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8 *Attorneys for Complainant*

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

13 In the Matter of the Accusation Against:

Case No. 800-2016-023600

14 **DOUGLAS JAY KIVIAT, M.D.**

**DEFAULT DECISION
AND ORDER**

15 16100 Paseo Del Sur
San Diego, CA 92127-6155

[Gov. Code, §11520]

16 **Physician's and Surgeon's Certificate No.**
17 **G 89144,**

18 Respondent.

19
20 **FINDINGS OF FACT**

21 1. On or about August 17, 2017, Complainant Kimberly Kirchmeyer, in her official
22 capacity as the Executive Director of the Medical Board of California, filed Accusation No. 800-
23 2016-023600 against Douglas Jay Kiviat, M.D. (respondent) before the Medical Board of
24 California, Department of Consumer Affairs, State of California.

25 2. On or about April 25, 2012, the Medical Board of California (Board) issued
26 Physician's and Surgeon's Certificate No. G 89144 to respondent. The Physician's and
27 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought

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1 herein and will expire on February 28, 2018, unless renewed. (Exhibit 1: Respondent's
2 Certificate of Licensure.)¹

3 3. On or about August 17, 2017, an employee of the complainant agency, served by
4 Certified Mail a copy of the Accusation No. 800-2016-023600, Statement to Respondent, Notice
5 of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and
6 11507.7 to respondent's address of record with the Board, which was and is 16100 Paseo Del Sur,
7 San Diego, CA 92127-6155. A copy of the Accusation, the related documents, and Declaration
8 of Service are attached as Exhibit 2, and are incorporated herein by reference.

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

11 5. On or about August 19, 2017, the aforementioned documents sent to respondent via
12 certified mail at his Address of Record were delivered and received. On or about August 22,
13 2017, the Medical Board of California received the certified return receipt from U.S. Postal
14 Service that showed a successful delivery of the certified mail containing the aforementioned
15 documents sent to respondent. A copy of the certified return receipts is attached as Exhibit 3,
16 and is incorporated herein by reference.

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

18 "...

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

24 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
25 of a true and correct copy of the Accusation, and has therefore waived his right to a hearing on

26 _____
27 ¹ The exhibits referred to herein, which are true and correct copies of the originals, are
28 contained in the separate accompanying "Default Decision Evidence Packet" and will be
identified by the specific exhibit numbers.

1 the merits of the charges and allegations contained in Accusation No. 800-2016-023600. (Exhibit
2 4: Declaration of Deputy Attorney General Michael Yun re: Notice of Defense.)

3 8. On or about September 1, 2017, Deputy Attorney General Michael J. Yun mailed a
4 courtesy notice of default to respondent informing him that he had failed to submit a Notice of
5 Defense, and if it was not received, a Default would be filed against him. Respondent did not
6 send a Notice of Defense to Deputy Attorney General Michael J. Yun. (Exhibit 5: Courtesy
7 Notice of Default from Deputy Attorney General Michael J. Yun.)

8 9. 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
10 hearing, the agency may take action based upon the respondent’s express admissions
11 or upon other evidence and affidavits may be used as evidence without any notice to
12 respondent.”

13 “..”

14 10. Pursuant to its authority under Government Code section 11520, the Board finds
15 respondent is in default. The Board will take action without further hearing and, based on
16 respondent’s express admissions by way of default and the evidence before it, contained in
17 Exhibits 1 through Exhibit 9, finds that the charges and allegations in Accusation No. 800-2016-
18 023600, and each of them, separately and severally, are true and correct.

19 11. Section 2227 of the Code states:

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

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

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

28 ///

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

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

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

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

14 12. Section 2234 of the Code, states, in pertinent part:

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

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

20 “...”

21 13. Unprofessional conduct under Business and Professions Code section 2234 is conduct
22 which breaches the rules or ethical code of the medical profession, or conduct which is
23 unbecoming a member in good standing of the medical profession, and which demonstrates an
24 unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564,
25 575.)

