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

10 In the Matter of the Accusation Against:
11 **MARK GERMINE, M.D.**
317 South Old Stage Rd.
Mt. Shasta, CA 96067
12 **Physician's and Surgeon's Certificate No. G**
13 **73538**
14 Respondent.

Case No. 02-2009-199109
DEFAULT DECISION
AND ORDER
[Gov. Code, §11520]

15
16 FINDINGS OF FACT

- 17 1. On or about March 13, 2012, Complainant Linda K. Whitney, in her official capacity
18 as the Executive Director of the Medical Board of California, Department of Consumer Affairs,
19 filed Accusation No. 02-2009-199109 against Mark Germine, M.D. (Respondent) before the
20 Medical Board of California.
- 21 2. On or about March 4, 1992, the Medical Board of California (Board) issued
22 Physician's and Surgeon's Certificate No. G 73538 to Respondent. The Physician's and Surgeon's
23 Certificate was in full force and effect at all times relevant to the charges brought herein, expired
24 on December 31, 2011, and has not been renewed. Attached as Exhibit A and incorporated here
25 as if fully set forth is a Certification of Licensure of Respondent.
- 26 3. On or about March 13, 2012, Teresa Schaeffer, an employee of the Complainant
27 Agency, served by Certified Mail a copy of the Accusation No. 02-2009-199109, Statement to
28 Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,

1 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is 317
2 South Old Stage Rd., Mt. Shasta, CA 96067. A copy of the Accusation, the related documents,
3 and Declaration of Service are attached as Exhibit B, and are incorporated herein by reference.

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

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

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

11 Respondent failed to file a Notice of Defense within 15 days after service upon him of the
12 Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 02-2009-
13 199109.

14 6. California Government Code section 11520 states, in pertinent part:

15 "(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the
16 agency may take action based upon the respondent's express admissions or upon other evidence
17 and affidavits may be used as evidence without any notice to respondent."

18 7. Pursuant to its authority under Government Code section 11520, the Board finds
19 Respondent is in default. The Board will take action without further hearing and, based on
20 Respondent's express admissions by way of default and the evidence before it, contained in
21 Exhibits A, B, C and D, finds that the allegations in Accusation No. 02-2009-199109 are true.

22 DETERMINATION OF ISSUES

23 1. Based on the foregoing findings of fact, Respondent Mark Germine, M.D. has
24 subjected his Physician's and Surgeon's Certificate No. G 73538 to discipline.

25 2. A copy of the Accusation and the related documents and Declaration of Service are
26 attached.

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

28 4. The Medical Board of California is authorized to revoke Respondent's Physician's

1 and Surgeon's Certificate based upon the following violations alleged in the Accusation:

2 a. Respondent is subject to disciplinary action under Business and Professions
3 Code section 822 for inability to practice safely, in that his ability to practice is impaired.

4 (1) On February 26, 2011, Dr. S., a licensed physician, Board certified by the
5 American Board of Psychiatry & Neurology, conducted a full psychiatric evaluation and
6 directly examined Respondent to provide an opinion on Respondent's fitness to practice
7 medicine safely. Dr. S. prepared a 46 page written report dated June 27, 2011, which made
8 the following findings:

9 "It is my opinion, with a reasonable degree of medical certainty, that based on my
10 review of the provided evidence, further data obtained, my interview, and my clinical
11 judgment and experience, that currently there are serious concerns regarding Dr. Germine's
12 ability to practice medicine at the level of 'standard of practice/care'. That is, in my
13 opinion, currently he is not able to practice medicine safely in the State of California." (See
14 Declaration of [REDACTED] S [REDACTED], M.D., attached hereto as Exhibit C and incorporated here as if
15 fully set forth.)

16 b. Respondent is subject to disciplinary action under the Code section 2234 and 2239 for
17 unprofessional conduct in that he drove to work on the morning of April 23, 2009, while under
18 the influence of dangerous drugs (including Mirtazapine, Paroxetine, and Clonazepam), to the
19 extent or in such a manner as to be dangerous or injurious to the public, posing a threat to himself
20 and the public safety. (See Declaration of E. A. Jones III attached hereto as Exhibit D and
21 incorporated here as if fully set forth.)

