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

In the Matter of the Accusation Against, **ROBERT GENE RAND, M.D.** 6880 S. McCarran Blvd #14 Reno, NV 89509 **Physician's and Surgeon's Certificate No. A 88456** Respondent.	Case No. 800-2016-024491 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about January 10, 2018, Complainant Kimberly Kirchmeyer, in her official capacity as the Executive Director of the Medical Board of California, filed Accusation No. 800-2016-024491 against Robert Gene Rand, M.D. (Respondent) before the Medical Board of California (Board).

2. On or about August 4, 2004, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. A 88456 to Robert Gene Rand, M.D. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2018, unless renewed. (Exhibit Package, Exhibit 1, License Certification.[1])

[1] The evidence in support of this Default Decision and Order is submitted herewith as the "Exhibit Package."

3. On or about January 10, 2018, an employee of the Board served by certified mail (Certification No. 7012-3460-0002-5327-9607) a copy of Accusation No. 800-2016-024491, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 on Respondent's address of record with the Board, which was and is 6880 S. McCarran Blvd. #14, Reno, NV 89509. The Statement to Respondent advised Respondent that he was required to complete, sign and return a Notice of Defense within fifteen days if he desired a hearing on the charges. (Exhibit Package, Exhibit 2, Accusation Package, Declaration of Service.)

4. On or about January 23, 2018, the Accusation Package, which included Accusation No. 800-2016-024491, was returned to the original sender as the package was unable to be delivered at Respondent's address of record. (Exhibit Package, Exhibit 3, United States Post Office Tracking Results for Certification No. 7012-3460-0002-5327-9607.)

5. On or about January 17, 2018, an employee of the Board served by certified mail (Certification No. 7012-3460-0002-5327-9560) a copy of Accusation No. 800-2016-024491, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Herlong Federal Correctional Institute[2], with an address of 741-925 Herlong Access Rd., A-25, Herlong, CA 96113. The Accusation Package was returned to the original sender on January 30, 2018, as service was refused by Herlong Federal Correctional Institute. (Exhibit Package, Exhibit 4, Declaration of Service for Accusation Package and United States Post Office Tracking Results for Certification No. 7012-3460-0002-5327-9560.)

6. On or about January 30, 2018, an employee of the Board served by certified mail an additional copy of Accusation No. 800-2016-024491, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to both Respondent's address of record (Certification No. 7012-3460-0002-5327-9430) and

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[2] Pursuant to Respondent's July 17, 2017 guilty plea in United States District Court, District of Nevada, he was sentenced to serve 120 months in federal prison with a recommendation for his sentence to be served at "FCI Herlong, CA."

Herlong Federal Correctional Institute (Certification No. 7012-3460-0002-5327-9423), which included Respondent's federal correctional registration number. Each Accusation Package was returned to the original sender as undeliverable on February 8, 2018. (Exhibit Package, Exhibit 5, Declaration of Service for Accusation Package and United States Post Office Tracking Results for Certification No. 7012-3460-0002-5327-9430 and No. 7012-3460-0002-5327-9423.)

7. On February 16, 2018, an employee of the Attorney General's Office sent by certified mail a Courtesy Notice of Default to Respondent at the address of record set forth above (Certification No. 9414-7266-9904-2009-2351-36), as well as Herlong Federal Correctional Institute (Certification No. 9414-7266-9904-2009-2351-29). The Courtesy Notice of Default provided Respondent with a copy of the Accusation and Notice of Defense, advised him that he was in default, and cautioned him that a decision would be rendered by the Board without a hearing if he did not take action. (Exhibit Package, Exhibit 6, Courtesy Notice of Default, Declaration of Service.)

8. The Courtesy Notice of Default mailed to Respondent's address of record and Furlong Federal Correctional Institute were each returned to the original sender as undeliverable on February 27, 2018. The envelope addressed to Herlong Federal Correctional Institute indicated as the reason for rejection as "No longer here." (Exhibit Package, Exhibit 7, United States Post Office Tracking Results for Certification No. 9414-7266-9904-2009-2351-36 and No. 9414-7266-9904-2009-2351-29; copy of returned Courtesy Notice of Default envelope addressed to Herlong Federal Correctional Institute.)

9. Respondent has not responded to service of the Accusation or the Courtesy Notice of Default. He has not filed a Notice of Defense. He has not changed his address of record, as required, if he has moved. As a result, Respondent has waived his right to a hearing on the merits to contest the allegations contained in the Accusation.

