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

13 In the Matter of the Accusation Against,

Case No. 800-2015-019436

14 HERVE J. DUMONT, M.D.

15 1155 North Vermont Avenue, Suite 200
16 Los Angeles, California 90029

**DEFAULT DECISION
AND ORDER**

17 Physician's and Surgeon's Certificate G 85430,
18 Respondent.

[Gov. Code, §11520]

19
20 **FINDINGS OF FACT**

21 1. On May 30, 2019, Complainant Kimberly Kirchmeyer, in her official capacity as the
22 Executive Director of the Medical Board of California, Department of Consumer Affairs (Board),
23 filed Accusation No. 800-2015-019436 against Herve J. Dumont, M.D. (Respondent).

24 2. On September 14, 1999, the Medical Board of California (Board) issued Physician's
25 and Surgeon's Certificate No. G 85430 to Respondent. That license expired on October 31, 2018,
26 and is now delinquent. (**Exhibit A.**)

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1 3. On May 30, 2019, Michelle Solorio, an employee of the Complainant Agency, served
2 by Certified Mail a copy of the Accusation No. 800-2015-019436, Statement to Respondent,
3 Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and
4 11507.7 to Respondent's address of record with the Board, which was and is 1155 North Vermont
5 Avenue, Suite 200, Los Angeles, California 90029. (**Exhibit B.**)

6 4. On July 22, 2019, a Courtesy Notice of Default was served via Certified Mail and
7 First Class Mail by the Office of the Attorney General on behalf of the Board to both
8 Respondent's address of record and to an address in Coral Springs, Florida, at which Respondent
9 was reported to reside. The Courtesy Notice of Default warned Respondent that he could face a
10 Default Order unless he filed a Notice of Defense requesting a hearing. (**Exhibit C.**)

11 5. On July 29, 2019, a signed Certified Mail Receipt for the Courtesy Notice of Default
12 showing delivery to Respondent at the Coral Springs, Florida address was received by the Office
13 of the Attorney General. (**Exhibit D.**)

14 6. No Notice of Defense was received from Respondent. (Declaration of Peggie
15 Bradford Tarwater, **Exhibit E.**)

16 7. On October 25, 2016, Respondent was convicted by guilty plea of violating Penal
17 Code section 148, a misdemeanor, in that he willfully obstructed an officer in the discharge of
18 duty. (**Exhibit F.**)

19 8. Respondent's conviction is substantially related to the qualifications, functions or
20 duties of a physician and surgeon. The conviction is based upon Respondent's December 5,
21 2015, arrest. Given the presence of a paper license plate and the lack of registration information
22 on the windshield of the car, police officers with the San Diego Police Department approached
23 the parked vehicle in which Respondent was seated. Although Respondent was eventually found
24 to be in possession of proper registration documentation for the vehicle, Respondent drove the
25 vehicle away, disregarding orders to stop. Respondent continued to drive erratically while
26 ignoring commands to stop. When he did stop the vehicle, he did not follow the officers'
27 directions in exiting the vehicle. (**Exhibit G.**)

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1 9. On December 30, 2016, Respondent was arrested for petty theft, in violation of Penal
2 Code section 484, subdivision (a), after having been observed in a Target Store in Pasadena,
3 California, concealing multiple items of merchandise in a duffel bag and then leaving the store
4 without paying for the items. **(Exhibit H.)**

5 10. On August 4, 2017, Respondent was found mentally incompetent and unable to stand
6 trial, pursuant to Penal Code section 1370.01. He was committed to the Los Angeles County Jail
7 Mental Health Service for care and treatment. On August 25, 2017, the court entered a minute
8 order finding no substantial likelihood that Respondent would be restored to competency by the
9 maximum commitment date and dismissing the case pursuant to Penal Code section 1370.2.

10 **(Exhibit I.)**

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

12 (b) The suspension, expiration, or forfeiture by operation of law of a license issued
13 by a board in the department, or its suspension, forfeiture, or cancellation by order of the
14 board or by order of a court of law, or its surrender without the written consent of the board,
15 shall not, during any period in which it may be renewed, restored, reissued , or reinstated,
16 deprive the board of its authority to institute or continue a disciplinary proceeding against
the licensee 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.

