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

11 In the Matter of the Accusation and Petition to  
Revoke Probation Against:

Case No. D1-2005-171963

12 **MARION FRY, M.D.**  
13 PostOffice Box 634  
14 Cool, California 95614

**DEFAULT DECISION  
AND ORDER**

[Gov. Code, §11520]

15 Physician's and Surgeon's  
16 Certificate Number G 57771

17 Respondent.

18 FINDINGS OF FACT

19  
20 1. On or about May 27, 2011, Complainant Linda K. Whitney, in her official capacity as  
21 the Executive Director of the Medical Board of California, Department of Consumer Affairs  
22 (Board) filed Accusation and Petition to Revoke Probation No. D1-2005-171963 against Marion  
23 P. Fry, M.D. (Respondent) before the Board

24 2. On or about July 14, 1986, the Board issued Physician's and Surgeon's Certificate No.  
25 G 57771 to Respondent. This certificate was in full force and effect at all times relevant and will  
26 expire on June 30, 2012, unless renewed.

27 3. On or about May 27, 2011, Kelly Montalbano, an employee of the Board, served by  
28 Certified and First Class Mail a copy of the Accusation and Petition to Revoke Probation No. D1-

1 2005-171963, Statement to Respondent, Notice of Defense, Request for Discovery, and  
2 Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record  
3 with the Board, which was and is Post Office Box 634, Cool, California, 95614. A copy of the  
4 Accusation and Petition to Revoke Probation, the related documents, and Declaration of Service  
5 are attached as exhibit 1, and are incorporated herein by reference.

6 4. Service of the Accusation and Petition to Revoke Probation was effective as a matter  
7 of law under the provisions of Government Code section 11505, subdivision (c).

8 5. On or about June 6, 2011, the aforementioned documents were delivered to the  
9 address of record and the green certified receipt tag was signed. A copy of the green certified  
10 receipt tag is attached as exhibit 2, and is incorporated herein by reference.

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

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

16 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of  
17 the Accusation and Petition to Revoke Probation, and therefore waived her right to a hearing on  
18 the merits of Accusation and Petition to Revoke Probation No. D1-2005-171963.

19 8. Exhibit A to Exhibit 1 hereto (the Decision in *In the Matter of the Accusation and*  
20 *Petition to Revoke Probation Against Marion Fry, M.D.*, Medical Board of California case  
21 number 02-2005-171963) contains the terms of Respondent's probation, which went into effect  
22 on August 21, 2009.

23 9. Included in Evidence Packet attached as Exhibit 3 are:

24 A. The Declaration of William A Norcross, M.D., June 26, 2013 establishing  
25 Respondent's unsatisfactory performance in the Physician Assessment and Clinical Education  
26 Program (PACE) of the University of San Diego Medical Center on April 29 and 30 and May 3  
27 through 7, 2010.

28 B. A certified copy of the following documents from the criminal action titled *United*

1 *States of America v. Marion P. Fry*, United States District Court, Eastern District of California  
2 case number 05CR00238: Judgment in a Criminal Case dated March 19, 2008, Verdict Form filed  
3 August 16, 2007 and Indictment filed June 15, 2005

4 9. California Government Code section 11520 states, in pertinent part:

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

8 10. Pursuant to its authority under Government Code section 11520, the Board finds  
9 Respondent is in default. The Board will take action without further hearing and, based on  
10 Respondent's express admissions by way of default and the evidence before it contained in  
11 Exhibits 1, 2 and 3, finds that the allegations in Accusation and Petition to Revoke Probation  
12 Number D1-2005-171963 are true in part.

13  
14 DETERMINATION OF ISSUES

15 1. Based on the foregoing findings of fact Respondent Marion P. Fry, M.D. has  
16 subjected her Physician's and Surgeon's License Number G 57771 to discipline.

17 2. A copy of the Accusation and Petition to Revoke Probation and the related documents  
18 and Declaration of Service are attached.

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

20 4. The Medical Board of California is authorized to revoke Respondent's Physician's  
21 and Surgeon's certificate based upon the following violations alleged in the Accusation and  
22 Petition to Revoke Probation:

23 a. Violation of Condition 1 of the Disciplinary Order: Enroll in and successfully  
24 complete a clinical training program.

25 b. Unprofessional Conduct under Business and Professions Code section 2236,  
26 conviction of a crime substantially related to the qualifications, functions or duties of a physician  
27 and surgeon.

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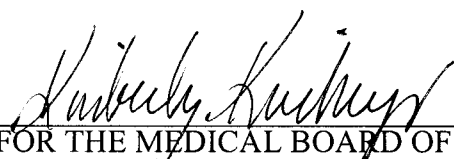
ORDER

IT IS SO ORDERED that Physician's and Surgeon's License Number G 57771, heretofore issued to Respondent Marion P. Fry, 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 7, 2013.

