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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. 800-2015-012878

13 ADLY AYAD AZAB, M.D.

14 1019 Highlight Drive
West Covina, California 91791

**DEFAULT DECISION
AND ORDER**

15 Physician's and Surgeon's Certificate No.
A 69237,

[Gov. Code, §11520]

16 Respondent.

17
18 FINDINGS OF FACT

19 1. On March 24, 2017, Complainant Kimberly Kirchmeyer, in her official capacity as
20 the Executive Director of the Medical Board of California (Board), filed Accusation No. 800-
21 2015-012878 against Adly Ayad Azab, M.D. (Respondent).

22 2. On July 16, 1999, the Board issued Physician's and Surgeon's Certificate No. A
23 69237 to Respondent. In a disciplinary action entitled *In the Matter of the Petition for Interim*
24 *Suspension Order of Suspension Against: Adly Ayad Azab, M.D.*, the Board issued an Interim
25 Order of Suspension, effective February 23, 2017, in which Respondent's Physician's and
26 Surgeon's Certificate was suspended.

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1 3. On or about March 24, 2017, Dianne Richards, an employee of the Complainant
2 Agency, served by Certified Mail a copy of the Accusation No. 800-2015-012878, Statement to
3 Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,
4 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is 1019
5 Highlight Drive, West Covina, California 91791. A copy of the Accusation, the related
6 documents, and Declaration of Service are attached as Exhibit A, and are incorporated herein by
7 reference.

8 4. Service of the Accusation was effective as a matter of law under the provisions of
9 Government Code section 11505, subdivision (c). On or about March 29, 2017, the
10 aforementioned documents were delivered and left with an individual at Respondent's address of
11 record by the U.S. Postal Service. A copy of the U.S. Postal Service tracking information is
12 attached as Exhibit B, and is incorporated herein by reference.

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

14 "(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a
15 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by
16 order of a court of law, or its surrender without the written consent of the board, shall not, during
17 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
18 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
19 provided by law or to enter an order suspending or revoking the license or otherwise taking
20 disciplinary action against the license on any such ground."

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

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

26 Respondent failed to file a Notice of Defense within 15 days after service upon him of the
27 Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 800-
28 2015-012878.

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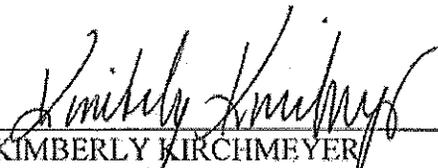
ORDER

IT IS ORDERED that Physician's and Surgeon's Certificate No. A 69237, heretofore issued to Respondent Adly Ayad Azab, 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 August 23, 2017 at 5:00 p.m.

IT IS SO ORDERED July 24, 2017



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

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

11 In the Matter of the Accusation Against:

Case No. 800-2015-012878

12 **Adly Ayad Azab, M.D.**
1019 Highlight Drive
13 West Covina, CA 91791

OAH No. 2017020045

ACCUSATION

14 Physician's and Surgeon's Certificate
15 No. A 69237,

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about July 16, 1999, the Medical Board issued Physician's and Surgeon's
22 Certificate Number A 69237 to Adly Ayad Azab, M.D. (Respondent). The Physician's and
23 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
24 herein and will expire on July 31, 2017, unless renewed.

25 **JURISDICTION**

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

28 4. The Medical Practice Act ("Act") is codified at sections 2000-2521 of the Business

1 and Professions Code.

2 5. Pursuant to Code section 2001.1, the Board's highest priority is public protection.

3 6. Section 2004 of the Code states:

4 "The board shall have the responsibility for the following:

5 "(a) The enforcement of the disciplinary and criminal provisions of the Medical
6 Practice Act.

7 "(b) The administration and hearing of disciplinary actions.

8 "(c) Carrying out disciplinary actions appropriate to findings made by a panel or an
9 administrative law judge.

10 "(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of
11 disciplinary actions.

12 "(e) Reviewing the quality of medical practice carried out by physician and surgeon
13 certificate holders under the jurisdiction of the board.

14 "..."