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

18 (c) The respondent shall be entitled to a hearing on the merits if the respondent
19 files a notice of defense, and the notice shall be deemed a specific denial of all parts
20 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.

21 Respondent failed to file a Notice of Defense within 15 days after service upon him of the
22 Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 800-
23 2015-019436.

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

25 (a) If the respondent either fails to file a notice of defense or to appear at the
26 hearing, 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.

27 14. Pursuant to its authority under Government Code section 11520, the Board finds
28 Respondent is in default. The Board will take action without further hearing and, based on the

evidence before it, contained in Exhibits A through I, finds that the allegations in Accusation No. 800-2015-019436 are true.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent has subjected his Physician's and Surgeon's Certificate No. G 85430 to discipline.

2. Pursuant to the authority of Government Code section 11520, and based on the evidence before it, the Board hereby finds that the charges and allegations continued in Accusation No. 800-2015-019436, and the Findings of Fact continued in paragraphs 1 through 10, above, and each of them separately and severally, are true.

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

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

a. First Cause for Discipline, conviction of a crime substantially related to the qualifications, functions or duties of a physician and surgeon under Business and Professions Code sections 2234, subdivision (a), and 2236, and California Code of Regulations, Title 16, section 1360. (**Exhibit B** at pp. 3-4.)

b. Second Cause for Discipline, inability to safely practice medicine due to illness under Business and Professions Code section 822. (**Exhibit B** at pp. 4-5.)

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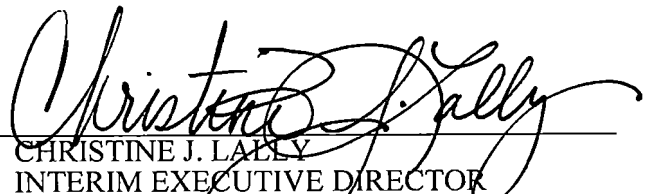
ORDER

IT IS ORDERED THAT Physician's and Surgeon's Certificate No. G 85430, issued to Respondent Herve J. Dumont, M.D., is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent 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 March 6, 2020 at 5:00 pm.

IT IS SO ORDERED February 5, 2020


CHRISTINE J. LALLY
INTERIM EXECUTIVE DIRECTOR
FOR THE MEDICAL BOARD OF
CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

LA2019500815

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO May 30 20 19
BY ANALYST

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10 MEDICAL BOARD OF CALIFORNIA
11 DEPARTMENT OF CONSUMER AFFAIRS
12 STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. 800-2015-019436

14 Herve J. Dumont, M.D.
15 1155 North Vermont Avenue
Suite 200
16 Los Angeles, CA 90029

ACCUSATION

17 Physician's and Surgeon's Certificate
No. G 85430,

18 Respondent.
19

20
21 Complainant alleges:

22 PARTIES

23 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
24 capacity as the Executive Director of the Medical Board of California, Department of Consumer
25 Affairs (Board).

26 2. On or about September 14, 1999, the Medical Board issued Physician's and Surgeon's
27 Certificate Number G 85430 to Herve J. Dumont, M.D. (Respondent). Respondent's Physician's
28 and Surgeon's Certificate expired on October 31, 2018, and is currently in delinquent status.

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.

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 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. 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 [Chapter 5, the Medical Practice Act]. 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.”

7. 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

1 a license, certificate or permit under the Medical Practice Act if to a substantial degree it
2 evidences present or potential unfitness of a person holding a license, certificate or permit to
3 perform the functions authorized by the license, certificate or permit in a manner consistent with
4 the public health, safety or welfare. Such crimes or acts shall include but not be limited to the
5 following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
6 violation of, or conspiring to violate any provision of the Medical Practice Act.”

7 8. Section 822 of the Code states:

8 “If a licensing agency determines that its licentiate’s ability to practice his or her profession
9 safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the
10 licensing agency may take action by any one of the following methods:

11 “(a) Revoking the licentiate’s certificate or license.

12 “(b) Suspending the licentiate’s right to practice.

13 “(c) Placing the licentiate on probation.

