

1 XAVIER BECERRA  
Attorney General of California  
2 ALEXANDRA M. ALVAREZ  
Supervising Deputy Attorney General  
3 KAROLYN M. WESTFALL  
Deputy Attorney General  
4 State Bar No. 234540  
600 West Broadway, Suite 1800  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 738-9465  
7 Facsimile: (619) 645-2061

8 *Attorneys for Complainant*

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO APR 26 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. 800-2016-019878

14 **DAVID PAUL KNAPP, M.D.**  
15 **4655 CASS STREET, STE. 406**  
**SAN DIEGO, CA 92109**

**ACCUSATION**

16 **Physician's and Surgeon's Certificate**  
17 **No. G33943,**

18 Respondent.

19 Complainant alleges:

20 **PARTIES**

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

24 2. On or about May 2, 1977, the Medical Board (Board) issued Physician's and  
25 Surgeon's Certificate No. G33943 to David Paul Knapp, M.D. (respondent). The Physician's and  
26 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, 2019, unless renewed.

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1 continuing education activities, and cost reimbursement associated therewith that  
2 are agreed to with the board and successfully completed by the licensee, or other  
3 matters made confidential or privileged by existing law, is deemed public, and  
4 shall be made available to the public by the board pursuant to Section 803.1.”

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

6 “The board shall take action against any licensee who is charged with  
7 unprofessional conduct...”

8 7. Unprofessional conduct under Business and Professions Code section 2234 is conduct  
9 which breaches the rules or ethical code of the medical profession, or conduct which is  
10 unbecoming a member in good standing of the medical profession, and which demonstrates an  
11 unfitness to practice medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564,  
12 575.)

13 8. Section 820 of the Code states:

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

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26 <sup>1</sup> An Order compelling examinations pursuant to Section 820 complies with state procedural due  
27 process. (*Alexander D. v. State Board of Dental Examiners* (1991) 231 Cal.App.3d 92, 96-96.) Section  
28 820 also complies with constitutional privacy interests. (*Kees v. Medical Board of California* (1992) 7  
Cal.App.4<sup>th</sup> 1801, 1814.)

1 9. 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."<sup>[2]</sup>

5 **FIRST CAUSE FOR DISCIPLINE**

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

7 10. Respondent has subjected his Physician's and Surgeon's Certificate No. G33943 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 11. On or about January 27, 2016, the Board's Central Complaint Unit (CCU) received  
11 an anonymous complaint alleging that respondent was "gravely disabled because of advanced  
12 memory difficulty."

13 12. On or about February 5, 2016, the CCU referred the case to the Division of  
14 Investigations, Health Quality Investigation Unit (HQIU), San Diego Field Office. The  
15 investigation was initially assigned to Investigator M.P.

16 13. On or about April 29, 2016, Investigator M.P. performed a Department of Motor  
17 Vehicles (DMV) records check and discovered that respondent's driver's license was suspended  
18 from approximately July 2015, through March 2016, due to a "disability."

19 14. On or about May 2, 2016, Investigator M.P. met with respondent at his medical office  
20 at 4655 Cass Street, Suite 406, in San Diego. At that time, respondent told Investigator M.P. that  
21 he does not see his primary care physician (PCP) regularly, and that his last appointment with his  
22 PCP was approximately three (3) months prior. Respondent was unable to recall the name of his  
23 PCP, the address of his PCP's office, or even the region in San Diego where his PCP's office is  
24 located.

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26 <sup>2</sup> 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           15. On or about May 19, 2016, Investigator M.P. received a voice mail from attorney  
2 David Rosenberg (Mr. Rosenberg), notifying the investigator that he had been retained to  
3 represent respondent in this case.

4           16. On or about June 7, 2016, Investigator M.P. spoke with respondent's attorney, Mr.  
5 Rosenberg, who informed Investigator M.P. that respondent was unwilling to sign an  
6 authorization for release of his medical information, but was willing to provide records from his  
7 last few visits with his doctor.

8           17. On or about June 29, 2016, Investigator M.P. spoke with DMV Investigator, H.S.,  
9 who informed him that respondent's driver's license was suspended due to an allegation that  
10 respondent was suffering from dementia.

11           18. On or about July 13, 2016, Investigator M.P. received a DMV driver medical  
12 evaluation form from respondent's attorney, Mr. Rosenberg. This form, signed by J.C.B., M.D.,  
13 Ph.D., (Dr. C.B.) on January 7, 2016, indicates that respondent has been diagnosed with "mild  
14 cognitive impairment," that manifests itself in "mild short-term memory problems."