22
23 ORDER

24 IT IS SO ORDERED that Physician's and Surgeon's Certificate No. G 73538, heretofore
25 issued to Respondent Mark Germine, M.D., is revoked.

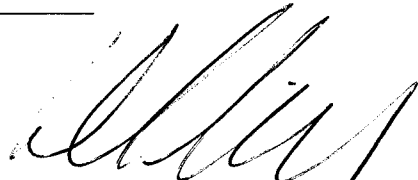
26 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
27 written motion requesting that the Decision be vacated and stating the grounds relied on within
28 seven (7) days after service of the Decision on Respondent. The agency in its discretion may

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vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on June 28, 2013.

It is so ORDERED May 30, 2013



FOR THE MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
LINDA K. WHITNEY
EXECUTIVE DIRECTOR

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO March 13, 2012
BY [Signature] ANALYST

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:
14 **MARK GERMINE, M.D.**
317 S. Old Stage Road
15 Mount Shasta, CA 96067
16 Physician's & Surgeon's Certificate No. G 73538
17 Respondent.

Case No. 02-2009-199109
ACCUSATION

18
19 Complainant alleges:

20 **PARTIES**

- 21 1. Linda K. Whitney (Complainant) brings this Accusation in her official capacity as the
22 Executive Director of the Medical Board of California, Department of Consumer Affairs, State of
23 California (hereinafter "Board").
24 2. On or about March 4, 1992, the Board issued Physician's and Surgeon's Certificate
25 Number G 73538 to Mark Germine, M.D. (Respondent). The physician's and surgeon's
26 certificate was in full force at all times relevant to the charges brought herein. Said license
27 expired on December 31, 2011, and is delinquent.

28 ///

1 JURISDICTION

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. The Medical Practice Act, Business and Professions Code section 2000 et. seq.,
6 governs the practice of medicine in the State of California.

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

11 6. Section 2001.1 of the Code provides as follows:

12 **§ 2001.1. Priority to protect the public**

13 Protection of the public shall be the highest priority for the Medical Board of
14 California in exercising its licensing, regulatory, and disciplinary functions.
15 Whenever the protection of the public is inconsistent with other interests sought to
be promoted, the protection of the public shall be paramount.

16 7. Section 822 of the Code states as follows:

17 **§ 822. Mental/Physical Illness**

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

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

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

23 (c) Placing the licentiate on probation.

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

25 The licensing agency shall not reinstate a revoked or suspended certificate or
26 license until it has received competent evidence of the absence or control of the
27 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.

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1 8. Section 2234 of the Code states in pertinent part the following:

2 **§ 2234. Unprofessional conduct**

3 The Division of Medical Quality¹ shall take action against any licensee who is
4 charged with unprofessional conduct. In addition to other provisions of this
article, unprofessional conduct includes, but is not limited to, the following:

5 (a) Violating or attempting to violate, directly or indirectly, assisting in or
6 abetting the violation of, or conspiring to violate any provision of this chapter
[Chapter 5, the Medical Practice Act].

7 ...
8 9. Section 2239 of the Code states as follows:

9 **§2239. Misuse of controlled substances, dangerous drugs or alcohol;
10 unprofessional conduct**

11 (a) The use or prescribing for or administering to himself or herself, of any
12 controlled substance; or the use of any of the dangerous drugs specified in Section
13 4022, or of alcoholic beverages, to the extent, or in such a manner as to be
14 dangerous or injurious to the licensee, or to any other person or to the public, or to
15 the extent that such impairs the ability of the licensee to practice medicine safely
or more than one misdemeanor or any felony involving the use, consumption, or
self-administration of any of the substances referred to in this section, or any
combination thereof, constitutes unprofessional conduct. The record of the
conviction is conclusive evidence of such unprofessional conduct.

16 ...

17 **STATUTORY VIOLATIONS**

18 **FIRST CAUSE FOR DISCIPLINE**

19 Bus. & Prof. Code § 822

[Inability to Practice Safely--Mental/Physical Illness]

20 10. Respondent is subject to disciplinary action under Business and Professions Code
21 section 822 for inability to practice safely, in that his ability to practice is impaired. The
22 circumstances are set forth below.

