BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: Yusuf S. Ruhullah Physician's and Surgeons License No. A 128203 Respondent.	Case No. 800-2017-030549

DECISION

The attached Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on January 14, 2021.

IT IS SO ORDERED: December 15, 2020.

MEDICAL BOARD OF CALIFORNIA

Kristina D. Lawson, J.D., Chair
Panel B

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

YUSUF S. RUHULLAH, M.D.,

Physician's and Surgeon's Certificate No. A 128203

Respondent.

Case No. 800-2017-030549

OAH No. 2020060555

PROPOSED DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on August 12, 2020, by videoconference.

Deputy Attorney General David Carr represented complainant William Prasifka, Executive Director of the Medical Board of California.

Attorney John L. Fleer represented respondent Yusuf S. Ruhullah, M.D., who was present for the hearing.

The matter was submitted for decision on August 12, 2020.

FACTUAL FINDINGS

1. The Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. A 128203 to respondent Yusuf S. Ruhullah, M.D., on December 20, 2013. At the time of the hearing this certificate was active, and was scheduled to expire March 31, 2021.

2. Acting in her official capacity as Executive Director of the Board, Kimberly Kirchmeyer filed an accusation against respondent on May 7, 2019. Complainant William Prasifka later replaced Kirchmeyer as the Board's Executive Director. The accusation alleges that respondent aided and abetted the unlicensed practice of medicine by failing adequately to supervise a physician assistant who prescribed controlled substances unlawfully. In addition, the accusation characterizes respondent's failure to supervise the physician assistant as gross negligence, as repeated negligence, as contrary to respondent's statutory obligations relating to controlled substance prescriptions, and as generally unprofessional conduct. On these bases, complainant seeks discipline against respondent. Respondent requested a hearing.

Experience

3. Respondent received his medical degree in 2009. He completed a family medicine residency in 2013 in Wyoming, and is board-certified in family medicine.

4. Since January 2014, respondent has practiced mainly outpatient primary care medicine, in a group practice with two other physicians. He also sees hospitalized patients, hospice patients, and patients in nursing and rehabilitation facilities.

Respondent's Professional Relationship With Mark Flores

5. Through the hospital where respondent practices, he met Vanni Manthiram, M.D., a general surgeon with whom he developed a professional relationship. Dr. Manthiram was senior to respondent among the medical staff at the hospital, and had a good reputation among physicians there. She treated some of respondent's patients as well.

6. In mid-2015, Dr. Manthiram introduced respondent to her husband, Mark Flores. At that time, Flores held a license to practice as a physician assistant.

7. Flores told respondent that Flores wished to start a concierge-style primary care practice in which Flores would make house calls, and asked respondent whether respondent would be interested in being Flores's physician supervisor in this practice. After discussing the business concept with Flores and discussing Flores's reputation with other physicians, respondent agreed in principle.

8. Respondent had been in private post-residency practice for less than two years when he and Flores discussed a possible business relationship, but he had supervised a physician assistant during this time. He knew that he would need to provide real, not merely nominal, supervision, including by reviewing some of Flores's patient charts each month. Respondent knew as well that his supervisory obligations would include the obligation to review all controlled substance prescriptions by Flores, and he intended to do so.

9. Flores drafted an agreement between himself and respondent, and sent the draft to respondent in early August 2015. This draft agreement described a financial and legal relationship between Flores's physician assistant practice (Medical Concierge Services—Physician Assistants, Inc.) and respondent. It stated that Flores

would use office space and medical equipment in respondent's clinic, but did not otherwise describe in any detail either the treatments and services Flores would perform or how respondent would supervise Flores in those activities.

10. Respondent recalls that he and Flores discussed and revised the draft, and that they signed a later version of the agreement in November 2015. No signed document memorializing any agreement between respondent and Flores was in evidence, however.

11. In March 2016, Flores ordered prescription pads printed with both his and respondent's names and Drug Enforcement Administration (DEA) registration numbers. He had these pads shipped to a UPS Store in San Ramon. Respondent did not know at this time that Flores had obtained these pads; he became aware only a few months later that they existed and that Flores was using them to write prescriptions.