26 14. Section 820 of the Code states:

27 “Whenever it appears that any person holding a license, certificate or permit
28 under this division or under any initiative act referred to in this division may be

1 unable to practice his or her profession safely because the licentiate's ability to
2 practice is impaired due to mental illness, or physical illness affecting competency,
3 the licensing agency may order the licentiate to be examined by one or more
4 physicians and surgeons or psychologists designated by the agency. The report of the
5 examiners shall be made available to the licentiate and may be received as direct
6 evidence in proceedings conducted pursuant to Section 822."^[2]

7 15. Section 821 of the Code states:

8 "The Licentiate's failure to comply with an order issued under Section 820
9 shall constitute grounds for the suspension or revocation of the licentiate's certificate
10 or license."^[3]

11 16. Respondent has subjected his Physician's and Surgeon's Certificate No. G 89144 to
12 disciplinary action under sections 2227 and 821, of the Code, in that he failed to comply with an
13 Order issued pursuant to section 820 of the Code, as more particularly alleged hereinafter (Exhibit
14 6: Declaration of HQIU Inv. A.M.):

15 17. On or about July 5, 2016, the Medical Board's Central Complaint Unit (CCU)
16 received an anonymous complaint regarding respondent. The complaint alleged respondent is
17 suffering from dementia brought on by Parkinson's disease and exacerbated by a fall and
18 subsequent concussion suffered in April of 2016. It further alleged respondent is paranoid and
19 called the police claiming his wife is stealing from him. The complaint also suggested respondent
20 was calling in prescriptions for himself and threatened his wife if she did not take him to pick up
21 the medications. The anonymous complainant also stated respondent was urinating all over his

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24 ² An Order compelling examinations pursuant to Section 820 complies with state procedural due
25 process. (*Alexander D. v. State Board of Dental Examiners* (1991) 231 Cal.App.3d 92, 96-96.) Section
26 820 also complies with constitutional privacy interests. (*Kees v. Medical Board of California* (1992) 7
27 Cal.App.4th 1801, 1814.)

28 ³ The Court of Appeal has upheld the Board's authority to discipline a licensee for failure to
comply with an Order to submit to examinations. With regards to disciplinary action taken pursuant to
Section 821, all that is relevant is that the licensee did not comply with the Order. (*Lee v. Board of
Registered Nursing* (2012) 209 Cal.App.4th 793, 798.)

1 house, dismantled his computer, and slept on the hard drives as a result of his paranoia. The
2 anonymous complainant suggested he/she is worried respondent might drug himself to death.
3 (Exhibit 7: Anonymous CCU Complaint.)

4 18. On or about July 28, 2016, Health Quality Investigation Unit (HQIU) Investigator
5 A.M. (Inv. A.M.) of California Department of Consumer Affairs spoke with respondent's wife
6 J.K. who told her that respondent has been suffering from Parkinson's disease for five (5) years
7 and that he has been living in an assisted living facility for three (3) days. (Exhibit 6.)

8 19. On or about August 1, 2016, Inv. A.M. received a certified copy of the San Diego
9 Police Department Report No. 15002583. The report described respondent as a 65-year-old who
10 has Parkinson's disease and walks with a cane. The report stated respondent left his home for a
11 short walk and did not return home when expected. After a two-hour search by the police,
12 respondent was found and reunited with his family. The report stated respondent may have some
13 cognitive impairment that was not present prior to his disappearance. (*Id.*; Exhibit 8: San Diego
14 Police Department Report No. 15002583.)

15 20. On or about August 5, 2016, Inv. A.M. sent respondent a letter to his address of
16 record requesting contact regarding this investigation. (Exhibit 6.)

17 21. On or about October 3, 2016, respondent's wife J.K. called Inv. A.M. on the
18 phone and provided the following information, in summary:

19 "Since she and Inv. A.M. last spoke, respondent had been kicked out of two
20 assisted living facilities and is currently on his third. Respondent is writing
21 prescriptions for himself. He wrote himself a prescription for an anti-parasitic
22 medication, and today he wrote four more prescriptions for himself. Respondent is
23 staying at Villa La Mesa assisted living facility. She feels horrible because she has
24 had to put him in a home and cannot take care of him."