23 11. Respondent Mark Germine, M.D. practiced psychiatry and neurology in Yreka,
24 California for the Siskiyou County Behavioral Health Services. On April 23, 2009, at
25 approximately 7:35 am, Respondent was driving to work on Interstate 5 northbound south of

26 ¹ Business and Professions Code section 2002, as amended and effective January 1, 2008,
27 provides that, unless otherwise expressly provided, the term "Board" as used in the State Medical
28 Practices Act means the "Medical Board of California", and references to the "Division of
Medical Quality" in the Act or any other provision of law shall be deemed to refer to the Board.

1 A-12. Respondent was observed "on six or more occasions" drifting halfway into the other lane,
2 posing a threat to public safety. A peace officer made an enforcement stop and determined
3 Respondent appeared to be under the influence of drugs or alcohol and notified the California
4 Highway Patrol in Yreka, California. Upon arriving at the scene, the CHP observed Respondent
5 standing at the rear of his small green car, "leaned against the right rear quarter panel" with
6 "slumped shoulders" and "staring at the ground in front of him."

7 12. When Respondent provided the CHP his license, his movements "were slow and
8 deliberate." Respondent's "eyes were red and watery." When asked if he were taking any
9 medication or drugs, Respondent indicated he was taking "Atenolol and Zocor" for high blood
10 pressure and high cholesterol. Respondent denied taking any other medication, and admitted to
11 swerving a little while driving. The Field Sobriety Testing administered to Respondent was
12 "consistent with that of a person under the influence of alcohol and/or drugs." At 8:00 am, the
13 CHP arrested Respondent and took him into custody for driving under the influence, a violation
14 of Vehicle Code section 23152(a). A blood test taken at the time of arrest revealed Respondent
15 had tested positive for the following drugs: Mirtazapine, Paroxetine, Clonazepam, and 7-
16 Aminoclonazepam.

17 13. Due to the arrest, the Medical Board was notified and an investigation undertaken.
18 Medical Board Senior Investigator M. contacted Respondent on March 23, 2010, and requested a
19 written summary of the events.

20 14. On March 23, 2010, by way of an e-mail, Respondent provided Senior Investigator
21 M. a summary of his arrest. He also stated that he suffered from major depressive disorder, panic
22 disorder, and problems with insomnia, yet stated these medical issues were well controlled with
23 no side effects to impair his practice.

24 15. On March 23, 2010, Respondent wrote an e-mail to Governor Schwarzenegger
25 enumerating his accomplishments, explained about his recent DUI incident and also complained
26 that Senior Investigator M. "endangered [his] employment in an unreasonable manner."

27 16. On July 26, 2010, Respondent was interviewed by Senior Investigator M., with
28 Senior Investigator P. present. When asked if he were competent to drive the day of his arrest, he

1 stated he was having an unpredictable episode of sleepiness, which he cannot predict, but that it
2 did not affect his work with patients. Respondent also admitted to self-prescribing Lidocaine
3 cream in May 2010, but said he did so for a rash or sunburn, but did not realize it was illegal.
4 (In an e-mail dated July 27, 2010, Respondent stated the Lidocaine was for his doctor bag, not
5 personal use.)

6 17. On July 30, 2010, at 8:33 pm, Respondent sent an e-mail to a local attorney and the
7 Sacramento Bee, complaining about Senior Investigator M.

8 18. On August 10, 2010 Respondent wrote a letter to Governor Schwarzenegger restating
9 his views on Senior Investigator M., and accused the investigator of "questioning in such manner
10 as to cause a relapse in my traumatic signs and symptoms."

11 19. On August 11, 2010, Respondent wrote to Attorney General Jerry Brown, Jr.
12 complaining about the Medical Board, Inv. M. and of "Discrimination of [sic] the basis of mental
13 illness. . ."

14 20. From July 28, 2010, until August 11, 2010, Respondent sent numerous e-mails to
15 Senior Investigator M. and/or the Medical Board's Executive Director, accusing the investigator
16 of conducting a mental exam, engaging in "smooth psychopathy", having mob connections,
17 engaging in criminal conduct, and practicing medicine without a license.