15 7. Section 2227 of the Code states:

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

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

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

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

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

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

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

7 8. Section 2234 of the Code, states:

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

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

13 “(b) Gross negligence.

14 “(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or
15 omissions. An initial negligent act or omission followed by a separate and distinct departure from
16 the applicable standard of care shall constitute repeated negligent acts.

17 “(1) An initial negligent diagnosis followed by an act or omission medically appropriate
18 for that negligent diagnosis of the patient shall constitute a single negligent act.

19 “(2) When the standard of care requires a change in the diagnosis, act, or omission that
20 constitutes the negligent act described in paragraph (1), including, but not limited to, a
21 reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the
22 applicable standard of care, each departure constitutes a separate and distinct breach of the
23 standard of care.

24 “(d) Incompetence.

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

27 “(f) Any action or conduct which would have warranted the denial of a certificate.

28 “(g) The practice of medicine from this state into another state or country without meeting

1 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not
2 apply to this subdivision. This subdivision shall become operative upon the implementation of the
3 proposed registration program described in Section 2052.5.

4 “(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and
5 participate in an interview by the board. This subdivision shall only apply to a certificate holder
6 who is the subject of an investigation by the board.”

7 9. Section 820 of the Code states:

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

15 10. Section 822 of the Code states:

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

19 “(a) Revoking the licentiate's certificate or license.

20 “(b) Suspending the licentiate's right to practice.

21 “(c) Placing the licentiate on probation.

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

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

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1 CAUSE FOR DISCIPLINE

2 (Inability to Practice)

3 11. Respondent's physician's and surgeon's certificate is subject to disciplinary action
4 under sections 820 and 822 of the Code in that Respondent failed a mental examination to
5 determine competency to practice pursuant to section 820, et. seq., of the Code. The
6 circumstances are as follows:

7 12. In a disciplinary action entitled *In the Matter of the Petition for Interim Order of*
8 *Suspension Against: Adly Ayad Azab, M.D.*, the Board issued an Interim Order of Suspension,
9 effective February 23, 2017, in which Respondent's Physician's and Surgeon's Certificate was
10 suspended. The noticed hearing on the Petition for an Interim Suspension Order was held on
11 February 17, 2017. A copy of that order is attached as Exhibit A and is incorporated by
12 reference.

13 13. On or about September 29, 2016, Stephen T. Chen, M.D. ("Dr. Chen"), a California
14 Medical Board appointed psychiatrist, performed a mental evaluation of Respondent.

15 14. Dr. Chen concluded that Respondent, a 73-year-old male, suffers from a disabling
16 condition of mild cognitive impairment, amnesic type, and that he is unsafe to practice medicine
17 at this time due to his amnesic memory.

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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 69237, issued to Adly Ayad Azab, M.D.;
2. Revoking, suspending or denying approval of Adly Ayad Azab, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;
3. Ordering Adly Ayad Azab, 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: March 24, 2017

Elizabeth Amara
for KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
State of California
Complainant

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Exhibit A

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

In the Matter of the Petition for Interim Order
of Suspension Against:

Case No. 800-2015-012878

ADLY AYAD AZAB, M.D., M.D.,

OAH No. 2017020045

Physician's and Surgeon's
Certificate Number A 69237,

Respondent.

Interim Order of Suspension

On February 17, 2017, Petitioner Kimberly Kirchmeyer, Executive Officer of the Medical Board of California, acting in her official capacity, presented a noticed petition for an interim order of suspension of the physician's and surgeon's certificate of Adly Ayad Azab, M.D. (Respondent).

Margaret J. Phe, Deputy Attorney General, represented Petitioner.

There was no appearance by or on behalf of Respondent.¹

The petition and all supporting declarations, exhibits and points and authorities were served and due notice was given as provided for in Government Code section 11529.

Ralph B. Dash, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), Los Angeles California, read and considered the Petition for Interim Order of Suspension; the declarations, the points and authorities filed in support thereof ALJ now issues the following Order:

¹ The Petition, with all supporting documents including a proof of service) was duly served on Respondent. On February 16, 2017, the Office of Administrative Hearings received a document purporting to be an "affidavit" (although not under penalty of perjury) from Respondent in which he indicated he would not appear at the hearing. This unsigned document was marked as Exhibit A for identification.