15           19. On or about July 13, 2016, Investigator M.P. received a medical progress note from  
16 respondent's attorney, Mr. Rosenberg, that was signed by Dr. C.B., UCSD Department of  
17 Neurosciences, on December 27, 2015. This note documents a clinical encounter on December  
18 17, 2015, wherein Dr. C.B. indicates that she first began treating respondent in July 2015, and  
19 that respondent presented that day for a follow-up. Dr. C.B. describes respondent as "a 64 year  
20 old male physician (dermatologist) with short-term memory problems." On a Mini-Mental State  
21 Examination (MMSE), respondent scored 24/30, losing points for attention/calculation and short-  
22 term verbal recall. As it relates to day-to-day functioning, the interpretation of the MMSE  
23 indicates that a score of 24/30 is indicative of "significant effect" that "may require some  
24 supervision, support, and assistance." At the first visit in July 2015, Dr. C.B. started respondent  
25 on Donepezil<sup>3</sup> 5mg per day. After this subsequent visit, Dr. C.B. continued respondent on this  
26 medication, but doubled the dose.

27           <sup>3</sup> Donepezil is a cholinesterase inhibitor. It works by increasing the amount of a acetylcholine in  
28 the brain, which may help reduce the symptoms of dementia in patients with Alzheimer disease.

1           20. On or about December 12, 2016, the investigation was reassigned to HQUI  
2 Investigator D.F.

3           21. On or about January 11, 2017, the Board issued an Order Granting a Petition to  
4 Compel Physical and Psychiatric Examinations with Biological Fluid Testing of respondent,  
5 pursuant to section 820, of the Code.

6           22. On or about January 17, 2017, Investigator D.F. mailed respondent a copy of the  
7 Board's Order, as well as a letter informing respondent that his psychiatric examination was  
8 scheduled for January 27, 2017, at 10:00 a.m. with Alan Abrams, M.D. (Dr. Abrams), and his  
9 physical examination appointment was scheduled for January 30, 2017, at 12:30 p.m. with Diana  
10 Marquardt, M.D. (Dr. Marquardt). The Order and appointment letters were mailed via certified  
11 mail to respondent's address of record with the Board,<sup>4</sup> which was and is: 4655 Cass St., Ste 406,  
12 San Diego, CA 92109.

13           23. On or about January 18, 2017, Investigator D.F. personally served respondent's  
14 counsel, Mr. Rosenberg, with a copy of the appointment letter.

15           24. On or about January 24, 2017, Investigator D.F. received a signed certified mail  
16 receipt for the appointment letter he mailed to respondent.

17           25. On or about January 25, 2017, Investigator D.F. received a phone call from E.R., who  
18 identified herself as respondent's office manager. E.R. indicated, among other things, that she  
19 had received the appointment letters for respondent and that she was going to speak with his  
20 counsel, Mr. Rosenberg, about it.

21           26. On or about January 26, 2017, Investigator D.F. received a voice mail from  
22 respondent's counsel, Mr. Rosenberg, indicating, among other things, that he had received the  
23 appointment letter, that respondent is no longer practicing medicine, he has closed his office, and  
24 he would not be attending the examination appointments.

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27 <sup>4</sup> Business and Professions Code section 2021 requires each licensee to maintain an updated  
28 address of record with the Board.



1 in conduct which breaches the rules or ethical code of the medical profession, or conduct which is  
2 unbecoming to a member in good standing of the medical profession, and which demonstrates an  
3 unfitness to practice medicine, as more particularly alleged in paragraphs 10 through 34, above,  
4 which are hereby incorporated by reference as if fully set forth herein.

5 **SECTION 822 CAUSE FOR ACTION**

6 **(Mental Illness and/or Physical Illness Affecting Competency)**

7 36. Respondent is subject to action under section 822 of the Code in that his ability to  
8 practice medicine safely is impaired due to a mental illness and/or physical illness affecting  
9 competency, as a result of his cognitive impairment, as more particularly alleged in paragraphs 10  
10 through 34, above, which are hereby incorporated by reference and realleged as if fully set forth  
11 herein.

12 **DISCIPLINARY CONSIDERATIONS**

13 37. To determine the degree of discipline, if any, to be imposed on respondent David  
14 Paul Knapp, M.D., complainant alleges that on or about March 10, 2003, in a prior disciplinary  
15 action entitled, *In the Matter of the Second Amended Accusation Against David Paul Knapp,*  
16 *M.D.*, before the Medical Board of California, in Case No. 08-1998-87845. In that matter, and as  
17 a result of out-of-state discipline, respondent's Physician's and Surgeon's Certificate No. G33943  
18 was revoked, stayed, and placed on probation for five (5) years subject to various terms and  
19 conditions. On or about March 10, 2008, the probation term was completed.