25 (*Id.*)

26 22. During the phone conversation, J.K. provided Inv. A.M. the address of the assisted
27 living facility at which respondent then resided and the names of his doctors. (*Id.*)

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1 23. On or about October 4, 2016, when Inv. A.M. met her in person, J.K. provided
2 the following information, in summary:

3 "Respondent was diagnosed with Parkinson's disease approximately
4 seven years ago. He started to slowly show signs of the disease in the
5 form of rigidity. Respondent suffers from rigidity. He has not practiced
6 medicine in the physical sense since he stopped working at The Brooklyn
7 Hospital. Afterwards, he continued to practice medicine providing expert
8 opinions for insurance companies. He was eventually fired around June
9 of 2015, from providing opinions because he became too slow in
10 producing his reports. Things did not start to get bad until respondent fell
11 on the ceramic tile in their home in San Diego. He fell and hit his
12 shoulder. He fractured and dislocated the shoulder. When his condition
13 got worse he began to self-medicate/self-prescribe. Respondent
14 prescribed himself Rytary (Carbidopa and Levodopa), Apokyn an
15 injectable, as well as Azilect, all of which are for Parkinson's disease.
16 One of the side effects of Azilect is dementia. Around April 1, 2016, he
17 fell again. She tried to get in-home help for him but respondent fired
18 everyone she hired. His doctor prescribed Seroquel to help respondent
19 calm down but he would not take it. The doctor suggested to her that she
20 put it in respondent's food, so she did. When he found out, he asked her
21 if she was "drugging him" and accused her of trying to poison him. In
22 June 2016, he thought he heard someone upstairs so he got a laser pointer
23 and his cane and went upstairs to search. She tried to tell him she was the
24 only one upstairs."

25 (*Id.*)

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1 24. During the same meeting, J.K. provided Inv. A.M. the following additional
2 information, in summary:

3 "In July, respondent was admitted to the Pomerado Hospital General
4 Psychiatric Unit twice and the Palomar Hospital Psychiatric unit once.
5 He wrote himself a prescription for an anti-parasitic medication because
6 he believes he has a parasite. He is picking his nose to the point that it is
7 bleeding and sore because he believes he is providing a sample of the
8 parasite. He also believes he is being gassed with ketamine gas through
9 the air vents at the home. She found an empty water bottle in his
10 refrigerator in his room that was labeled with a date. Respondent had told
11 her this was a sample of the room air with the ketamine. He also told her
12 that the Filipino Mafia was after him."

13 (*Id.*)

14 25. On or about October 4, 2016, J.K. provided Inv. A.M. with a copy of the physician's
15 report for residential care facilities for the elderly regarding respondent, signed by Dr. D.S. The
16 report indicates respondent's primary diagnosis is Dementia. The report further provided that
17 respondent suffers from "the loss of intellectual function (such as thinking, remembering,
18 reasoning, exercising judgment and making decisions) and other cognitive functions, sufficient to
19 interfere with an individual's ability to perform activities of daily living or to carry out social or
20 occupational activities." (*Id.*)

21 26. On or about October 6, 2016, Inv. A.M. sent respondent a letter requesting that he
22 contact her to discuss his Medical Board investigation. The letter was mailed to respondent's
23 Address of Record and a copy of the letter was also sent to Villa La Mesa, the living assisted
24 facility provided to her by respondent's wife J.K. In the same letter and the copy of the letter,
25 Inv. A.M. also requested that respondent sign releases for his medical records and requested that
26 he consent to voluntary physical and mental evaluations. Inv. A.M. requested respondent to sign
27 and return the agreement forms. In each of the two mails, she included a self-addressed stamped

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1 envelope and a copy of the Notice to Medical Consumer. A copy of the above-mentioned letter
2 was also sent to respondent's wife J.K. as his power of attorney. (*Id.*)