FINDINGS OF FACT

1. At all times pertinent hereto Respondent was and now is licensed by the Board as a physician and surgeon, certificate number A 69237. The license has been renewed through July 31, 2017.

2. Respondent is a psychiatrist. He has been employed by California Correctional Health Care Services (CCHCS) since 1992. On a date not established by the evidence, CCHCS sent a notice to the Board under the provisions of Business and Professions Code section 805.²

3. The contents of the report required under section 805 were not offered. That report prompted the Board to have Respondent undergo a psychiatric evaluation by Dr. Stephen T. Chen, Associate Clinical Professor, Department of Psychiatry and Biobehavioral Sciences at the University of California, Los Angeles. Dr. Chen provided his report, dated October 4, 2016, to a Board investigator. The mental status examination portion of the report, which is incorporated into Dr. Chen's declaration reads, in part:

"On the 9-Item Patient Health Questionnaire, an inventory of depressive symptoms, he indicated that he experienced little interest, depressed mood, feeling tired, poor appetite, low self-esteem, and poor concentration several days over the past 2 weeks, for a total score of 6, consistent with mild depression.

"On cognitive testing, Dr. Azab scored 21/30 on the Montreal Cognitive Assessment version 7.1. He called a drawing of a rhinoceros a hippopotamus. He switched the 2nd and 3rd digits in repeating 5 digits forward, a test of immediate attention. He committed 3 errors on the A test, a test of sustained attention. He was fluent with naming 14 unique words beginning with the letter F in one minute, but repeated 4 of the words, suggesting impaired short-term memory or perseveration. He could only spontaneously recall 1 of 5 words after 5 minutes, and no additional words with categorical cues, and only 2 more words with multiple choice, indicating some amnesic memory impairment. While trying to recall the 5 words he repeated twice 5 minutes prior, he guessed by repeating 4 of the 'F' words he gave in the fluency test, indicating some intrusion from one test into another, or an inability to distinguish between the two tasks and to remember the two separate lists of words. Dr. Azab was also given a list of ten common grocery items to repeat aloud 3 times in succession. He showed a limited learning curve, repeating 4, 4, and 5 of the 10 words in the successive attempts. After 20 minutes, he could not recall any of the 10 words. When given these words again and asked which ones were on the list, he incorrectly identified 5 of the words as not being on the list, again indicating some amnesic memory impairment.

² This code section requires, among other things, that the chief executive officer or administrator of any licensed health care facility notify the Board if, "A licentiate's membership, staff privileges, or employment is terminated or revoked for a medical disciplinary cause or reason." (Bus. and Prof. Code §805, subd. (b)(2).

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RADIOLOGIC STUDIES

"On a 7/13/2012 brain MRI for evaluation of headaches, 'mild prominence of the ventricular system, cortical sulci and subarachnoid cisterns is identified consistent with atrophy.'

"On 11/3/2014, a brain MRI showed ventricles and sulci 'prominent secondary to age-appropriate global cortical atrophy' and 'minimal periventricular chronic ischemic changes.'

"DIAGNOSIS

Mild cognitive impairment, amnesic type

"SUMMARY AND RECOMMENDATIONS

"Dr. Azab is a 73 year old physician referred by the Board for psychiatric evaluation and concerns regarding his ability to safely practice medicine, with specific concerns regarding attention and memory. His only reported psychiatric history has been a psychiatric evaluation 2-3 years ago that resulted in a prescription of an antidepressant, which he continues to take. He currently does not endorse significant depressive symptoms or memory complaints, though his wife has observed some loss of interest and forgetfulness. Today's exam revealed prominent amnesic memory impairment with relative preservation of other cognitive domains. Thus far, by Dr. Azab's report, he has not had any difficulty performing basic or instrumental activities of daily living. The most appropriate diagnosis based on this evaluation is mild cognitive impairment, amnesic type, which can be a precursor to dementia due to Alzheimer's disease. Serial MRIs showed brain atrophy that may indicate the presence of a neurodegenerative disorder. This condition is likely to progress, and may remain stable, but is unlikely to improve. However, optimization of some of his medical conditions may modestly improve his cognitive performance, including full compliance with CPAP treatment of obstructive sleep apnea. Though depression can cause cognitive impairment. I do not believe that depression is significantly affecting his cognition or that more aggressive antidepressant treatment would improve his cognition.