20 **PRAAYER**

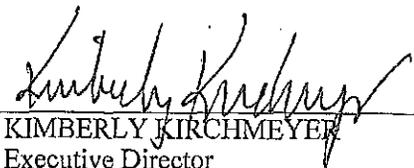
21 WHEREFORE, complainant requests that a hearing be held on the matters herein alleged,  
22 and that following the hearing, the Medical Board of California issue a decision:

- 23 1. Revoking or suspending Physician's and Surgeon's Certificate No. G33943, issued to  
24 respondent David Paul Knapp, M.D.;
- 25 2. Revoking, suspending or denying approval of respondent David Paul Knapp, M.D.'s  
26 authority to supervise physician assistants and advanced practice nurses;
- 27 3. Ordering respondent David Paul Knapp, M.D., if placed on probation, to pay the  
28 Board the costs of probation monitoring; and

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

DATED: April 26, 2017



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

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

In the Matter of the Accusation	)	
Against:	)	
	)	
	)	
DAVID PAUL KNAPP, M.D.	)	Case No. 800-2016-019878
	)	
Physician's and Surgeon's	)	OAH No. 2017070303
Certificate No. G33943	)	
	)	
Respondent	)	
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DECISION

The Proposed Decision of Susan J. Boyle, Administrative Law Judge, dated December 15, 2017 is attached hereto. Said decision is hereby amended, pursuant to Government Code section 11517(c)(2)(C), to correct technical or minor changes that do not affect the factual or legal basis of the proposed decision. The proposed decision is amended as follows:

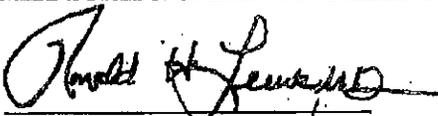
1. Page 1, Caption Box, the title of the matter is corrected to read "In the Matter of the Accusation"

The Proposed Decision as amended is hereby accepted and adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on February 9, 2018.

IT IS SO ORDERED January 10, 2018.

MEDICAL BOARD OF CALIFORNIA

By:   
Ronald Lewis, M.D., Chair  
Panel A

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

In the Matter of the Noticed Hearing on the  
Petition for Interim Suspension Order Against:

Case No. 800-2016-019878

DAVID PAUL KNAPP, M.D.

OAH No. 2017070303

Physician's and Surgeon's  
Certificate No. G 33943,

Respondent.

**DECISION**

This matter was heard by Administrative Law Judge Susan J. Boyle, Office of Administrative Hearings, State of California, in San Diego, California on November 16, 2017.

Deputy Attorney General Carolyn M. Westfall, represented petitioner, Kimberly Kirchmeyer, the Executive Director of the Medical Board, Department of Consumer Affairs, State of California.

David Rosenberg, Attorney at Law, Rosenberg, Shpall, & Zeigen, represented respondent David Paul Knapp, M.D. Mr. Rosenberg and respondent were properly noticed of the date, time and place of the instant hearing; however, neither appeared at the hearing.

The matter was submitted on November 16, 2017.

**FACTUAL FINDINGS**

1. On May 2, 1977, respondent was issued Physician's and Surgeon's Certificate No. G 33943. Respondent's certificate is in full force and effect.
2. On January 27, 2016, the board's central complaint unit received an anonymous complaint alleging that respondent was "gravely disabled because of advanced

memory difficulty.” On February 5, 2016, the complaint was referred to the Health Quality Investigation Unit for investigation.

3. The investigation of the complaint led to concerns about respondent’s mental status. For example, it was discovered that respondent’s driver’s license had been suspended due to the fact that respondent “seemed to be suffering from dementia.” Additionally, a medical evaluation report signed by respondent’s treating physician, Jody Corey-Bloom, M.D., Ph.D., had concluded that respondent was suffering “significant effect” from memory problems and he “may require some supervision, support, and assistance.”

4. On January 11, 2017, based on the appearance that respondent may be unable to safely practice medicine, the board issued an Order Granting a Petition to Compel Physical and Psychiatric Examinations with Biological Fluid Testing pursuant to Business and Professions Code section 820.

5. Respondent received the order compelling examinations and a letter informing him that a psychiatric examination was scheduled for January 27, 2017, at 10:00 a.m. with Alan Abrams, M.D., and a physical examination was scheduled for January 30, 2017, at 12:30 p.m. with Diana Marquardt, M.D.