3 27. On or about June 8, 2017, the Medical Board issued an Order Granting a Petition to
4 Compel Physical and Mental Examinations of respondent ("820 Order"), pursuant to section 820,
5 of the Code. (*Id.*)

6 28. On or about June 15, 2017, Inv. A.M. sent a letter notifying respondent of his
7 physical and mental evaluations appointments including their respective dates, times, and
8 locations. This letter was sent by HQIU via both certified mail and regular mail to respondent's
9 Address of Record. (*Id.*)

10 29. Respondent's appointment for his 820 physical health evaluation was scheduled for
11 June 27, 2017, at 9:00 A.M. with D.M., M.D. (Dr. D.M.). (*Id.*)

12 30. Respondent's appointment for his 820 mental health evaluation was scheduled for
13 June 28, 2017, at 9:00 A.M. with M.K., M.D. (Dr. M.K.). (*Id.*)

14 31. On or about June 20, 2017, Inv. A.M. received a call from respondent's wife J.K. who
15 told her angrily that she did not appreciate getting a "threatening letter and subpoena" from her.
16 J.K. stated that she has to feed and shave respondent. When Inv. A.M. asked J.K. where
17 respondent resides, J.K. told her respondent is at the Villa Rancho Bernardo Skilled Nursing and
18 Memory Care Center ("Villa Rancho Bernardo"). (*Id.*)

19 32. On or about June 20, 2017, Inv. A.M. sent another letter notifying respondent of his
20 physical and mental evaluation appointments including their respective dates, times, and
21 locations, via both certified mail and regular mail to Villa Rancho Bernardo's address. Included
22 in the mails was a copy of the 820 Order. (*Id.*)

23 33. On or about June 27, 2017, Inv. A.M. received a telephone call from Dr. Marquardt
24 who told her that respondent failed to show up for his 9:00 A.M. appointment. (*Id.*)

25 34. On or about June 27, 2017, the letter that Inv. A.M. sent to respondent at the address
26 of Villa Rancho Bernardo that his wife J.K. provided was returned undeliverable as addressed.
27 (*Id.*)

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1 35. On or about June 28, 2017, Inv. A.M. received a telephone call from Dr. M.K. who
2 told her that respondent failed to show up for his 9:00 A.M. appointment. (*Id.*)

3 36. On or about July 3, 2017, Inv. A.M. received a letter from Dr. M.K. stating that
4 respondent did not attend his 820 mental health evaluation. (*Id.*)

5 37. On or about July 12, 2017, Inv. A.M. received via return mail a certified letter sent to
6 respondent at his Address of Record. (*Id.*)

7 38. On or about July 17, 2017, Inv. A.M. received a letter from Dr. D.M. stating
8 respondent did not attend his 820 physical health evaluation. (*Id.*)

9 39. As of August 8, 2017, Inv. A.M. had received no contact from either respondent, or
10 his counsel, regarding the missed evaluation appointments. (*Id.*)

11 **DETERMINATION OF ISSUES**

- 12 1. Based on the foregoing findings of fact, respondent Douglas Jay Kiviat, M.D. has
13 subjected his Physician's and Surgeon's Certificate No. G-89144 to discipline.
- 14 2. The agency has jurisdiction to adjudicate this case by default.
- 15 3. Pursuant to its authority under California Government Code section 11520, and based
16 on the evidence before it, the Board hereby finds that the charges and allegations
17 contained in Accusation No. 800-2016-023600, and the Findings of Fact contained in
18 paragraphs 1 through 39, above, and each of them, separately and severally, are true
19 and correct.
- 20 4. Pursuant to its authority under California Government Code section 11520, and by
21 reason of the Findings of Fact contained in paragraphs 1 through 39, above, and
22 Determination of Issues 1, 2, and 3, above, the Board hereby finds that respondent
23 Douglas Jay Kiviat, M.D., has subjected his Physician's and Surgeon's Certificate
24 No. G 89144 to disciplinary action in that respondent has failed to comply with an
25 order issued under section 820, in violation of section 821, of the Code.