"While Dr. Azab does not meet criteria for dementia or a major neurocognitive disorder, this level and quality of memory impairment would likely interfere with most physicians' ability to perform basic medical skills: obtain a medical history, remember the elements of the history and exam to formulate diagnoses, recall patients' conditions and treatment plans, even with the aid of medical records, from visit to visit, and retain and acquire knowledge of medical facts and treatment modalities, including understanding of side effects of drugs and other treatments. These basic skills are all essential for any physician to safely practice medicine. Even with regard to his personal medical history and medications, Dr. Azab omitted numerous conditions and likely omitted some medications. Only continuous monitoring and supervision by another physician would mitigate risk of unsafe errors in Dr. Azab's practice of medicine." (Exhibit 2, pp 4-6.)

4. In a letter dated November 3, 2016, attached to Exhibit 2, Dr. Chen augmented his report by adding, "In my medical opinion, Dr. Azab is unsafe to practice medicine at this time due to his amnesic memory, which I do not expect to improve for the foreseeable future."

LEGAL CONCLUSIONS

1. The purpose of the Medical Practice Act is to assure the high quality of medical practice. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 574.) Conduct supporting the revocation or suspension of a medical license must demonstrate unfitness to practice. Protection of the public is the highest priority in health care disciplinary actions. (Bus. & Prof. Code, § 2229, subd. (a).) The purpose of a disciplinary action is not to punish, but to protect the public. In an administrative disciplinary proceeding, the inquiry must be limited to the effect of the doctor's actions upon the quality of his or her service to patients. (*Watson v. Superior Court* (2009) 176 Cal.App.4th 1407, 1416.) Because the main purpose of license discipline is to protect the public, patient harm is not required before the board can impose discipline. It is far more desirable to impose discipline on a physician before there is patient harm than after harm has occurred. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 772-773).

2. Business and Professions Code section 822 provides:

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

- (a) Revoking the licentiate's certificate or license.
- (b) Suspending the licentiate's right to practice.
- (c) Placing the licentiate on probation.
- (d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper.

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

3. Interim orders suspending or restricting the license of a physician and surgeon may be issued by an administrative law judge if the affidavits in support of the petition show that the licensee has engaged in, or is about to engage in, acts or omissions constituting a violation of the Medical Practice Act and that permitting the licensee to continue to engage in the profession will endanger the public health, safety or welfare. (Gov. Code §11529, subd. (a).)

4. The administrative law judge shall grant the interim order where, in the exercise of discretion, he concludes that: (1) There is a reasonable probability that the petitioner will prevail in the underlying action, and (2) The likelihood of injury to the public in not issuing the order outweighs the likelihood of injury to the licensee in issuing the order. (Gov. Code §11529, subd. (e).)

5. Petitioner must prove the facts necessary to establish the above conditions by a preponderance of the evidence. (Gov. Code §11529, subd. (e).)

6. Petitioner has met the burden of proof in establishing that (1) There is a reasonable probability that the petitioner will prevail in the underlying action, and (2) The likelihood of injury to the public in not issuing the order outweighs the likelihood of injury to the licensee in issuing the order.

7. Permitting Respondent to continue to engage in the practice of medicine pending a final Decision by the Board in its administrative action will endanger the public health, safety and welfare.

ORDER

The Petition for Interim Order of Suspension is granted. Pending a final decision by the Board on the merits of the Accusation (or any successor pleading) to be filed in this matter, Respondent's physician's and surgeon's certificate number A 69237 is suspended and Respondent shall not engage in any conduct for which a physician's and surgeon's certificate is required.

Date: February 23, 2017

DocuSigned by:
Ralph B. Dash
DD18522F370840F.

RALPH B. DASH
Administrative Law Judge
Office of Administrative Hearings