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

11 In the Matter of the Accusation Against,
12
13 **WILLIAM R. SCHMALHORST, M.D.**
100 HUME LANE
BAKERSFIELD, CA 93309
14 **Physician's and Surgeon's Certificate No.**
C28822

Case No. 800-2014-002596

DEFAULT DECISION
AND ORDER

[Gov. Code, §11520]

One.

16
17 FINDINGS OF FACT

18 1. On or about April 19, 2016, Complainant Kimberly Kirchmeyer, in her official
19 capacity as the Executive Director of the Medical Board of California, Department of Consumer
20 Affairs, filed Accusation No. 800-2014-002596 against William R. Schmalhorst, M.D.

21 (Respondent) before the Medical Board of California.

22 2. On or about February 10, 1967, the Medical Board of California (Board) issued
23 Physician's and Surgeon's Certificate No. C28822 to Respondent. The Physician's and Surgeon's
24 Certificate expired on May 31, 2013, and has not been renewed. A true and correct copy of the
25 Certification of licensure is attached hereto as Exhibit A and it shows that Respondent's address
26 of record is was and is 100 Hume Lane, Bakersfield, CA 93309.

27 3. On or about April 19, 2016, Rozana Firdaus, an employee of the Complainant
28 Agency, served by Certified Mail a copy of the Accusation No. 800-2014-002596, Statement to

1 Respondent, Notice of Defense, and Request for Discovery to Respondent's address of record
2 with the Board, which was and is 100 Hume Lane, Bakersfield, CA 93309. A copy of the
3 Accusation, the related documents, and Declaration of Service are attached as Exhibit B, and are
4 incorporated herein by reference.

5 4. On or about April 21, 2016, the aforementioned documents were returned by the U.S.
6 Postal Service and identified as "Notice Left (No Authorized Recipient Available)." A copy of
7 the U.S. Postal Service Product and Tracking Information is attached as Exhibit C, and is
8 incorporated herein by reference.

9 5. On or about May 4, 2016, Susan Carpenter, an employee of the Department of
10 Justice, served by Certified Mail a copy of the Accusation No. 800-2014-002596, Statement to
11 Respondent, Notice of Defense, and Request for Discovery and Courtesy Notice of Default to
12 Respondent's address of record with the Board, which was and is 100 Hume Lane, Bakersfield,
13 CA 93309. A copy of the Accusation, the related documents, the Courtesy Notice of Default and
14 Declaration of Service are attached as Exhibit D, and are incorporated herein by reference.

15 6. On or about May 17, 2016, the aforementioned documents were returned by the U.S.
16 Postal Service and identified as "Refused." A copy of the envelope returned by the post office is
17 attached as Exhibit E, and is incorporated herein by reference.

18 7. Service of the Accusation was effective as a matter of law under the provisions of
19 Government Code section 11505, subdivision (c).

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

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

28 9. Government Code section 11506 states, in pertinent part:

1 “(a) Within 15 days after service of the accusation...the respondent may file with the
2 agency a notice of defense...”

3 “...”

4 “(c) The respondent shall be entitled to a hearing on the merits if the respondent files a
5 notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation
6 not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
7 respondent’s right to a hearing, but the agency in its discretion may nevertheless grant a hearing.”

8 Respondent failed to file a Notice of Defense within 15 days after service upon him of the
9 Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 800-
10 2014-002596.

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

12 “(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the
13 agency may take action based upon the respondent’s express admissions or upon other evidence
14 and affidavits may be used as evidence without any notice to respondent.”

15 11. David Slater, M.D., F.C.A.P. was retained by the Board for reviewing the evidence
16 gathered during the investigation of case 800-2014-002596 and providing an opinion about
17 whether or not the care provided by Respondent departed from the Standard of Care. Dr. Slater’s
18 C.V. and expert opinion are attached as Exhibit F, and are incorporated herein by reference. Dr.
19 Slater concluded that Respondent engaged in multiple departures from the standard of care in the
20 care and treatment of patient J.P.

21 12. Pursuant to its authority under Government Code section 11520, the Board finds
22 Respondent is in default. The Board will take action without further hearing and, based on the
23 Declaration of David Slater, M.D., F.C.A.P., the evidence before it, contained in exhibits A, B,
24 C, D, E and F, finds that the allegations in Accusation No. 800-2014-002596 are true.

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ORDER

IT IS SO ORDERED that Physician's and Surgeon's Certificate No. C28822, heretofore issued to Respondent William R. Schmalhorst, 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 4, 2016.