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ORDER

IT IS SO ORDERED that Physician's and Surgeon's Certificate No. G 89144, heretofore issued to respondent Douglas Jay Kiviat, M.D., is revoked.

If respondent ever files an application for relicensure in the State of California, the Board shall treat it as a petition for reinstatement of a revoked license. Respondent must comply with all laws, regulations and procedures for reinstatement of a revoked license at the time that the application for relicensure or petition for reinstatement is filed.

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 December 1, 2017, at 5:00 p.m.

It is so ORDERED November 2, 2017


FOR THE MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
KIMBERLY KIRCHMEYER
EXECUTIVE DIRECTOR

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Attorney General of California
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8 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO AUGUST 17, 2017
BY *[Signature]* ANALYST

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

13 In the Matter of the Accusation Against:

Case No. 800-2016-023600

14 **DOUGLAS JAY KIVIAT, M.D.**
16100 Paseo Del Sur
15 San Diego, CA 92127-6155

ACCUSATION

16 **Physician's and Surgeon's Certificate**
17 **No. G 89144,**

18 Respondent.

19
20 Complainant alleges:

21 **PARTIES**

- 22 1. Kimberly Kirchmeyer (complainant) brings this Accusation solely in her official
23 capacity as the Executive Director of the Medical Board of California.
- 24 2. On or about April 25, 2012, the Medical Board (Board) issued Physician's and
25 Surgeon's Certificate No. G 89144 to Douglas Jay Kiviat, M.D. (respondent). The Physician's
26 and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
27 herein and will expire on February 28, 2018, unless renewed.

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JURISDICTION

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

5 4. Section 2227 of the Code states:

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

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

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

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

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

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

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

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5. Section 2234 of the Code, states, in pertinent part:

“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]

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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, 96-96.) Section 820 also complies with constitutional privacy interests. (*Kees v. Medical Board of California* (1992) 7 Cal.App.4th 1801, 1814.)

1 8. Section 821 of the Code states:

2 "The Licentiate's failure to comply with an order issued under Section 820 shall
3 constitute grounds for the suspension or revocation of the licentiate's certificate or
4 license."^[2]

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(Failure to Comply with Order of Examination)**

7 9. Respondent has subjected his Physician's and Surgeon's Certificate No. G 89144 to
8 disciplinary action under sections 2227 and 821, of the Code, in that he failed to comply with an
9 Order issued pursuant to section 820 of the Code, as more particularly alleged hereinafter:

10 10. On or about July 5, 2016, the Medical Board's Central Complaint Unit (CCU)
11 received an anonymous complaint regarding respondent. The complaint alleged respondent is
12 suffering from dementia brought on by Parkinson's disease and exacerbated by a fall and
13 subsequent concussion suffered in April of 2016. It further alleged respondent is paranoid and
14 called the police claiming his wife is stealing from him. The complaint also suggested respondent
15 was calling in prescriptions for himself and threatened his wife if she did not take him to pick up
16 the medications. The anonymous complainant also stated respondent was urinating all over his
17 house, dismantled his computer, and slept on the hard drives as a result of his paranoia. The
18 anonymous complainant suggested he/she is worried respondent might drug himself to death.

19 11. On or about July 28, 2016, Health Quality Investigation Unit (HQIU) Investigator
20 A.M. (Inv. A.M.) of California Department of Consumer Affairs spoke with respondent's wife
21 J.K. who told her that respondent has been suffering from Parkinson's disease for five (5) years
22 and that he has been living in an assisted living facility for three (3) days.

