In the Matter of the Accusation Against:

DOUGLAS HULSTEDT, MD

147 El Dorado Street #C
Monterey, CA 93940

Physician's and Surgeon's Certificate
No. A 42397

Respondent.

Complainant alleges:

PARTIES

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

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

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

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

5. Section 2234 of the Code, states:

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

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

(b) Gross negligence.

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

6. Section 2052 of the Code states:

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

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

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

7. Section 2264 of the Code states:

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

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

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Aiding and Abetting Unlicensed Practice)

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

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

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1 Initials are used to protect individual and patient privacy. Identities will be disclosed
during discovery.
came into the examination room, assessed R.S.'s breathing, and administered albuterol\(^2\) and/or Xopenex\(^3\) treatment through a nebulizer device. Following the treatment, G.H. determined that R.S. had not received enough medication, and administered a second dose. R.S. became noticeably upset, prompting D.S. to discontinue the treatment and leave Respondent's medical office. G.H. followed D.S. to her vehicle and indicated that if her daughter gets pneumonia and dies, it would be her own fault and not the fault of Respondent or his staff. G.H. is not a licensed physician or healthcare practitioner and has no formal medical education or training. Respondent failed to document the September 10, 2013 office visit.


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

SECOND CAUSE FOR DISCIPLINE
(Unprofessional Conduct – Gross Negligence and/or Repeated Acts of Negligence)

13. Paragraphs 9 through 12 are incorporated herein.

\(^2\) Albuterol is a bronchodilator used to treat asthma and other pulmonary disorders. Albuterol is a class beta2-adrenergic agonist drug.

\(^3\) Xopenex is a bronchodilator used to treat bronchospasm in patients 4 years of age and older with reversible obstructive airway disease. Xopenex is a class beta2-adrenergic agonist drug.
14. Respondent’s license is subject to disciplinary action for unprofessional conduct under Code sections 2234(b) and/or (c) for gross negligence and repeated negligent acts, in that Respondent committed each of the following departures from the standard of care:

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

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

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Failure to Maintain Accurate Medical Records)

15. Paragraphs 9 through 12 are incorporated herein.

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

PRAYER

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

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

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

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

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

DATED: April 28, 2015

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