10. The allegations of the Accusation are true as follows:

Respondent was convicted on July 17, 2017, pursuant to his guilty plea in United States District Court, District of Nevada, of one felony count of Involuntary Manslaughter (Title 18, U.S. Code section 1112(a)), and one felony count of Distribution of a Controlled Substance

(Title 21, U.S. Code section 841(a)(1), Title 21, U.S. Code section 841(b)(1)(C), and Title 21, Federal Code of Regulations section 1306.04), and sentenced to a term of ten (10) years in federal prison, based on a joint DEA and FBI investigation which revealed that Respondent was involved in a drug trafficking organization where he prescribed grossly excessive amounts of narcotics, such as oxycodone, not for a legitimate medical purpose, and not acting in the course of his professional practice. Further, Respondent acted with gross negligence in prescribing high dosages of oxycodone to a patient who fatally overdosed on said narcotics, and did so in reckless disregard for the patient's life. (United States District Court, District of Nevada, Criminal Judgement for Respondent, Exhibit 8 in the Exhibit Package.)

STATUTORY AUTHORITY

11. Section 2234 of the Code, states:

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

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

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

12. Section 2236 of the Code states:

"(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

"(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section and Section 2236.1. The record of conviction shall be conclusive evidence of the fact that the conviction occurred."

13. Section 2237 of the Code states:

"a) The conviction of a charge of violating any federal statutes or regulations or any statute or regulation of this state, regulating dangerous drugs or controlled substances, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of such unprofessional conduct. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section."

14. Section 2238 of the Code states:

"A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct."

15. California Code of Regulations, title 16, section 1360, states:

"For the purposes of denial, suspension or revocation of a license, certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but not be limited to the following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of the Medical Practice Act."

16. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on Respondent's express admissions by way of default and the evidence before it, contained in Exhibits 1 through 6, finds that the allegations in Accusation No. 800-2016-024491 are true.

DETERMINATION OF ISSUES

1. Pursuant on the foregoing findings of fact, Respondent Robert Gene Rand, M.D. has subjected his Physician's and Surgeon's Certificate No. C 30161 to discipline.

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

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

"Respondent's July 17, 2017 criminal convictions of Involuntary Manslaughter and Distribution of a Controlled Substance are substantially related to the qualifications, functions and duties of a physician and surgeon in that his convictions are directly associated with his medical practice and demonstrate unprofessional conduct and dishonest and corrupt acts. As such, his convictions and conduct constitute a violation of Code section 2336/California Code of Regulations, title 16, section 1360 (criminal conviction), 2237 and 2238 (criminal drug conviction), and 2234 and 2234(e) (unprofessional conduct)."

DISCIPLINARY ORDER

Physician's and Surgeon's certificate number A 88456 issued to Robert Gene Rand, M.D. is hereby **REVOKED.**

Respondent shall not be deprived of making a request for relief from default as set forth in Government Code section 11520(c) for good cause shown. However, such showing must be made in writing by way of a motion to vacate the default decision and directed to the Medical Board of California at 2005 Evergreen Street, Suite 1200, Sacramento, CA 95815 within seven (7) days of the service of this Decision.

This Decision will become effective April 6, 2018 at 5:00 p.m.

It is so ordered on March 8, 2018

MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By Kimberly Kirchmeyer
Kimberly Kirchmeyer
Executive Director

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Jan 10 2018
BY D. Richards ANALYST

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

In the Matter of the Accusation Against: **Robert Gene Rand, M.D.** 6880 S. McCarran Blvd. #14 Reno, NV 89509 **Physician's and Surgeon's Certificate No. A 88456,** Respondent.	Case No. 800-2016-024491 **A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California (Board).

2. On or about August 4, 2004, the Medical Board issued Physician's and Surgeon's Certificate Number A 88456 to Robert Gene Rand, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2018, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

A. Section 2227 of the Code provides in part that the Board may revoke, suspend for a period not to exceed one year, or place on probation, the license of any licensee who has been found guilty under the Medical Practice Act, and may recover the costs of probation monitoring.

B. Section 2234 of the Code, states:

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

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

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

C. Section 2236 of the Code states:

"(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

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D. Section 2237 of the Code states:

"a) The conviction of a charge of violating any federal statutes or regulations or any statute or regulation of this state, regulating dangerous drugs or controlled substances, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of such unprofessional conduct. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section."

E. Section 2238 of the Code states:

"A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional

conduct."

F. California Code of Regulations, title 16, section 1360, states:

"For the purposes of denial, suspension or revocation of a license, certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a person holding a license, certificate or permit under the Medical Practice Act if to a substantial degree it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare. Such crimes or acts shall include but not be limited to the following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of the Medical Practice Act."

CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Criminal/Drug Conviction and Dishonest/Corrupt Acts)

4. Respondent is subject to disciplinary action under sections, 2234, 2234, subdivisions (a) and (e), 2236, 2237, 2238, and California Code of Regulations, title 16, section 1360 based on the following circumstances.