23 12. On or about August 1, 2016, Inv. A.M. received a certified copy of the San Diego
24 Police Department Report No. 15002583. The report described respondent as a 65-year-old who
25 has Parkinson's disease and walks with a cane. The report stated respondent left his home for a

26 ² The Court of Appeal has upheld the Board's authority to discipline a licensee for failure to
27 comply with an Order to submit to examinations. With regards to disciplinary action taken pursuant to
28 Section 821, all that is relevant is that the licensee did not comply with the Order. (*Lee v. Board of
Registered Nursing* (2012) 209 Cal.App.4th 793, 798.)

1 short walk and did not return home when expected. After a two-hour search by the police,
2 respondent was found and reunited with his family. The report stated respondent may have some
3 cognitive impairment that was not present prior to his disappearance.

4 13. On or about August 5, 2016, Inv. A.M. sent respondent a letter to his address of
5 record requesting contact regarding this investigation.

6 14. On or about October 3, 2016, respondent's wife J.K. called Inv. A.M. on the
7 phone and provided the following information, in summary:

8 "Since she and Inv. A.M. last spoke, respondent had been kicked out of two
9 assisted living facilities and is currently on his third. Respondent is writing
10 prescriptions for himself. He wrote himself a prescription for an anti-parasitic
11 medication, and today he wrote four more prescriptions for himself. Respondent is
12 staying at Villa La Mesa assisted living facility. She feels horrible because she has
13 had to put him in a home and cannot take care of him."

14 15. During the phone conversation, J.K. provided Inv. A.M. the address of the assisted
15 living facility at which respondent then resided and the names of his doctors.

16 16. On or about October 4, 2016, when Inv. A.M. met her in person, J.K. provided
17 the following information, in summary:

18 "Respondent was diagnosed with Parkinson's disease approximately
19 seven years ago. He started to slowly show signs of the disease in the
20 form of rigidity. Respondent suffers from rigidity. He has not practiced
21 medicine in the physical sense since he stopped working at The Brooklyn
22 Hospital. Afterwards, he continued to practice medicine providing expert
23 opinions for insurance companies. He was eventually fired around June
24 of 2015, from providing opinions because he became too slow in
25 producing his reports. Things did not start to get bad until respondent fell
26 on the ceramic tile in their home in San Diego. He fell and hit his
27 shoulder. He fractured and dislocated the shoulder. When his condition
28 got worse he began to self-medicate/self-prescribe. Respondent

1 prescribed himself Rytary (Carbidopa and Levodopa), Apokyn an
2 injectable, as well as Azilect, all of which are for Parkinson's disease.
3 One of the side effects of Azilect is dementia. Around April 1, 2016, he
4 fell again. She tried to get in-home help for him but respondent fired
5 everyone she hired. His doctor prescribed Seroquel to help respondent
6 calm down but he would not take it. The doctor suggested to her that she
7 put it in respondent's food, so she did. When he found out, he asked her
8 if she was "drugging him" and accused her of trying to poison him. In
9 June 2016, he thought he heard someone upstairs so he got a laser pointer
10 and his cane and went upstairs to search. She tried to tell him she was the
11 only one upstairs."

12 17. During the same meeting, J.K. provided Inv. A.M. the following additional
13 information, in summary:

14 "In July, respondent was admitted to the Pomerado Hospital General
15 Psychiatric Unit twice and the Palomar Hospital Psychiatric unit once.
16 He wrote himself a prescription for an anti-parasitic medication because
17 he believes he has a parasite. He is picking his nose to the point that it is
18 bleeding and sore because he believes he is providing a sample of the
19 parasite. He also believes he is being gassed with ketamine gas through
20 the air vents at the home. She found an empty water bottle in his
21 refrigerator in his room that was labeled with a date. Respondent had told
22 her this was a sample of the room air with the ketamine. He also told her
23 that the Filipino Mafia was after him."

24 18. On or about October 4, 2016, J.K. provided Inv. A.M. with a copy of the physician's
25 report for residential care facilities for the elderly regarding respondent, signed by Dr. D.S. The
26 report indicates respondent's primary diagnosis is Dementia. The report further provided that
27 respondent suffers from "the loss of intellectual function (such as thinking, remembering,
28 reasoning, exercising judgment and making decisions) and other cognitive functions, sufficient to

1 interfere with an individual's ability to perform activities of daily living or to carry out social or
2 occupational activities.”