It is so ORDERED July 5, 2016



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

Attachments:

Default Decision Evidence Packet

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STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO April 19 20 16
BY R. Firdaus ANALYST

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

11 In the Matter of the Accusation Against:

Case No. 800-2014-002596

12 **William R. Schmalhorst, M.D.**
13 **100 Hume Lane**
14 **Bakersfield, CA 93309**

ACCUSATION

15 **Physician's and Surgeon's Certificate**
16 **No. C28822,**

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about February 10, 1967, the Medical Board issued Physician's and Surgeon's
24 Certificate Number C28822 to William R. Schmalhorst, M.D. (Respondent). The Physician's and
25 Surgeon's Certificate is delinquent, having expired on May 31, 2013.

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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 unless otherwise indicated.

4 4. Section 2227 of the Code provides that a licensee who is found guilty under the
5 Medical Practice Act may have his or her license revoked, suspended for a period not to exceed
6 one year, placed on probation and required to pay the costs of probation monitoring, or such other
7 action taken in relation to discipline as the Board deems proper.

8 5. Section 2234 of the Code, states:

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

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

14 “(b) Gross negligence.

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

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

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

25 “...”

26 “”

27 “”

28 “”

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct and/or Gross Negligence and/or Repeated Negligent Acts)**

3 **Patient J.P.**

4 6. On or about February 22, 2010, patient J.P. underwent an excisional biopsy of a skin
5 lesion on her upper left arm. The specimen included four tissue slices that were placed on slides
6 on which the margins were not inked. The specimen was submitted to the Physicians Automated
7 Laboratory for review by Respondent with a specimen designation stating "left upper arm" and
8 clinical impression of "rule out cancer 173.6¹."

9 7. Respondent interpreted J.P.'s 2010 biopsy as "compound melanocytic nevus without
10 atypia, excised." The report includes microscopic observations supportive of a benign
11 interpretation and the statement "No atypia is evident." Respondent incorrectly concluded that
12 J.P.'s 2010 specimen was benign and that the margins were negative.

13 8. Contrary to Respondent's interpretation of J.P.'s 2010 biopsy, the specimen presented
14 numerous features which are atypical and indicative of melanoma. The atypical features of J.P.'s
15 2010 biopsy include the large lesion size, low power impression of asymmetry and heterogeneity,
16 highly active and broad junctional melanocytic proliferation with much pagetoid upward spread of
17 melanocytic cells within the epidermis and extension of the cells deeper along the hair follicles.
18 There is a heterogeneous asymmetric pattern of the dermal component of the lesion ranging from
19 small to large cell nests, some comprised of heavily melanized, large, clear epithelioid cells and
20 areas of sheet like cellular dermal growth with loss of nesting and no obvious maturation along
21 the deep edge. The specimen also includes atypical architectural features with significant
22 cytologic atypia with readily evident mitotic figures in melanocytic cells and lesional cells with
23 sizable nucleoli and voluminous pale cytoplasm with fine melanin pigment.

24 9. Respondent incorrectly concluded that the margins were negative in J.P.'s 2010
25 biopsy. The specimen presented nests of atypical junctional and intraepidermal melanocytic cells
26

27 ¹ 173.6 is the International Classification of Diseases (9th Edition) code for skin
28 malignancy of the arm.

1 that extend to within microns of the free edge of one slice and to within less than 0.5 mm of the
2 edge of a second slice which should have been interpreted as positive.

3 10. On or about 2012, J.P.'s skin lesion recurred at the same location on her arm as the
4 lesion that was biopsied in 2010. J.P. underwent a new biopsy which revealed that her lesion was
5 invasive melanoma.

6 Departures from the Standard of Care

7 11. Respondent's license is subject to disciplinary action under sections 2234, and/or
8 2234, subdivision (a), and/or 2234, subdivision (b), and/or 2234, subdivision (c), for his treatment
9 of patient J.P., in that he engaged in unprofessional conduct, and/or gross negligence, and/or
10 repeated negligent acts, including but not limited to the following:

11 (a) Respondent failed to recognize the atypical features of J.P.'s melanocytic lesion
12 during his February 2010 evaluation, and/or refer J.P.'s biopsy specimen to an expert
13 dermatopathologist for review.

14 (b) Respondent incorrectly stated that the margins of J.P.'s 2010 biopsy were negative.

15 PRAYER

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

18 1. Revoking or suspending Physician's and Surgeon's Certificate Number C28822,
19 issued to William R. Schmalhorst, M.D.;

20 2. Revoking, suspending or denying approval of William R. Schmalhorst, M.D.'s
21 authority to supervise physician assistants, pursuant to section 3527 of the Code;

22 3. Ordering William R. Schmalhorst, M.D., if placed on probation, to pay the Board the
23 costs of probation monitoring; and

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

DATED: April 19, 2016


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

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