It is so ORDERED July 8, 2013

  
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FOR THE MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
Kimberly Kirchmeyer  
Interim Executive Director

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*Attorneys for Complainant*

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO MAY 27 2011  
BY: K. MONTALBALO ANALYST

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

11 In the Matter of the Accusation/Petition to Revoke  
12 Probation Against:

Case No. D1-2005-171963

13 **MARION FRY, M.D.**  
14 P.O. Box 634  
Cool, CA 95614

**ACCUSATION AND PETITION TO  
REVOKE PROBATION**

15 Physician's and Surgeon's Certificate NO. G 57771  
16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Linda K. Whitney (Complainant) brings this Accusation and Petition to Revoke  
21 Probation solely in her official capacity as the Executive Director of the Medical Board of  
22 California, Department of Consumer Affairs.

23 2. On or about July 14, 1986, the Medical Board of California issued Physician's and  
24 Surgeon's Certificate Number G 57771 to Marion P. Fry, M.D. (Respondent). This license was in  
25 full force and effect at all times relevant to the charges brought herein and will expire on June 30,  
26 2012, unless renewed.

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1           3. In a disciplinary action entitled, "*In the Matter of Accusation and Petition to Revoke*  
2 *Probation Against: Marion P. Fry, M.D.*," Case No. 02-2005-171963, the Medical Board of  
3 California, issued a decision, effective August 21, 2009, in which Respondent's Physician's and  
4 Surgeon's Certificate was revoked. However, the revocation was stayed and Respondent's  
5 Physician's and Surgeon's Certificate was placed on probation for a period of three (3) years with  
6 certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated  
7 by reference.

8   **JURISDICTION**

9           4. This Accusation and Petition to Revoke Probation is brought before the Medical  
10 Board of California (Board), Department of Consumer Affairs, under the authority of the  
11 following laws. All section references are to the Business and Professions Code unless otherwise  
12 indicated.

13           5. Section 2227<sup>1</sup> of the Code provides that a licensee who is found guilty under the  
14 Medical Practice Act may have his or her license revoked, suspended for a period not to exceed  
15 one year, placed on probation and required to pay the costs of probation monitoring, or such other  
16 action taken in relation to discipline as the Division deems proper.

17           6. Section 2234 Code provides in pertinent part that the Division shall take action  
18 against a licensee who is charged with unprofessional conduct.

19           7.. Section 2236 of the Code states:

20                               “(a) The conviction of any offense substantially related to the  
21                               qualifications, functions, or duties of a physician and surgeon constitutes  
22                               unprofessional conduct within the meaning of this chapter [Chapter 5, the  
                                  Medical Practice Act]. The record of conviction shall be conclusive  
                                  evidence only of the fact that the conviction occurred.

23                               “(b) The district attorney, city attorney, or other prosecuting  
24                               agency shall notify the Division of Medical Quality of the pendency of an  
25                               action against a licensee charging a felony or misdemeanor immediately  
                                  upon obtaining information that the defendant is a licensee. The notice

26           <sup>1</sup> California Business and Professions Code section 2002, as amended and effective,  
27           January 1, 2008, provides that, unless otherwise expressly provided, the term “Board” as used in  
28           the State Medical Practice Act (Cal. Bus. & Prof. Code § 2000 et. seq.) means that “Medical  
                                  Board of California”, and references to the “Division of the Medical Quality” and “Division of  
                                  Licensing” in the Act or any other provision of law shall be deemed to refer to the Board.

1 shall identify the licensee and describe the crimes charged and the facts  
2 alleged. The prosecuting agency shall also notify the clerk of the court in  
3 which the action is pending that the defendant is a licensee, and the clerk  
shall record prominently in the file that the defendant holds a license as a  
physician and surgeon.

4 “(c) The clerk of the court in which a licensee is convicted of a  
5 crime shall, within 48 hours after the conviction, transmit a certified copy  
6 of the record of conviction to the board. The division may inquire into  
7 the circumstances surrounding the commission of a crime in order to fix  
the degree of discipline or to determine if the conviction is of an offense  
substantially related to the qualifications, functions, or duties of a  
physician and surgeon.

8 “(d) A plea or verdict of guilty or a conviction after a plea of nolo  
9 contendere is deemed to be a conviction within the meaning of this  
10 section and Section 2236.1. The record of conviction shall be conclusive  
evidence of the fact that the conviction occurred.”

11 **FIRST CAUSE TO REVOKE PROBATION**  
12 (Clinical Training Program)

13 8. At all times after the effective date of Respondent’s probation, Condition 1, stated in  
14 pertinent part that Respondent was required to enroll in a clinical training program or educational  
15 program equivalent to the Physician Assessment and Clinical Education Program (PACE) offered  
16 at the University of California - San Diego School of Medicine (Program). Respondent is  
17 required at the completion of the Program to submit to and pass an examination. The Program's  
18 determination whether or not respondent successfully completed the Program shall be binding.  
19 Failure to participate in and complete successfully all phases of the clinical training program is a  
20 violation of probation. Respondent shall not practice medicine until she successfully completes  
this requirement.

