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

In the Matter of the Accusation Against: **Robin Richard Cole, M.D.,** **1325 N. Rose Drive, Suite 202** **Placentia, CA 92870** **Physician's and Surgeon's Certificate** **No. A 84827,** Respondent.	Case No. 800-2015-013500 **DEFAULT DECISION AND ORDER** [Gov. Code §11520]

FINDINGS OF FACT

1. On or about October 3, 2003, the Medical Board of California, Department of Consumer Affairs ("Board"), issued Physician's and Surgeon's Certificate No. A 84827 to Robin Richard Cole, M.D. ("respondent"). The Physician's and Surgeon's Certificate expired on March 31, 2015, and has not been renewed. On January 22, 2018, following a noticed hearing on January 11, 2018, an Interim Order of Suspension was issued immediately suspending respondent's Physician's and Surgeon's Certificate Number A 84827.

2. Pursuant to California Business and Professions Code ("Code"), section 118, subdivision (b), the expiration and/or suspension of respondent's Physician's and Surgeon's Certificate does not deprive the Board of its authority to institute or continue a disciplinary

proceeding against respondent upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the license on any such ground. A true and correct copy of a Certificate of Licensure for respondent, including his address of record with the Board, is attached to the simultaneously submitted "Default Decision Evidence Packet" as Exhibit A and is incorporated herein by reference.

3. On or about January 3, 2018, Complainant Kimberly Kirchmeyer, in her official capacity as the Executive Director of the Board, filed Accusation No. 800-2015-013500 against respondent before the Board.

4. Under the provisions of section 2021, subdivision (b), of the Code, respondent is, and was at all times relevant to Accusation No. 800-2015-013500, required to furnish the Board with his address of record, and to report to the Board each and every change of address within 30 days after each change, giving both the old and new address. If an address so reported to the Board is a post office box, respondent is (and was) also required to provide the Board with a street address. The address of record for the respondent, as reported to the Board, is 1325 N. Rose Drive, Ste. 202, Placentia, CA 92870-3800 ("street address of record").

5. Besides respondent's street address of record, the Board has been informed of another address at which respondent resides and at which he can be located, namely, 1655 Via Del Corvo, San Marco, CA 92078 ("residential address").

6. Under the provisions of section 2021, subdivision (d), of the Code, respondent is, and was at all times relevant to Accusation No. 800-2015-013500, required to furnish the Board with his electronic mail address. His electronic mail address is on file with the Board as XXXXXX@yahoo.com[1] ("electronic address of record").

7. On or about January 3, 2018, Michelle Solario, an employee of the Board, served by Certified Mail (tracking number 7012 3460 0000 2387 4827) and First Class Mail a true and correct copy of Accusation No. 800-2015-013500, Statement to Respondent, Notice of Defense (two copies), Request for Discovery, and Government Code sections 11507.5, 11507.6, 11507.7

[1] The full email address is known to the Board but not provided here for privacy reasons.

and 11455.10 (collectively, referred to as "the Accusation Package"), to both respondent's street address of record and residential address, as well as his electronic address of record. A true and correct copy of the Accusation Package and Declaration of Service are attached to the Default Decision Evidence Packet as Exhibit B and incorporated herein by reference.

8. On or about January 9. 2018, the Board received a Certified Mail Return Receipt signed by what appears to be "Dan Cole," an unknown person, acknowledging receipt of the Accusation Package at respondent's residential address. A true and correct copy of the Certified Mail Return Receipt is attached to the Default Decision Evidence Packet as Exhibit C and incorporated herein by reference.

9. On or about January 23, 2018, Ileana Chavarin, an employee of the Office of the Attorney General, served by First Class Mail and certified mail, return receipt required, a Courtesy Notice of Default to respondent's residential address as well as his electronic address of record. A true and correct copy of the Courtesy Notice of Default and Proof of Service is attached to the Default Decision Evidence Packet as Exhibit D and incorporated herein by reference. No response to the Courtesy Notice of Default was received.

10. On or about January 29, 2018, a true and correct copy of the Decision on Petition for Interim Suspension Order ("the ISO Order") was personally served on respondent at his residential address. A true and correct copy of the ISO Order and Proof of Service is attached to the Default Decision Evidence Packet as Exhibit E and incorporated herein by reference. No response to the ISO Order was received.