6. On January 26, 2017, respondent’s attorney left a voicemail for the investigator informing her that respondent was no longer practicing medicine, he had closed his office and he would not be attending the examination appointments. Later, Deputy Attorney General Westfall contacted the investigator and informed the investigator that based on a conversation she had with respondent’s attorney she had agreed to reschedule respondent’s appointments.

7. Respondent’s physical examination was rescheduled for February 4, 2017, at 12:30 p.m. with Dr. Marquardt and his psychiatric evaluation was rescheduled for February 10, 2017, at 3:30 p.m. with Dr. Abrams. Both respondent and his attorney were advised of/noticed about the examination dates, times and places.

8. On February 10, 2017, the investigator was notified that respondent failed to appear for his February 4, 2017, physical examination/evaluation and his February 10, 2017, 3:30 p.m. psychiatric evaluation.

9. On March 15, 2017, complainant filed a petition for interim suspension order prohibiting respondent from practicing medicine until an administrative hearing could be held. Respondent and attorney David Rosenberg were properly served with the petition, supporting documents and notice of hearing. The hearing was held on April 13, 2017. Respondent and Mr. Rosenberg failed to appear at the hearing on the interim suspension order, and an administrative law judge entered an interim order forbidding respondent to practice medicine until a hearing on the merits of his case could be heard.

10. After obtaining the interim suspension order, complainant filed and properly served an accusation. The accusation and supporting documents were served on respondent. After the time had passed to file a notice of defense, complainant began to prepare a default decision. Before the default decision was concluded, respondent filed a notice of defense that listed Mr. Rosenberg as his attorney.

11. Respondent and Mr. Rosenberg were served notice that an administrative hearing on the accusation would be held on November 15, 2017.

12. Neither respondent nor Mr. Rosenberg appeared at the administrative hearing.

## LEGAL CONCLUSIONS

### *Authorization of Physician Discipline*

1. Business and Professions Code section 2227 authorizes the board to take a licensing action against a physician “whose matter has been heard by an administrative law judge . . . or whose default has been entered” by revoking his or her license.

### *Purpose of Physician Discipline*

2. 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 an unfitness to practice. The purpose of a licensing action is not to punish, but to protect the public. In an administrative licensing action, the inquiry must be limited to the effect of the doctor’s actions upon the quality of his service to his patients. (*Watson v. Superior Court* (2009) 176 Cal.App.4th 1407, 1416.)

### *The Standard of Proof*

3. The standard of proof in an administrative action seeking to suspend or revoke a physician’s certificate is clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

4. The clear and convincing standard of proof applies in a licensing action involving the claims that a physician’s ability to practice medicine competently was impaired due to mental or physical illness and that the physician failed to comply with the board’s order compelling his medical/mental examination. (*Medical Board of California v. Superior Court*

(*Liskey*) (2003) 111 Cal.App.4th 163, 170-171.) In order to take action against a medical license, the Board is obligated to base its decision on 'clear and convincing proof to a reasonable certainty and not a mere preponderance of the evidence.' (*Ibid.*, at pp. 177-178.)

*Legal Authorities for Licensing Action*

5. Business and Professions Code section 820 provides:

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 a 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. . . .

6. Business and Professions Code section 821 provides: "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 or license."

7. 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.

8. Business and Professions Code section 2234 authorizes the board to take licensing action against a licensee "who is charged with unprofessional conduct . . . ." Unprofessional conduct includes violating rules governing the medical profession.

*Evaluation*

9. Cause exists under Business and Professions Code sections 2227 and 821 to revoke respondent's medical license because he failed to attend a board-ordered psychiatric examination. Respondent and his counsel were properly notified/advised of the board's order, and respondent failed to appear.

10. Cause exists under Business and Professions Code sections 2227 and 2234 to revoke respondent's medical license because he failed to attend a board-ordered psychiatric examination. Respondent and his counsel were properly notified/advised of the board's order, and respondent failed to appear.

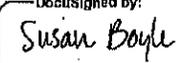
11. Cause was not established under Business and Professions Code section 822 that respondent's ability to practice medicine safely is impaired due to a mental and/or physical illness affecting competency because respondent did not appear for his board-ordered psychiatric examination.

12. Respondent failed to comply with the board's Order Granting a Petition to Compel Physical and Psychiatric Examinations with Biological Fluid Testing. He failed to appear at the hearing on the interim suspension order and at the present hearing on the accusation. Accordingly, respondent's license is revoked.

ORDER

David Paul Knapp, M.D.'s Physician's and Surgeon's Certificate No. G 33943 is revoked.

Dated: December 15, 2017

DocuSigned by:  
  
81006079EFC743F  
SUSAN J. BOYLE  
Administrative Law Judge  
Office of Administrative Hearings