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

16 “The licensing section shall not reinstate a revoked or suspended certificate or license until
17 it has received competent evidence of the absence or control of the condition which caused its
18 action and until it is satisfied that with due regard for the public health and safety the person’s
19 right to practice his or her profession may be safely reinstated.”

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Conviction of a Crime)**

22 9. Respondent is subject to disciplinary action under Code sections 2234, subdivision
23 (a), and 2236, and California Code of Regulations, title 16, section 1360 in that he was convicted
24 of obstructing a police officer, a crime that is substantially related to the qualifications, functions
25 or duties of a physician and surgeon. The circumstances are as follows:

26 10. On December 5, 2015, at approximately 9:50 a.m., police officers with the San Diego
27 Police Department were on duty in Mission Beach, targeting waterborne narcotic smuggling
28 operations. In Mission Beach Park, officers observed a Prius with a yellow paper plate and tinted

1 windows. An officer contacted the occupant of the vehicle, who was later identified to be
2 Respondent. Given the paper license plate, Respondent was asked for the vehicle registration.
3 Respondent refused to provide any paperwork relating to the purchase or registration of the
4 vehicle and stated he had no identification with him. While the officer requested information
5 from dispatch on the vehicle's VIN number, Respondent backed out of the stall, refused orders to
6 stop the vehicle, and drove onto the southbound Interstate 5 Freeway. Respondent drove on the
7 right shoulder, eventually coming to a stop. When officers stopped behind him, Respondent
8 accelerated and continued to drive erratically while ignoring further commands to stop the
9 vehicle. Eventually, Respondent obeyed commands to stop the vehicle, but failed to follow
10 officers' directions in exiting the vehicle. Respondent was taken into custody. Respondent was
11 in possession of paperwork demonstrating his purchase of the vehicle, as well as identification.

12 11. On October 25, 2016, judgment was entered, and Respondent was convicted by guilty
13 plea of violating Penal Code section 148, a misdemeanor, in that he willfully resisted, delayed, or
14 obstructed an officer in the discharge of duty. Respondent was sentenced to three years of
15 probation with terms including completion of 20 volunteer hours and the payment of fines.

16 12. Respondent was convicted of a crime, the circumstances of which demonstrate it is
17 substantially related to the qualifications, functions or duties of a physician and surgeon, and his
18 physician's and surgeon's certificate is subject to discipline.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Inability to Safely Practice Medicine Due to Illness)**

21 13. Respondent is subject to disciplinary action under section 822 of the Code in that he
22 is unable to safely practice medicine due to mental illness. The circumstances are as follows:

23 14. On December 30, 2016, at approximately 6:45 p.m., a man later identified as
24 Respondent was at a Target Store in Pasadena, California. While under monitoring by a CCTV
25 surveillance system, as well as floor monitoring, Respondent was seen concealing multiple items
26 of merchandise in a duffel bag. Police officers from the Pasadena Police Department were
27 dispatched to assist in contacting Respondent. Respondent was detained for further investigation,
28 and the items in the duffel bag were identified as belonging to the Target store. Respondent was

1 arrested for petty theft, pursuant to Penal Code section 484, subdivision (a), and released.

2 15. On August 4, 2017, Respondent was found mentally incompetent and unable to stand
3 trial, pursuant to Penal Code section 1370.01. Respondent was ordered committed to the Los
4 Angeles County Jail Mental Health Service for care and treatment not to exceed January 29,
5 2018.

6 16. Respondent continues to suffer from cognitive impairment.

7 **PRAYER**

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

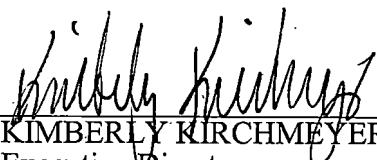
10 1. Revoking or suspending Physician's and Surgeon's Certificate Number G 85430,
11 issued to Herve J. Dumont, M.D.;

12 2. Revoking, suspending or denying approval of Herve J. Dumont, M.D.'s authority to
13 supervise physician assistants and advanced practice nurses;

14 3. Ordering Herve J. Dumont, M.D., if placed on probation, to pay the Board the costs
15 of probation monitoring; and

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

17
18 DATED: May 30, 2019


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

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