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7

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. 16-2012-221575

12 **WESLEY ALAN McELDOON, M.D.**
13 **3315 Falcon Avenue**
Signal Hill, CA 90755-4811

DEFAULT DECISION
AND ORDER

14 **Physician's and Surgeon's Certificate**
15 **No. C 42996**

[Gov. Code §11520]

16 Respondent
17

18 FINDINGS OF FACT

19 1. On or about November 15, 2012, Complainant Linda K. Whitney, in her official
20 capacity as the Executive Director of the Medical Board of California, Department of Consumer
21 Affairs, filed Accusation No. 16-2012-221575 against Wesley Alan McEldoon, M.D.
22 (Respondent) before the Medical Board of California.

23 2. On or about April 28, 1992, the Medical Board of California (Board) issued
24 Physician's and Surgeon's Certificate No. C 42996 to Respondent. The Physician's and Surgeon's
25 Certificate was in full force and effect at all times relevant to the charges brought herein and will
26 expire on October 31, 2013, unless renewed. (Exhibit Package, Exhibit 1, License Certification.)¹
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28 ¹ The evidence in support of this Default Decision and Order is attached and submitted as
(continued...)

1 3. On or about November 15, 2012, an employee of the Board served by certified mail a
2 copy of the Accusation No. 16-2012-221575, Statement to Respondent, Request for Discovery,
3 Notice of Defense form, and a copy of Government Code sections 11507.5, 11507.6, and 11507.7
4 to Respondent’s address of record with the Board, which was and is 3315 Falcon Avenue, Signal
5 Hill, CA 90755-4811. The Board received confirmation from the U.S. Postal Service that
6 delivery of the Accusation Packet (Certified Mail receipt 7012 1010 0001 2263 0756) was
7 attempted on November 17, 2012, but was unsuccessful. Notice was left of the attempted
8 delivery. On December 11, 2012, the Accusation Packet sent via certified mail was returned to
9 the Board marked “Unclaimed.” The Board has not received a response to the Accusation from
10 Respondent. (Exhibit Package, Exhibit 2, Accusation Packet, declaration of service, copy of
11 unsigned Certified Mail Domestic Return Receipt and envelope stamped “Unclaimed”, and a
12 copy of the U.S. Postal Track and Confirm Search Results.)

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

15 5. On or about January 4, 2013, an employee of the Attorney General’s Office sent by
16 certified and regular mail addressed to Respondent at the address of record set forth above a
17 Courtesy Notice of Default, advising Respondent of the service of the Accusation, and providing
18 him with an opportunity to request relief from default. The green certified mail receipt was
19 signed and returned. (Exhibit Package, Exhibit 3, Courtesy Notice of Default with Accusation
20 Packet attached, declaration of service, and signed certified mail receipt.) No Notice of Defense
21 has been received from Respondent.

22 6. Government Code section 11506 states, in pertinent part:

23 “(a) Within 15 days after service of the accusation the respondent may file with the agency
24 a notice of defense . . .

25 “

26
27
28 the “Exhibit Package” and is incorporated herein by reference as if fully set forth.

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

5 Respondent failed to file a Notice of Defense within 15 days after service upon him of the
6 Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 16-2012-
7 221575.

8 7. California Government Code section 11520 states, in pertinent part:

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

12 8. Pursuant to its authority under Government Code section 11520, the Board finds
13 Respondent is in default. The Board will take action without further hearing and, based on
14 Respondent's express admissions by way of default and the evidence before it, contained in the
15 Exhibit Package, finds that the allegations in Accusation No. 16-2012-221575 are true as follows:

16 A. On or about February 14, 2012, the State of Maine Board of Licensure in Medicine
17 (Maine Board) issued a Reprimand to Respondent, imposed a fine in the amount of \$3000.00, and
18 required Respondent to reimburse the costs associated with the hearing. This action was based on
19 findings that, on or about November 16, 2009, Respondent obtained a medical license through
20 fraud or deceit in connection with an application for an emergency medical license he filed with
21 the Maine Board. Respondent executed an affidavit in which he stated that he would file a
22 completed application for a permanent Maine medical license within 14 days of having been
23 issued an emergency license. In reliance on that affidavit, an emergency license was issued.
24 Respondent never filed an application for a permanent Maine medical license. (Exhibit Package,
25 Exhibit 2, Decision and Order of the Maine State Board of Licensure in Medicine, attached as
26 Exhibit A to Accusation No. 16-2012-221575.)

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1 DETERMINATION OF ISSUES

2 1. Pursuant to the foregoing Findings of Fact, Respondent's conduct and the action
3 taken by the Maine Board regarding Respondent's license to practice medicine, as set forth
4 above, constitutes cause for disciplinary action and/or unprofessional conduct within the meaning
5 of Business and Professions Code sections 141 and/or 2305.

6 2. The agency has jurisdiction to adjudicate this case by default.
7

8 ORDER

9 IT IS SO ORDERED that Physician's and Surgeon's Certificate No. C 42996, heretofore
10 issued to Respondent Wesley Alan McEldoon, M.D., is revoked.

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

15 This Decision shall become effective on June 21, 2013.

16 It is so ORDERED May 22, 2013.
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19 MEDICAL BOARD OF CALIFORNIA
20 DEPARTMENT OF CONSUMER AFFAIRS
21 STATE OF CALIFORNIA

22
23 BY: 

24 Linda K. Whitney
25 Executive Director
26

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO NOVEMBER 15 2012
BY: [Signature] ANALYST

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13 **WESLEY ALAN McELDOON, M.D.**
14 **3315 Falcon Avenue**
Signal Hill, CA 90755-4811
15 **Physician's and Surgeon's Certificate**
16 **No. C 42996**
Respondent.

Case No. 16-2012-221575

A C C U S A T I O N

17
18 Complainant alleges:

19 **PARTIES**

- 20 1. Linda K. Whitney (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Director of the Medical Board of California, Department of Consumer Affairs.
22 2. On or about April 28, 1992, the Medical Board of California issued Physician's and
23 Surgeon's Certificate Number C 42996 to Wesley A. McEldoon, M.D. (Respondent). The
24 Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the
25 charges brought herein. The certificate is renewed and current with an expiration date of October
26 31, 2013.

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JURISDICTION

3. This Accusation is brought before the Medical Board of California (Board)¹, Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

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

5. Section 2305 of the Code states:

“The revocation, suspension, or other discipline, restriction or limitation imposed by another state upon a license or certificate to practice medicine issued by that state, or the revocation, suspension, or restriction of the authority to practice medicine by any agency of the federal government, that would have been grounds for discipline in California of a licensee under this chapter [Chapter 5, the Medical Practice Act], shall constitute grounds for disciplinary action for unprofessional conduct against the licensee in this state.”

6. Section 141 of the Code states:

"(a) For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or another country shall be conclusive evidence of the events related therein.

"(b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by that board that provides for discipline based upon a

¹ The term “board” means the Medical Board of California. “Division of Medical Quality” shall also be deemed to refer to the Medical Board. (Bus. & Prof. Code, § 2002.)

1 disciplinary action taken against the licensee by another state, an agency of the federal
2 government, or another country."

3 CAUSE FOR DISCIPLINE

4 (Discipline, Restriction, or Limitation Imposed by Another State and Unprofessional Conduct)

5 7. On or about February 14, 2012, the State of Maine Board of Licensure in Medicine
6 (Maine Board) issued a Reprimand to Respondent, imposed a fine in the amount of \$3000.00, and
7 required Respondent to reimburse the costs associated with the hearing. This action was based on
8 findings that, on or about November 16, 2009, Respondent obtained a medical license through
9 fraud or deceit in connection with an application for an emergency medical license he filed with
10 the Maine Board. Respondent executed an affidavit in which he stated that he would file a
11 completed application for a permanent Maine medical license within 14 days of having been
12 issued an emergency license. In reliance on that affidavit, an emergency license was issued.
13 Respondent never filed an application for a permanent Maine medical license. Attached hereto as
14 Exhibit A and incorporated herein, as if fully set forth, is a true and correct copy of the Decision
15 and Order issued by the Maine State Board of Licensure in Medicine.

16 8. Respondent's conduct and the action of the Maine Board regarding Respondent's
17 license to practice medicine, as set forth above, constitutes cause for disciplinary action and/or
18 unprofessional conduct within the meaning of sections 141 and/or 2305 of the Code. Therefore,
19 cause for discipline exists.

20 PRAYER

21 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
22 and that following the hearing, the Medical Board of California issue a decision:

23 1. Revoking or suspending Physician's and Surgeon's Certificate Number C 42996,
24 issued to Wesley A. McEldoon, M.D.;

25 2. Revoking, suspending or denying approval of Wesley A. McEldoon, M.D.'s authority
26 to supervise physician assistants, pursuant to section 3527 of the Code;

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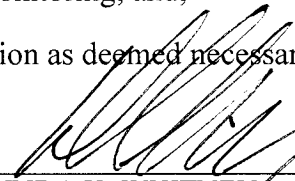
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3. Ordering Wesley A. McEldoon, M.D. to pay the Medical Board of California, if placed on probation, the costs of probation monitoring; and,

4. Taking such other and further action as deemed necessary and proper.

DATED: November 15, 2012



LINDA K. WHITNEY
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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Exhibit A: Maine Board Decision and Order

EXHIBIT A

which he affirmatively stated in writing that “I will file a completed application for a permanent Maine [medical] license within 14 days of having been issued an emergency license.”

2. On November 16, 2009, relying upon Dr. McEldoon’s affirmation, the Board staff issued him an emergency medical license that allowed Dr. McEldoon to practice medicine in the State of Maine. The license expired on February 24, 2010.

3. Board staff contacted Dr. McEldoon via e-mail on November 3, 2010 to notify him that no permanent Maine medical license application had been received. The e-mail further stated that if he did not respond by November 30, 2010, the matter would be referred to the Board for review.

4. The Board reviewed the matter at their meeting on February 8, 2011 and voted to issue a complaint against Wesley McEldoon, M.D. alleging unprofessional conduct and fraud or deceit in obtaining the emergency medical license based on his failure to complete the process for a permanent Maine medical license as he represented he would.