12. On Friday, April 22, 2016, a pharmacy called respondent's clinic to confirm with respondent that the pharmacy should fill a controlled substance prescription Flores had written. The call surprised respondent, because before receiving the call he did not realize that Flores had begun seeing patients or writing prescriptions in a manner representing even implicitly to others that respondent was supervising Flores.

13. Respondent sent a telephone text message to Flores promptly after receiving the pharmacy telephone call described in Finding 12. The text message stated that respondent and Flores should "sit down to discuss things," and proposed either Tuesday or Friday of the next week. Flores answered respondent, stating

"Practice type changed unexpectedly. I have your contracted payment. It is large.[1] I will brig [sic] you up to speed to the abrupt changes."

14. Citing schedule conflicts, Flores avoided meeting with respondent during the next week. Flores and respondent did not meet in person at any time over the following 10 months, despite respondent's repeated efforts to schedule such a meeting. Flores also represented to respondent that he kept electronic medical records, but rebuffed respondent's efforts to gain access to any such records.

15. Meanwhile, respondent received several further inquiries from pharmacies about Flores's prescriptions in May, June, and July 2016.

16. By August 2016, respondent concluded that he could not supervise Flores effectively. He told Flores that he would not authorize any further prescriptions by Flores because he never had been able to review any of Flores's patient records.

17. Also in August 2016, Flores sent respondent a text message asking respondent if he "had been contacted by any board or dea agency." Respondent answered that he had not. In late September 2016, respondent told Flores that a pharmacy had suggested that respondent contact the DEA about Flores's prescribing activity, but that respondent did not "want to go that way."

18. In September 2016, respondent instructed Flores not to use respondent's name in connection with prescriptions. Flores answered that he was "shutting everything down in the next 30 days."

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[1] Flores never actually paid any money to respondent.

19. Despite respondent's requests that he stop, and despite assuring respondent that he would stop, Flores continued prescribing controlled substances to patients using prescription forms bearing both Flores's and respondent's names and DEA registration numbers. Between August 2016 and February 2017, respondent received two to four inquiries each month from pharmacies about Flores's prescriptions.

20. Respondent took no further action to investigate or halt Flores's prescribing activity. Respondent did not, for example, consult the California Controlled Substance Utilization Review and Evaluation System (CURES) for a comprehensive list of controlled substance prescriptions Flores had written in 2016.[2] He also did not report Flores's prescribing practices to any professional regulatory agency or police agency.

Criminal Investigation

21. Law enforcement officers arrested Flores in mid-February 2017. Both complainant and respondent understand Flores to have been convicted of violating federal criminal laws governing controlled substance distribution, and sentenced to serve time in a federal prison.

22. On February 23, 2017, a team including a Board investigator, an investigator from the California Department of Justice, and a local police officer who

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[2] Complainant alleges that Flores wrote more than 1,800 prescriptions for controlled substances between November 2015 and February 2017. The evidence did not establish the number of such prescriptions for which Flores represented to patients or pharmacies that respondent was the responsible supervising physician.

had been assigned to work with the DEA served a search warrant at respondent's clinic, and interviewed him about his professional relationship with Flores. Respondent cooperated with the team's investigation.

23. Respondent has not been charged with any crime arising from his professional relationship with Flores.

24. The Board investigator who participated in the interview described in Finding 22 understands that Flores prescribed controlled substances under other physicians' ostensible supervision as well. To the investigator's knowledge, none of these physicians has been prosecuted for any crimes arising from Flores's actions.

Expert Testimony

25. Timur S. Durrani, M.D., reviewed records about this matter, including a transcript of the interview described in Finding 22 and various communications in writing between respondent and Flores. He prepared a report for the Board, and testified at the hearing, regarding his opinion of respondent's conduct.

26. Like respondent, Dr. Durrani is a board-certified family physician who holds a California physician's and surgeon's certificate. His training and experience as a family physician have familiarized him with California's supervision requirements for physician assistants, and with the standard of practice for family physicians in California who work with physician assistants.

27. Dr. Durrani described respondent's failure to supervise Flores, despite knowing for months that Flores was prescribing controlled substances to patients, as an extreme departure from the standard of care for family physicians. In Dr. Durrani's view, respondent's failure was an extreme departure from the standard of care

especially because Flores was prescribing dangerous controlled substances. Yet even after learning that Flores was writing such prescriptions, respondent did not intervene effectively either to stop him or to ensure that he prescribed these drugs responsibly.

28. Dr. Durrani's report states incorrectly that respondent approved the prescription pad order described above in Finding 11. Although the evidence at the hearing did not establish that respondent knew about or approved these prescription pads when Flores ordered them in March 2016, it did establish (as stated in Findings 12 through 20) that respondent made minimal efforts to supervise or control Flores, despite persistent evidence over several months that Flores was prescribing controlled substances in a manner triggering concerns at multiple pharmacies. In light of all the evidence, Dr. Durrani's opinion is persuasive.

References

29. Respondent presented written references from two hospital colleagues (Rishi Sawhney, M.D., and Lorena Tan, M.D.).

a. Dr. Sawhney is an oncologist who knows respondent through the hospital in which they both practice. Dr. Sawhney also has treated some of respondent's patients. He describes respondent as an excellent physician for his patients, and as a cooperative and reliable colleague.

b. Dr. Tan is a family physician who also knows respondent through the hospital. She is responsible each year for reviewing and re-approving respondent's hospital privileges. Dr. Tan knows that Flores used respondent's purported supervision to distribute controlled substances unlawfully, but believes that respondent did not realize the criminal nature of Flores's prescribing activity. She states that respondent

has a strong and positive reputation among patients and physicians, and that he is "kind and caring."

30. Respondent also presented a written reference from Peter Wong, M.D., the managing partner in respondent's medical group. Dr. Wong believes respondent to be thoughtful and competent, and he trusts respondent. Although respondent describes Dr. Wong as a mentor, neither respondent nor Dr. Wong described any discussions between them about Flores.

LEGAL CONCLUSIONS

1. The Board may suspend or revoke respondent's physician's and surgeon's certificate if clear and convincing evidence establishes the facts supporting discipline. The factual findings above reflect this standard.

2. Business and Professions Code sections 2227 and 2234 make a physician's unprofessional conduct grounds for suspension or revocation of the physician's certificate.

First Cause for Discipline: Aiding Unlicensed Practice

3. Aiding and abetting the unlicensed practice of medicine (or of any other health care profession requiring licensure) is unprofessional conduct, and also is a crime. (Bus. & Prof. Code, §§ 2052, subd. (b), 2264.)

4. As stated in Finding 12, respondent knew no later than April 22, 2016, that Flores was seeing patients, prescribing drugs, and representing to pharmacies (if not also to patients) that respondent was supervising him. As stated in Findings 9, 10, and 13, respondent also knew that none of these actions had occurred under

respondent's actual supervision, or in accordance with any agreement in writing between respondent and Flores. Yet as stated in Findings 14, 15, and 16, rather than instructing Flores to cease immediately, respondent allowed Flores to continue this unsupervised practice for at least three months. These matters constitute unprofessional conduct under Business and Professions Code sections 2052 and 2264, and cause for suspension or revocation of respondent's certificate under sections 2227 and 2234.

Second Cause for Discipline: Gross Negligence

5. Gross negligence, connoting an extreme departure from the minimum professionally accepted standard of care, is also unprofessional conduct. (Bus. & Prof. Code, § 2234, subd. (b).)

6. The matters stated in Findings 27 and 28 establish that the conduct described in Findings 7 through 20 constitutes gross negligence, and that this conduct is cause under Business and Professions Code sections 2227 and 2234 for suspension or revocation of respondent's certificate.

Third Cause for Discipline: Repeated Negligence

7. Whether gross or not, repeated negligent acts also are unprofessional conduct. (Bus. & Prof. Code, § 2234, subd. (c).)

8. The matters stated in Findings 27 and 28 establish that the conduct described in Findings 7 through 20 includes negligent acts on multiple occasions, and that this conduct is cause under Business and Professions Code sections 2227 and 2234 for suspension or revocation of respondent's certificate.

Fourth Cause for Discipline: Violation of Controlled Substance Laws

9. Violating laws that regulate controlled substance use and distribution also is unprofessional conduct. (Bus. & Prof. Code, § 2238.) These laws include the statutes requiring a physician assistant to practice and prescribe only under a physician's supervision. (*Id.*, §§ 3502, 3502.1.)

10. As stated in Finding 12, respondent knew no later than April 22, 2016, that Flores was prescribing controlled substances and representing to pharmacies that respondent was supervising him in doing so. As stated in Findings 9, 10, and 13, respondent also knew that none of these actions had occurred under respondent's actual supervision, or in accordance with any agreement in writing between respondent and Flores. Yet as stated in Findings 14, 15, and 16, rather than instructing Flores to cease immediately, respondent allowed Flores to continue this unsupervised practice for at least three months. Moreover, and as stated in Findings 17 through 21, respondent took no effective action to stop Flores's unauthorized prescribing; it stopped only when law enforcement officers arrested Flores. This course of conduct by respondent violated controlled substance laws. It constitutes unprofessional conduct under Business and Professions Code sections 2238 and 3502.1 and cause for suspension or revocation of respondent's certificate under sections 2227 and 2234.

Disciplinary Considerations

11. The matters stated in Findings 29 and 30 show that respondent retains respect from colleagues in his outpatient practice and at the hospital. Nevertheless, the matters stated in Findings 5 through 7, 13, 14, and 17 show that respondent ignored his statutory and professional responsibility to supervise Flores, with catastrophic results when Flores abused respondent's misplaced trust. Respondent's judgment failure in this matter was significant, and risked serious harm both to patients and to the community into which the controlled substances Flores prescribed flowed.

12. Despite the unintentional nature of respondent's misconduct, a disciplinary order similar to the minimum stated in the Board's Manual of Model Disciplinary Orders and Disciplinary Guidelines (12th Edition 2016; see Cal. Code Regs., tit. 16, § 1361, subd. (a)) is necessary to ensure that respondent does not repeat his misconduct. The Manual recommends a period of practice suspension, but a suspension more than four years after respondent's misconduct would be punitive and would not improve public safety. The circumstances in this matter do not warrant any specific restriction on respondent's medical practice, but they do warrant addition of a prescribing practices course to the professionalism and general medical education courses the Manual recommends.

ORDER

Physician's and Surgeon's Certificate No. A 128203, issued to respondent Yusuf S. Ruhullah, is revoked. The revocation is stayed, however, and respondent is placed on probation for five years upon the following terms and conditions.

1. Education Course

Within 60 calendar days of the effective date of this decision, and on an annual basis thereafter, respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s), which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

2. Prescribing Practices Course

Within 60 calendar days of the effective date of this decision, respondent shall enroll in a course in prescribing practices approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six months after respondent's initial enrollment. Respondent

shall successfully complete any other component of the course within one year of enrollment. The prescribing practices course shall be at respondent's expense and shall be in addition to the CME requirements for renewal of licensure.

A prescribing practices course taken after the acts that gave rise to the charges in the accusation but prior to the effective date of the decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the decision, whichever is later.

3. Professionalism Program (Ethics Course)

Within 60 calendar days of the effective date of this decision, respondent shall enroll in a professionalism program that meets the requirements of California Code of Regulations, title, 16, section 1358.1. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six months after respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one year after attending the classroom component. The professionalism program shall be at respondent's expense and shall be in addition to the CME requirements for renewal of licensure.

A professionalism program taken after the acts that gave rise to the charges in the accusation but prior to the effective date of the decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the program would have been approved by the Board or its designee had the program been taken after the effective date of this decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the program or not later than 15 calendar days after the effective date of the decision, whichever is later.

4. Practice Monitor

Within 30 calendar days of the effective date of this decision, respondent shall submit to the Board or its designee for prior approval as a practice monitor the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering; shall be in respondent's field of practice; and must agree to serve as respondent's monitor. Respondent shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the decision and accusation, and a proposed monitoring plan. Within 15 calendar days of receipt of the decision, accusation, and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the decision and accusation, fully

understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

Within 60 calendar days of the effective date of this decision, and continuing throughout probation, respondent's practice shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

If respondent fails to obtain approval of a monitor within 60 calendar days of the effective date of this decision, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three calendar days after being so notified. Respondent shall cease the practice of medicine until a monitor is approved to provide monitoring responsibility.

