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

10 In the Matter of the Accusation Against:

11 **DOUGLAS HULSTEDT, MD**

Case No. 800-2014-007854

12 **147 El Dorado Street #C**
13 **Monterey, CA 93940**

14 **Physician's and Surgeon's Certificate**
15 **No. A 42397**

A C C U S A T I O N

16 Respondent.

17 Complainant alleges:

18 PARTIES

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

22 2. On or about December 30, 1985, the Medical Board of California issued Physician's
23 and Surgeon's Certificate Number A 42397 to Douglas Hulstedt, M.D. ("Respondent"). The
24 Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the
25 charges brought herein and will expire on December 31, 2015, unless renewed.
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1 JURISDICTION

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

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

9 5. Section 2234 of the Code, states:

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

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

15 "(b) Gross negligence.

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

19 6. Section 2052 of the Code states:

20 "(a) Notwithstanding Section 146, any person who practices or attempts to practice, or who
21 advertises or holds himself or herself out as practicing, any system or mode of treating the sick or
22 afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment,
23 blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition
24 of any person, without having at the time of so doing a valid, unrevoked, or unsuspended
25 certificate as provided in this chapter [Chapter 5, the Medical Practice Act], or without being
26 authorized to perform the act pursuant to a certificate obtained in accordance with some other
27 provision of law, is guilty of a public offense, punishable by a fine not exceeding ten thousand
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1 dollars (\$10,000), by imprisonment in the state prison, by imprisonment in a county jail not
2 exceeding one year, or by both the fine and either imprisonment.

3 "(b) Any person who conspires with or aids or abets another to commit any act described in
4 subdivision (a) is guilty of a public offense, subject to the punishment described in that
5 subdivision.

6 "(c) The remedy provided in this section shall not preclude any other remedy provided by
7 law."

8 7. Section 2264 of the Code states:

9 "The employing, directly or indirectly, the aiding, or the abetting of any unlicensed person
10 or any suspended, revoked, or unlicensed practitioner to engage in the practice of medicine or any
11 other mode of treating the sick or afflicted which requires a license to practice constitutes
12 unprofessional conduct."

13 8. Section 2266 of the Code states: "The failure of a physician and surgeon to maintain
14 adequate and accurate records relating to the provision of services to their patients constitutes
15 unprofessional conduct."

16 FIRST CAUSE FOR DISCIPLINE

17 (Unprofessional Conduct - Aiding and Abetting Unlicensed Practice)

18 9. Respondent's license is subject to disciplinary action for unprofessional conduct
19 under Code sections 2052, 2234(a), and 2264 for aiding and abetting the unlicensed practice of
20 medicine, in that Respondent ordered and/or acquiesced unlicensed person(s) to engage in the
21 practice of medicine. The circumstances are as follows:

22 10. On or about September 10, 2013, D.S.¹ brought her infant daughter, R.S., to a medical
23 appointment at Respondent's office for concerns related to possible conjunctivitis. Respondent
24 was away from the office and unavailable when D.S. arrived for the appointment, so R.S. was
25 seen by a nurse in Respondent's office instead. The nurse examined R.S. and briefly left the
26 examination room. While the nurse was away, Respondent's wife and office manager, G.H.,

27 ¹ Initials are used to protect individual and patient privacy. Identities will be disclosed
28 during discovery.

1 came into the examination room, assessed R.S.'s breathing, and administered albuterol² and/or
2 Xopenex³ treatment through a nebulizer device. Following the treatment, G.H. determined that
3 R.S. had not received enough medication, and administered a second dose. R.S. became
4 noticeably upset, prompting D.S. to discontinue the treatment and leave Respondent's medical
5 office. G.H. followed D.S. to her vehicle and indicated that if her daughter gets pneumonia and
6 dies, it would be her own fault and not the fault of Respondent or his staff. G.H. is not a licensed
7 physician or healthcare practitioner and has no formal medical education or training. Respondent
8 failed to document the September 10, 2013 office visit.

9 11. On May 21, 2014, D.S. filed a consumer complaint with the Board.

10 12. On August 26, 2014, Department of Consumer Affairs Division of Investigations
11 Health Quality Investigation Unit Investigators interviewed Respondent and G.H.
12 contemporaneously. During the interview, respondent indicated that he has a standing order in his
13 office, which authorizes his staff to administer albuterol treatments and/or similar nebulizer
14 treatments to patients he has not evaluated or assessed when he is away from the office, or
15 otherwise unavailable. Respondent also indicated that during R.S.'s medical appointment on
16 September 10, 2013, he was not in the office, did not evaluate R.S., and did not provide a consult
17 to his staff regarding R.S.'s medical condition. Respondent admitted that G.H. administers
18 unsupervised albuterol treatments and/or similar nebulizer treatments on his patients
19 approximately once a month.

20 SECOND CAUSE FOR DISCIPLINE

21 (Unprofessional Conduct – Gross Negligence and/or Repeated Acts of Negligence)

22 13. Paragraphs 9 through 12 are incorporated herein.
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26 ² Albuterol is a bronchodilator used to treat asthma and other pulmonary disorders.
Albuterol is a class beta2-adrenergic agonist drug.

27 ³ Xopenex is a bronchodilator used to treat bronchospasm in patients 4 years of age and
28 older with reversible obstructive airway disease. Xopenex is a class beta2-adrenergic agonist
drug.

1 14. Respondent's license is subject to disciplinary action for unprofessional conduct
2 under Code sections 2234(b) and/or (c) for gross negligence and repeated negligent acts, in that
3 Respondent committed each of the following departures from the standard of care:

4 A. Respondent allowed an unlicensed individual (G.H.) to assess and administer a
5 nebulizer treatment, which constitutes an extreme departure from the standard of care.

6 B. Respondent failed to document R.S.'s September 10, 2013 office visit.

7 THIRD CAUSE FOR DISCIPLINE

8 (Unprofessional Conduct – Failure to Maintain Accurate Medical Records)

9 15. Paragraphs 9 through 12 are incorporated herein.

10 16. Respondent's license is subject to disciplinary action for unprofessional conduct
11 under Code section 2266 for failure to maintain adequate patient records, in that he failed to
12 document R.S.'s September 10, 2013 office visit.

13 PRAYER

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

16 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 42397,
17 issued to Douglas Hulstedt, M.D.;

18 2. Revoking, suspending or denying approval of Douglas Hulstedt, M.D.'s authority to
19 supervise physician's assistants, pursuant to section 3527 of the Code;

20 3. Ordering Douglas Hulstedt, M.D. to pay the costs of probation monitoring, if placed
21 on probation; and

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

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24 DATED: April 28, 2015

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

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