5. A notice of complaint was sent to the Respondent’s contact address via certified mail, return receipt requested, on March 15, 2011. The notice was returned to the Board on April 14, 2011.

6. A notice of complaint was sent to Respondent McEldoon’s contact address via certified mail, return receipt requested, on May 4, 2011. The notice was returned to the Board on June 13, 2011 marked “unclaimed”.

7. A notice of complaint was sent to Respondent McEldoon’s contact address via first class mail on June 28, 2011.

8. An e-mail was also sent to Dr. McEldoon on June 28, 2011 informing him that the Board was attempting to contact him via certified letters to his home and requesting that he contact the Board.

9. Dr. McEldoon finally contacted Board staff on June 28, 2011 and requested that a copy of the complaint be sent to him via e-mail. His request was complied with that day. At the same time, a request was made of him to respond in writing to the complaint within thirty (30) days.

10. Board staff contacted Dr. McEldoon via e-mail on July 29, 2011 to check on the status of his response to the complaint. Dr. McEldoon responded via e-mail that day and indicated that he no longer wished to have a Maine medical license. Board staff responded to his e-mail and indicated that a response to the complaint was still required. Board staff received no response from Dr. McEldoon.

11. Randal C. Manning, Executive Director of the Maine Board of Licensure in Medicine, contacted Respondent McEldoon via e-mail on August 3, 2011 and explained possible action that the Board might take if he did not respond to the complaint. Mr. Manning informed the Respondent that the matter would be presented to the Board at their September meeting and requested that he respond no later than August 12, 2011. Mr. Manning added: "The emergency license was granted. Even if the physician no longer works in this state, Board laws and rules are taken seriously, and the obligation of the Board to fully verify credentials is clear. Your choice not to return to Maine does not satisfy the attestation." Mr. Manning further informed Dr. McEldoon that "a Board finding of discipline always has profound and extremely long lasting ramifications on the licensee."

12. To date the Board has not received a response to the complaint.

III.

CONCLUSIONS OF LAW

The Board, by the vote of 8-0, concluded as a result of the above factual findings that Dr. Wesley McEldoon violated the following two Board statutes.

A. Dr. McEldoon engaged in unprofessional conduct in violation of 32 M.R.S. § 3282-A(2)(F) by violating a standard of professional behavior that has been established in the practice for which the licensee is licensed.

B. Dr. McEldoon engaged in the practice of fraud or deceit in obtaining a license under this chapter or in connection with services rendered within the scope of the license issued in violation of 32 M.R.S. §3282-A(2)(A).

IV.

SANCTIONS

Based on the above evidence and other evidence found in the record but not alluded to herein, and having considered that the Board's sole purpose is to protect the public health and welfare, the Board voted 8-0:¹

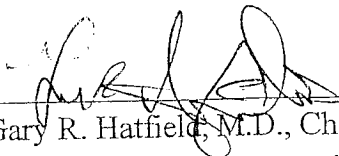
1. To **REPRIMAND** Wesley A. McEldoon, M.D.

2. To require Dr. McEldoon to **pay a fine** of fifteen hundred dollars (\$1500.00) prior to May 15, 2012 per each of the above two violations for a **total of three thousand dollars**. Payment shall be by certified check or money order made payable to: "Treasurer, State of Maine" and remitted to Randal C. Manning, Executive Director, 137 State House Station, Augusta, Maine. 04333-0137.

3. To require Dr. McEldoon to reimburse the Board by May 15, 2012 for the costs of the hearing and also the hearing record and transcription costs in the event of an appeal by him. The costs will be attached to this decision. Payment shall be by certified check or money order made payable to: "Maine Board of Licensure in Medicine" and remitted to Randal C. Manning, Executive Director, 137 State House Station, Augusta, Maine. 04333-0137. This sanction is ordered based on the premise that those who violate Board Rules and statutes should be responsible for the costs of the hearing as opposed to those licensees who obey such laws. Additionally, this proceeding could most probably been avoided if the Respondent had responded and made a serious attempt at resolving the issues.

¹ "The sole purpose of an occupational and professional regulatory board is to protect the public health and welfare. A board carries out this purpose by ensuring that the public is served by competent and honest practitioners and by establishing minimum standards of proficiency in the regulated professions by examining, licensing, regulating and disciplining practitioners of those regulated professions. Other goals or objectives may not supersede this purpose."

Dated: February 14, 2012



Gary R. Hatfield, M.D., Chairman
Maine Board of Licensure in Medicine

V.

APPEAL RIGHTS

Pursuant to the provisions of 5 M.R.S. § 10051.3 and 10 M.R.S. § 8003 (5)(G) and (5-A), any party that appeals this Decision and Order must file a Petition for Review in the Superior Court within 30 days of receipt of this Order. The petition shall specify the person seeking review, the manner in which they are aggrieved and the final agency action which they wish reviewed. It shall also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought and a demand for relief. Copies of the Petition for Review shall be served by Certified Mail, Return Receipt Requested upon the Maine State Board of Licensure in Medicine, all parties to the agency proceedings and the Attorney General.