11. Service on respondent of a true and correct copy of Accusation No. 800-2015-013500, together with copies of all statutorily required documents, was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c), when the Accusation Package was served on respondent's address of record.

12. Government Code section 11506 states, in pertinent part:

"(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of

defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

13. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, or at all, and has therefore waived his right to a hearing on the merits of Accusation No. 800-2015-013500.

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

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

15. Pursuant to its authority under Government Code section 11520, the Board finds respondent is in default. Exercising its discretion, the Board will take action without further hearing. Based on respondent's express admissions by way of default and the evidence before the Board in the accompanying Default Decision Evidence Packet, the Board finds that the following allegations in Accusation No. 800-2015-013500 are true and correct:

A. <u>Cause for Discipline – Failure to Comply With An Order Issued Under Section 820)</u>

1. Section 821 of the Code provides that a licensee's failure to comply with an order issued under section 820 of the Code shall constitute grounds for suspension or revocation of the licentiate's certificate of license.

2. Respondent is subject to disciplinary action under sections 2227 and 821 of the Code, in that he failed to comply with an Order issued pursuant to section 820 of the Code, as follows:

(a) On or about September 25, 2017, the Board issued an Order Granting a Petition to Compel Physical and Psychiatric Examinations of respondent, pursuant to section 820 of the Code ("the 820 Order").

(b) The Order required respondent to submit to a physical examination conducted by a Board-selected physician and surgeon specializing in internal medicine, and to a

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Board-selected psychiatric examination conducted by a physician and surgeon specializing in psychiatry, both within thirty (30) days of service of the Order.

(c) On or about October 3, 2017, respondent was personally served with a copy of the Order. At the same time, respondent was provided with details of the physical and psychiatric examinations which had been scheduled for him on October 16, 2017, and October 23, 2017, respectively, pursuant to the Order.

(d) Respondent failed to attend both the physical and psychiatric examinations which had been scheduled for him, and failed to comply with the Board's Order.

(e) On January 22, 2018, respondent's Physician's and Surgeon's Certificate No. A 84827 was suspended due to his failure to comply with the Board's Order.

(e) Supporting Evidence: Exhibit F (The 820 Order); Exhibit G (Declaration of Charlaine McKenzie, Supervising Investigator, and attachments; Exhibit E (The ISO Order and Proof of Service).

B. Cause for Discipline – Violation of a Provision or Provisions of the Medical Practice Act

1. Section 2234 of the Code provides, in pertinent part, that the Board shall take action against any licensee who is charged with unprofessional conduct, which includes, but is not limited to, violating a provision or provisions of the Medical Practice Act.

2. Respondent is subject to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (a), of the Code, in that he failed to notify the Board of his change of address of record as required by section 2021 of the Code, as follows:

(a) The address of record for the respondent, as reported to the Board, is 1325 N. Rose Drive, Ste. 202, Placentia, CA 92870-3800.

(b) Respondent vacated this property on or about September 15, 2014, and can no longer be reached at that location.

(c) Supporting Evidence: Exhibit A (Certificate of Licensure); Exhibit G (Declaration of Charlaine McKenzie).

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DETERMINATION OF ISSUES

1. Pursuant to California Government Code section 11520, the Board hereby takes this action based upon respondent's express admissions and other evidence contained in the separate accompanying Default Decision Evidence packet filed herewith.

2. Pursuant to its authority under Government Code section 11520, and based on the evidence before it, the Board hereby finds that the charges and allegations in Accusation No. 800-2015-013500, and the Findings of Fact in paragraphs 1 through 15, above, and each of them, severally and separately, are true and correct.

3. Pursuant to its authority under Government Code section 11520, Business and Professions Code section 118, and based on the evidence before it, the Findings of Fact contained in paragraphs 1 through 15, above, and the Determination of Issues 1 and 2, above, the Board hereby finds that respondent, Robin Richard Cole, M.D., has subjected his Physician's and Surgeon's Certificate No. A 84827 to disciplinary action under sections 118, 821, 2021, and 2234, subdivision (a), of the Code, in that:

(a) Respondent failed to comply with an Order issued pursuant to section 820 of the Code, in violation of section 821 of the Code; and

(b) Respondent failed to notify the Board of his change of address, which occurred more than 30 days ago, in violation of sections 2021 and 2234, subdivision (a), of the Code.

ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 84827, heretofore issued to respondent Robin Richard Cole, M.D., is revoked for each of the violations, separately and severally, of the California Business and Professions Code found in the Determination of Issues, above.

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

This Decision shall become effective on April 20, 2018 at 5:00 p.m.

It is so ORDERED March 23, 2018

FOR THE MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Jan 3 20 18
BY _____ ANALYST

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

In the Matter of the Accusation Against: **Robin Richard Cole, M.D.,** **1325 N. Rose Drive, Suite 202** **Placentia, CA 92870** **Physician's and Surgeon's Certificate** **No. A 84827,** Respondent.	Case No. 8002015013500 **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, Department of Consumer Affairs (Board).

2. On or about October 3, 2003, the Board issued Physician's and Surgeon's Certificate Number A 84827 to Robin Richard Cole, M.D. (Respondent). The Physician's and Surgeon's Certificate expired on March 31, 2015, and has not been renewed.

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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 (Code) unless otherwise indicated.

4. Section 2227 of the Code states:

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

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

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

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

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

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

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

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5. 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.

"..."

6. Unprofessional conduct under Business and Professions Code section 2234 is conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine. (*Shea v. Board of Medical Examiners (1978) 81 Cal.App.3d 564, 575.)*

7. Section 820 of the Code states:

"Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to Section 822."[1]

8. Section 821 of the Code provides that the licentiate's failure to comply with an order issued under section 820 shall constitute grounds for the suspension or revocation of the licentiate's certificate of license.

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[1] An Order compelling examinations pursuant to Section 820 complies with state procedural due process. (*Alexander D. v. State Board of Dental Examiners* (1991) 231 Cal.App.3d 92, 96.) Section 820 also complies with constitutional privacy interests. (*Kees v. Medical Board of California* (1992) 7 Cal.App.4th 1801, 1814.)

9. Section 2021 of the Code states:

"(a) If the board publishes a directory pursuant to Section 112, it may require persons licensed pursuant to this chapter to furnish any information as it may deem necessary to enable it to compile the directory.

"(b) Each licensee shall report to the board each and every change of address within 30 days after each change, giving both the old and new address. If an address reported to the board at the time of application for licensure or subsequently is a post office box, the applicant shall also provide the board with a street address...

"..."

FIRST CAUSE FOR DISCIPLINE

(Failure To Comply With An Order Issued Under Section 820)

10. Respondent Robin Richard Cole, M.D., is subject to disciplinary action under sections 2227 and 821 of the Code in that he failed to comply with an Order issued pursuant to section 820 of the Code, as more particularly alleged hereinafter:

11. On or about September 25, 2017, the Board issued an Order Granting a Petition to Compel Physical and Psychiatric Examinations of respondent, pursuant to section 820 of the Code (the Order).

12. The Order required respondent to submit to a physical examination conducted by a Board-selected physician and surgeon specializing in internal medicine, and to a Board-selected psychiatric examination conducted by a physician and surgeon specializing in psychiatry, both within thirty (30) days of service of the Order.

13. On or about October 3, 2017, respondent was personally served with a copy of the Order. At the same time, respondent was provided with details of the physical and psychiatric examinations which had been scheduled for him on October 16, 2017, and October 23, 2017, respectively, pursuant to the Order.

14. Respondent failed to attend both the physical and psychiatric examinations which had been scheduled for him, and failed to comply with the Board's Order.

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SECOND CAUSE FOR DISCIPLINE

(Violation of a Provision or Provisions of the Medical Practice Act)

15. Respondent is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (a), and Title 16, California Code of Regulations, section 1360, in that he has violated a provision or provisions of the Medical Practice Act, as more particularly alleged hereinafter:

16. Each licensee is required, pursuant to section 2021, subdivision (b), of the Code, to report to the Board each and every change of address within 30 days after each change, giving both the old and new address.

17. The address of record for the respondent, as reported to the Board, is 1325 N. Rose Drive, Ste. 202, Placentia, CA 92870-3800 (address of record).

18. Respondent vacated this property on or about September 15, 2014, and can no longer be reached at that location.

19. Respondent failed to notify the Board of his change of address, which occurred more than 30 days ago, as required by section 2021, subdivision (b), of the Code.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number A 84827, issued to Respondent Robin Richard Cole, M.D.;

2. Revoking, suspending or denying approval of Respondent Robin Richard Cole, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Respondent Robin Richard Cole, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: January 3, 2018

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant