed her blood alcohol level to
23 be approximately .344. At that time, the patient admitted to a 20 year history of alcoholism.
24 Respondent arranged for her to come under the care of an addiction specialist and he met with the
25 specialist himself. His note of that meeting states that he would continue to function as the
26 patient's psychiatrist.

27 _____
28 ² The patient's name is abbreviated to protect privacy and confidentiality.

1 11. In March 2011, the patient was admitted to Bayside Marin Alcohol and Drug
2 Rehabilitation Program. The records of that program include a credit card authorization for
3 respondent's payment to the program on behalf of C.B.

4 12. Respondent's personal involvement in the patient's alcohol treatment and personal
5 affairs escalated and in May 2011 he noted that the patient blamed him for her worsening alcohol
6 problems.

7 13. In September 2011, respondent wrote prescriptions for Oxycodone/acetaminophen for
8 C.B. which -- as with the previously prescribed benzodiazepines -- were contraindicated in a
9 patient suffering from chronic alcoholism.

10 14. By December 2011, the patient's alcohol consumption had increased to a reported 3-4
11 bottles of wine per day and she was separated from her husband. Respondent intervened in the
12 marriage and spoke with C.B.'s husband, T.B., about reconciliation.

13 15. C.B. was arrested for another DUI at the end of December 2011. On January 18,
14 2012, Tiburon Police were called to C.B.'s apartment. There she reported that she and her
15 "former boyfriend" had gotten into an argument and that he had tried to kill her. She identified
16 respondent as the former boyfriend. She stated that respondent had placed a pillow over her face
17 and that he had thrown a bag of recycling at her. While the police were interviewing C.B., she
18 received a text from respondent that said: "sorry, sorry, sorry, I love you forever I'll always be
19 there for you. Please call me when. The letter for tomorrow is in the door." Although the
20 investigating officers observed that the letter was on respondent's professional letterhead, C.B.
21 was evasive when questioned about the exact nature of the relationship between them. Ultimately
22 she stated that they had been dating for five years, that he sometimes stayed in the apartment and
23 that he paid the rent.

24 16. Respondent was arrested on domestic violence charges and interviewed regarding the
25 incident. He reported that "my girlfriend of five years and I had a spat tonight." When
26 questioned about how they met, respondent was evasive and only admitted that he was also
27 C.B.'s psychiatrist when he was directly confronted with the fact. He stated that he met C.B. to
28 give her a letter to take to her DUI court appearance, but that during dinner she had consumed

1 most of two bottles of wine and they had an argument at her apartment. He admitted to placing a
2 pillow over C.B.'s face, but stated that she was screaming and he wanted to silence her so that she
3 would not be evicted. He also admitted that the incident with the pillow took place on C.B.'s bed.
4 When the interrogating officer questioned respondent about the letter he wrote for C.B. – which
5 did not disclose to the court that he had a personal relationship with her – respondent
6 acknowledged that there might be a conflict of interest in their relationship.

7 17. On December 18, 2012, respondent was involved in another police complaint
8 involving C.B. On that day, C.B. called the Walnut Creek Police Department and reported that
9 respondent was her psychiatrist and that he had become upset with her because he suspected she
10 was again dating a former boyfriend, G.B. She stated that respondent slapped her on the right
11 cheek and left. When asked about the nature of her relationship with respondent, C.B. stated that
12 they had gone on multiple “dates” but that there was no sexual relationship. She stated that
13 respondent had been paying the rent on her apartment for approximately two years. She told the
14 officers she wanted the keys to her apartment and car back. When the officers asked respondent
15 for the keys, respondent told the officers to ask C.B. who was paying the rent. He then reportedly
16 threw the keys at the officers.

17 18. On August 8, 2013, C.B. was admitted John Muir Center for Recovery. The records
18 of that treatment indicate that the patient was admitted with a blood alcohol of .384. She stated
19 that respondent was her outpatient psychiatrist and that he had been treating her for the past seven
20 or eight years. On August 15, 2013, respondent sent a letter discharging C.B. as a patient, stating
21 that she was now under the care of the rehabilitation facility and its physicians.

22 19. The Medical Board opened an investigation after receiving CII reports of
23 respondent's two arrests for battery/domestic violence. In the course of the investigation,
24 documents were obtained which showed that respondent was the guarantor and paid rent for
25 Patient C.B. on multiple occasions in 2011, 2012 and 2013. The Medical Board also obtained
26 pharmacy records which showed that respondent had prescribed narcotics, including oxycodone,
27 and benzodiazepines, to C.B. and that he also prescribed benzodiazepines for C.B.'s estranged
28 husband, T.B. albeit T.B. was not his patient.

1 20. On July 26, 2013, respondent was interviewed by an investigator for the Medical
2 Board, although he attempted to deny that C.B. had been his girlfriend and said that he had lied to
3 the Tiburon police officers when he said she was, he admitted to extensive financial and personal
4 involvement with C.B. He described C.B. as a personal friend. He admitted that he paid C.B.'s
5 expenses, including in-patient rehabilitation, prescription charges, car payments and rent. He also
6 said that over time he had ceased billing C.B. for his psychiatric care. Respondent admitted to
7 having keys to her apartment and car as well. Respondent acknowledged that his relationship
8 with C.B. had crossed professional and ethical boundaries.

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct/Gross Negligence/Negligence Acts/Violation of Ethical
11 Standards)**

12 21. Respondent's conduct in entering into a social, personal and financial relationship
13 with his patient constitutes unprofessional conduct, and/or gross negligence, and/or negligence
14 acts, and/or a violation of ethical standards, and is cause for discipline pursuant to Business and
15 Professions Code sections 2234 and/or 2234(b), and/or 2234(c).

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Unprofessional Conduct/Gross Negligence/Negligence/Incompetence)**

18 22. Respondent's lack of familiarity with, or failure to conform his conduct to, the ethical
19 standards governing the practice of psychiatry constitutes unprofessional conduct and/or
20 incompetence and is cause for discipline pursuant to Business and Professions Code sections
21 2234 and/or 2234(d). It also represents a violation of ethical standards.

22 23. Respondent's failure to understand or appreciate the role of transference and counter-
23 transference in his relationship with C.B., his maintenance of a dual-relationship with his patient,
24 his multiple arrests for domestic violence against C.B., each constitute unprofessional conduct
25 and/or incompetence and/or gross negligence and/or negligence, and is cause for discipline
26 pursuant to Business and Professions Code sections 2234 and/or 2234(b) 2234(c) and/or 2234(d).

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Negligent Prescribing)**

3 24. Respondent's conduct in prescribing narcotics and benzodiazepines to C.B. and to
4 C.B.'s husband, T.B. constitutes unprofessional conduct and/or gross negligence and/or repeated
5 negligent acts and is cause for discipline pursuant to Business and Professions Code sections
6 2234 and/or 2234(b) and/or 2234(c). It also represents a violation of Business and Professions
7 Code section 2242, prescribing without an appropriate examination and medical indication.

8 **PRAYER**

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
10 and that following the hearing, the Board issue a decision:

- 11 1. Revoking or suspending Physician's and Surgeon's Certificate Number C26891
12 issued to Gerard Schmit, M.D.
- 13 2. Revoking, suspending, or denying approval of Respondent's authority to supervise
14 physician assistants; and
- 15 3. If placed on probation, ordering him to pay the Medical Board of California the costs
16 of probation monitoring.
- 17 4. Taking such other and further action as deemed necessary and proper.

18
19 DATED: January 16, 2014


20 KIMBERLY KIRCHMEYER
21 Interim Executive Director
22 Medical Board of California
23 Department of Consumer Affairs
24 State of California
25 Complainant

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