3 19. On or about October 6, 2016, Inv. A.M. sent respondent a letter requesting that he
4 contact her to discuss his Medical Board investigation. The letter was mailed to respondent's
5 Address of Record and a copy of the letter was also sent to Villa La Mesa, the living assisted
6 facility provided to her by respondent's wife J.K. In the same letter and the copy of the letter, Inv.
7 A.M. also requested that respondent sign releases for his medical records and requested that he
8 consent to voluntary physical and mental evaluations. Inv. A.M. requested respondent to sign and
9 return the agreement forms. In each of the two mails, she included a self-addressed stamped
10 envelope and a copy of the Notice to Medical Consumer. A copy of the above-mentioned letter
11 was also sent to respondent's wife J.K. as his power of attorney.

12 20. On or about June 8, 2017, the Medical Board issued an Order Granting a Petition to
13 Compel Physical and Mental Examinations of respondent (“820 Order”), pursuant to section 820,
14 of the Code.

15 21. On or about June 15, 2017, Inv. A.M. sent a letter notifying respondent of his physical
16 and mental evaluations appointments including their respective dates, times, and locations. This
17 letter was sent by HQIU via both certified mail and regular mail to respondent's Address of
18 Record.

19 22. Respondent's appointment for his 820 physical health evaluation was scheduled for
20 June 27, 2017, at 9:00 A.M. with D.M., M.D. (Dr. D.M.).

21 23. Respondent's appointment for his 820 mental health evaluation was scheduled for
22 June 28, 2017, at 9:00 A.M. with M.K., M.D. (Dr. M.K.).

23 24. On or about June 20, 2017, Inv. A.M. received a call from respondent's wife J.K. who
24 told her angrily that she did not appreciate getting a “threatening letter and subpoena” from her.
25 J.K. stated that she has to feed and shave respondent. When Inv. A.M. asked J.K. where
26 respondent resides, J.K. told her respondent is at the Villa Rancho Bernardo Skilled Nursing and
27 Memory Care Center (“Villa Rancho Bernardo”).

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1 25. On or about June 20, 2017, Inv. A.M. sent another letter notifying respondent of his
2 physical and mental evaluation appointments including their respective dates, times, and
3 locations, via both certified mail and regular mail to Villa Rancho Bernardo's address. Included
4 in the mails was a copy of the 820 Order.

5 26. On or about June 27, 2017, Inv. A.M. received a telephone call from Dr. D.M. who
6 told her that respondent failed to show up for his 9:00 A.M. appointment.

7 27. On or about June 27, 2017, the letter that Inv. A.M. sent to respondent at the address
8 of Villa Rancho Bernardo that his wife J.K. provided was returned undeliverable as addressed.

9 28. On or about June 28, 2017, Inv. A.M. received a telephone call from Dr. M.K. who
10 told her that respondent failed to show up for his 9:00 A.M. appointment.

11 29. On or about July 3, 2017, Inv. A.M. received a letter from Dr. M.K. stating that
12 respondent did not attend his 820 mental health evaluation.

13 30. On or about July 12, 2017, Inv. A.M. received via return mail a certified letter sent to
14 respondent at his Address of Record.

15 31. On or about July 17, 2017, Inv. A.M. received a letter from Dr. D.M. stating
16 respondent did not attend his 820 physical health evaluation.

17 32. As of August 8, 2017, Inv. A.M. had received no contact from either respondent, or
18 his counsel, regarding the missed evaluation appointments.

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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 No. G 89144, issued to respondent Douglas Jay Kiviat, M.D.;

2. Revoking, suspending or denying approval of respondent Douglas Jay Kiviat, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code, and advanced practice nurses;

3. Ordering respondent Douglas Jay Kiviat, M.D. to pay the Board the costs of probation monitoring, if placed on probation; and

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

DATED: August 17, 2017


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

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