21 9. Respondent’s probation is subject to revocation because she failed to comply with  
22 Probation Condition 1, referenced above. The facts and circumstances regarding this violation  
23 are as follows:

24 A. On or about April 29-30, 2010, Respondent participated in Phase I of the PACE  
25 Program at the University of California, San Diego School of Medicine. She participated in  
26 Phase II of the Program May 3-7, 2010. In a written report from PACE dated August 30,  
27 2010, respondent’s overall performance on Phase I was unsatisfactory. Respondent’s  
28 overall performance on Phase II was unsatisfactory. PACE found that Respondent’s overall

1 performance on the comprehensive seven (7) day program physician assessment is  
2 consistent with a Fail.

3  
4 **SECOND CAUSE TO REVOKE PROBATION**  
(Psychiatric Evaluation)

5 10. At all times after the effective date of Respondent's probation Condition 2, stated in  
6 pertinent part that Respondent shall undergo and complete a psychiatric evaluation and  
7 psychological testing, if deemed necessary, by a board-certified psychiatrist. Respondent is  
8 required to comply with all restrictions or conditions recommended by the evaluating psychiatrist.  
9 Respondent shall not engage in the practice of medicine until notified by the Division that she is  
10 mentally fit to practice medicine safely. The circumstances are as follows:

11 A. On September 21, 2009, Respondent was evaluated by a board-certified  
12 psychiatrist. In the evaluator's report dated December 28, 2009, Respondent was found to  
13 have Bipolar Disorder, NOS, Post Traumatic Stress Disorder, Panic Disorder by history  
14 (Axis I). It was found that Respondent is a danger to patients and that she is unable to  
15 practice medicine safely because of her mood swings and psychotic episodes. Bipolar  
16 disorder is treatable if the patient is willing. It was found that Respondent does not believe  
17 that she needs treatment, that she has disagreed with all of the psychiatrists that she has  
18 seen about her illness, and that this denial prevents her from benefitting from any treatment  
19 offered to her.

20 **FIRST CAUSE FOR DISCIPLINE**  
(Conviction of a Crime)  
21 [Bus. & Prof. Code § 2236]

22 11. Respondent is subject to discipline under Code Section 2236 in that she has been  
23 convicted of a crime. The facts and circumstances are as follow:

24 A. In a case before the United States District Court for the Eastern District of  
25 California entitled: "*United States of America, Plaintiff v. Dale C. Shaefer, and Marion P.*  
26 *Fry, Defendants*", Cr. No. S-05-0238 FCD, Respondent was convicted on or about August  
27 16, 2007, following a jury trial of violating Counts I, Conspiracy to Distribute Marijuana,  
28 and Count 2, Manufacture of Marijuana. Respondent was sentenced on or about March 20,



1 2008, to 60 months incarceration on both Counts 1 and 2, to be served concurrently.  
2 Respondent timely filed a notice of appeal with the Ninth Circuit Court of Appeals and  
3 remained free on bail pending appeal. On November 8, 2010, the Court issued a published  
4 opinion affirming the conviction. A motion for rehearing en banc was denied on  
5 January 19, 2011. Respondent was incarcerated and began serving her sentence on or about  
6 May 2, 2011.

7 B. Respondent and her husband who was also a named defendant had a medical  
8 marijuana growing operation and dispensary in the Sierra Nevada community of Cool,  
9 California. Beginning on or about August 1, 1999 and continuing up to on or about  
10 September 28, 2001, Respondent along with her husband manufactured and distributed at  
11 least 100 marijuana plants.

#### 12 DISCIPLINE CONSIDERATIONS

13 12. To determine the degree of discipline, if any, to be imposed on Respondent,  
14 Complainant alleges that on or about February 23, 2005, in a prior disciplinary action entitled, *In*  
15 *the Matter of the Accusation Against: Marion P. Fry, M.D.*, before the Medical Board of  
16 California, in Case No. 02 2000 109018, Respondent was issued a public reprimand upon the  
17 completion of a medical record keeping course and the payment of costs. That decision is now  
18 final.

#### 19 PRAYER

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

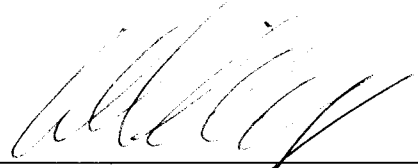
- 22 1. Revoking the probation that was granted by the Medical Board of California in Case  
23 No. 02-2005-171963, and imposing the disciplinary order that was stayed thereby revoking  
24 Physician's and Surgeon's Certificate No. G 57771, issued to Marion P. Fry, M.D.;
- 25 2. Revoking or suspending Physician's and Surgeon's Certificate No. G 57771, issued to  
26 Marion P. Fry, M.D.;
- 27 3. Revoking, suspending or denying approval of Marion P. Fry, M.D.'s authority to  
28 supervise physician assistants, pursuant to section 3527 of the Code;

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4. Ordering Marion P. Fry, M.D. to pay the Medical Board of California the costs of probation monitoring, if she is placed on probation;

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

DATED: May 27, 2011



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

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