5. Respondent was convicted on July 17, 2017, pursuant to his guilty plea in United States District Court, District of Nevada, of one felony count of Involuntary Manslaughter (Title 18, U.S. Code section 1112(a)), and one felony count of Distribution of a Controlled Substance (Title 21, U.S. Code section 841(a)(1), Title 21, U.S. Code section 841(b)(1)(C), and Title 21, Federal Code of Regulations section 1306.04), and sentenced to a term of ten (10) years in federal prison, based on the following investigation:

a. The Reno DEA and the Reno FBI jointly investigated a drug trafficking organization (DTO) responsible for distributing large amounts of illicit prescriptions, primarily oxycodone, a Schedule II controlled substance, in the Reno, Nevada and Northern California areas;

b. Respondent, a practicing physician in Reno, Nevada was identified as a source for the DTO in that he prescribed grossly excessive amounts of narcotics, such

as oxycodone, not for a legitimate medical purpose, and not acting in the course of his professional practice. Respondent issued these prescriptions for substantial amounts of narcotics, including oxycodone, to members of the DTO, who in turn illegally distributed the prescribed narcotics after filling them at local pharmacies;

c. Substantial income was generated by Respondent from the distribution of the illegally-prescribed narcotics to members of the DTO;

d. In addition to his criminal enterprise with the DTO, Respondent commonly prescribed narcotics, such as oxycodone, to patients for a cash-only fee, after his regular business hours, which caused patients to either become addicted to these narcotics or illicitly sell the narcotics for profit to others;

e. Respondent held a managerial/leadership role in the DTO criminal enterprise and directed members of his office staff to embrace and/or further his practice of receiving cash-only payments from patients for narcotics prescriptions outside of regular business hours. There were numerous participants in the DTO, including certain members of Respondent's office staff;

f. Respondent began to illicitly prescribe oxycodone to Patient[1] in 2014, in the amount of 180 oxycodone pills 30 mg per month;

g. On September 17, 2014, another physician advised Respondent of Patient's history as it adversely related to Respondent's oxycodone prescription to Patient;

h. Patient was hospitalized twice in July and August 2015 with inconsistent toxicology results, which were contained in Respondent's patient file;

i. On September 22, 2015, Patient's mother called Respondent and informed him of present, relevant circumstances of Patient's health, including that Patient was addicted to painkillers and was recently in rehabilitation for substance

[1] The patient is identified only as "Patient" to protect their right to privacy. The patient's identity will be revealed to Respondent in discovery.

abuse, and begged him to stop prescribing oxycodone to Patient given the substantial risk the prescription posed to Patient. Patient's mother warned Respondent that he would kill Patient if he continued to prescribe oxycodone to Patient. Respondent acknowledged he was aware of Patient's substance abuse problems.

j. On September 23, 2015, Respondent prescribed 45 dosages of oxycodone 30 mg to Patient, as well as Xanax. On September 30, 2105, Respondent prescribed 180 dosages of oxycodone 30 mg to Patient. Respondent did so not for a legitimate medical purpose and not in the usual course of professional practice. Respondent acted with gross negligence in prescribing 180 dosages of oxycodone in light of calls, records, and encounters, and did so in reckless disregard for Patient's life;

k. After receiving and filling Respondent's prescription for 180 dosages of oxycodone, on October 2, 2015, Patient died from oxycodone intoxication;

l. From January 2011 to April 2016, Patient 2[2] was as a patient of Respondent and received a number of opioid prescriptions, including oxycodone.

m. From March 24, 2011 to April 9, 2016, Respondent prescribed Patient 2 a total of 23,645 oxycodone 30 mg pills. During this time, Respondent consistently prescribed 500 oxycodone pills 30 mg each month to Patient 2, as well as other opioids, not for a legitimate purpose and not in the usual course of professional practice;

n. Respondent intended to prescribe such large dosages of 30 mg oxycodone outside the usual course of professional practice and not for a legitimate medical purpose to Patient 2 based upon, among other evidence, Respondent's issuance of the prescriptions without performing an evaluation of Patient 2, permitting other individuals to pick up Patient 2's oxycodone prescriptions, not

[2] The patient is identified only as "Patient 2" to protect their right to privacy. The patient's identity will be revealed to Respondent in discovery.

requiring Patient 2 to undergo any toxicology testing, and by alerting Patient 2 that the prescriptions would no longer be filled at pharmacies and offering an alternative means for Patient 2 to obtain the illicit prescriptions.

6. Respondent's July 17, 2017 criminal convictions of Involuntary Manslaughter and Distribution of a Controlled Substance are substantially related to the qualifications, functions and duties of a physician and surgeon in that his convictions are directly associated with his medical practice and demonstrate unprofessional conduct and dishonest and corrupt acts. As such, his convictions and conduct constitute a violation of Code section 2336/California Code of Regulations, title 16, section 1360 (criminal conviction), 2237 and 2238 (criminal drug conviction), and 2234 and 2234(e) (unprofessional conduct).

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number A 88456, issued to Robert Gene Rand, M.D.;

2. Revoking, suspending or denying approval of Robert Gene Rand, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Robert Gene Rand, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: January 10, 2018

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
State of California
Complainant

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