18 21. On September 19, 2010, Respondent wrote to M.A., the Chair of the Board of
19 Supervisors, stating the following:

20 "for personal health reasons, as I am in eminent danger as a result of a
21 Tarasoff warning on L.R., who Administration is, implicitly, indirectly, or
22 explicit[sic], directly, courting as a potential witness against me"
23 [implying a cover up on a threat to his life]. The following are my
24 conditions: preservation of uninterrupted benefits, assurance of retirement
25 income, payment of alimony to my ex-wife, victim witness status, and
26 subsequent paid-for relocation by expatriation with change of name for
27 protection back to my birth name, Mark Germinario, and surrender of
28 medical license for protection against my/old new name becoming part of
the public record. . . I will become no one, whereabouts unknown, with
no internet or other identifiable sources including life, education,
publications, achievements, editorships(3) -everything. . . The County
can get off at least expense and embarrassment only if it meets these
requests. They may seem excessive requests or demands, but they are
nothing compared to what you would otherwise by[sic] looking at, should
you fail to very quickly, and in writing, assume that my requests are met.
If you cannot see this as an urgent necessity, you will be very foolish."

1 22. From September 21, 2010, through September 29, 2010, Respondent sent his former
2 employer multiple erratic e-mails notifying them that he had “a sudden and incapacitating
3 medical illness”, accused his colleagues of attempting to perform a 5150 hold on him, notified
4 them that he was retiring, and notified them that he has surrendered his medical license.

5 23. On January 23, 2011, Respondent wrote to a Medical Board analyst that he had not
6 practiced psychiatry since September 19, 2010, and surrendered his license due to “inability to
7 continue practice due to Post Traumatic Stress Disorder, which has generalized to fear of
8 patients.” Respondent’s letter also stated:

9 If you must, take this letter as surrender of my license, but the term must
10 be qualified in any publication as ‘License Surrendered due to
11 Retirement.’ It had nothing to do with your investigations. . . I now find
12 returning to California traumatic and will in no case do so. I also find Mr.
13 M. (See F.Y.I.) traumatizing. He has practiced without a license and
14 done great harm, and your Agency has done nothing. I have developed a
15 severe loss of concentration. . . This loss of concentration is part of a
16 progressive Post Traumatic Stress Disorder (PTSD) . . .

17 24. On December 1, 2011, the Medical Board issued an Order to Compel Examination
18 under Business and Professions Code section 820, compelling Respondent to undergo a
19 psychiatric examination.

20 25. On February 26, 2011, Dr. S., a licensed physician, Board certified by the American
21 Board of Psychiatry & Neurology, conducted a full psychiatric evaluation and directly examined
22 Respondent to provide an opinion on Respondent’s fitness to practice medicine safely. Dr. S.
23 prepared a 46 page written report dated June 27, 2011, which made the following findings:

24 It is my opinion, with a reasonable degree of medical certainty, that based
25 on my review of the provided evidence, further data obtained, my
26 interview, and my clinical judgment and experience, that currently there
27 are serious concerns regarding Dr. Germiné’s ability to practice medicine
28 at the level of ‘standard of practice/care’. That is, in my opinion,
 currently he is not able to practice medicine safely in the State of
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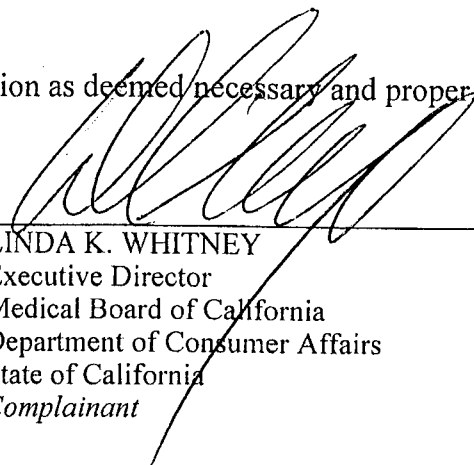
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1 2. Revoking, suspending or denying approval of Mark Germino M.D.'s authority to
2 supervise physician assistants, pursuant to section 3527 of the Code;

3 3. Ordering Mark Germino, M.D. to pay the Medical Board of California the costs of
4 probation monitoring;

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

6
7 DATED: March 13, 2012


LINDA K. WHITNEY
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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