The monitor(s) shall submit a quarterly written report to the Board or its designee that includes an evaluation of respondent's performance, indicating whether respondent's practices are within the standards of medical practice and whether respondent is practicing medicine safely. It shall be the sole responsibility of respondent to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, respondent shall, within five calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will assume that responsibility within 15 calendar days. If respondent fails to obtain

approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three calendar days after being so notified Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

In lieu of a monitor, respondent may participate in a professional enhancement program approved in advance by the Board or its designee, that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at respondent's expense during the term of probation.

5. Notification

Within seven days of the effective date of this decision, respondent shall provide a true copy of this decision and the accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent, at any other facility where respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

6. Supervision of Physician Assistants and Advanced Practice Nurses

During probation, respondent is prohibited from supervising physician assistants and advanced practice nurses.

7. Obey All Laws

Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

8. Quarterly Declarations

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

9. General Probation Requirements

Compliance with Probation Unit: Respondent shall comply with the Board's probation unit.

Address Changes: Respondent shall, at all times, keep the Board informed of respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b).

Place of Practice: Respondent shall not engage in the practice of medicine in respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal: Respondent shall maintain a current and renewed California physician's and surgeon's certificate.

Travel or Residence Outside California: Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty calendar days.

In the event respondent should leave the State of California to reside or to practice respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

10. Interview with the Board or its Designee

Respondent shall be available in person upon request for interviews either at respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

11. Non-Practice While on Probation

Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of respondent's return to practice. Non-practice is defined as any period of time respondent is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If respondent resides in California and is considered to be in non-practice, respondent

shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve respondent from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event respondent's period of non-practice while on probation exceeds 18 calendar months, respondent shall successfully complete the Federation of State Medical Board's Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Respondent's period of non-practice while on probation shall not exceed two years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice for a respondent residing outside of California will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or Controlled Substances; and Biological Fluid Testing.

12. Completion of Probation

Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, respondent's certificate shall be fully restored.

13. Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation. If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation, a petition to revoke probation, or an interim suspension order is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

14. License Surrender

Following the effective date of this decision, if respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request to surrender his license. The Board reserves the right to evaluate respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the Board or its designee and respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of

probation. If respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

15. Probation Monitoring Costs

Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

DATE: September 11, 2020

DocuSigned by:
Juliet E. Cox
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JULIET E. COX
Administrative Law Judge
Office of Administrative Hearings

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO May 7 2019
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BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **YUSUF S. RUHULLAH, M.D.** 7788 Dublin Blvd. Dublin, CA 94568-2923 Physician's and Surgeon's Certificate No. A128203, Respondent.	Case No. 800-2017-030549 **A C C U S A T I O N**

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 (Board).

2. On December 20, 2013, the Medical Board issued Physician's and Surgeon's Certificate No. A128203 to Yusuf S. Ruhullah, 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 March 31, 2021, unless renewed.

JURISDICTION

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

4. 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 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 pursuant to subdivision (h) of Section 1170 of the Penal Code, 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."

5. 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.

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6. Section 2234 of the Code, states, in pertinent part:

"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.

"..."

7. Section 2238 of the Code states:

"A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct."

8. 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."

9. Section 3501 states, in pertinent part:

"...

"(4) "Physician assistant" means a person who meets the requirements of this chapter and is licensed by the board.

"(5) "Supervising physician" or "supervising physician and surgeon" means a physician and surgeon licensed by the Medical Board of California or by the Osteopathic Medical Board of California who supervises one or more physician assistants, who

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possesses a current valid license to practice medicine, and who is not currently on disciplinary probation for improper use of a physician assistant.

"(6) "Supervision" means that a licensed physician and surgeon oversees the activities of, and accepts responsibility for, the medical services rendered by a physician assistant.

"(7) "Regulations" means the rules and regulations as set forth in Chapter 13.8 (commencing with Section 1399.500) of Title 16 of the California Code of Regulations.

"...

"(10) "Delegation of services agreement" means the writing that delegates to a physician assistant from a supervising physician the medical services the physician assistant is authorized to perform consistent with subdivision (a) of Section 1399.540 of Title 16 of the California Code of Regulations.

"...

"(b) A physician assistant acts as an agent of the supervising physician when performing any activity authorized by this chapter or regulations adopted under this chapter."

10. Section 3502 of the Code states, in pertinent part:

"(a) Notwithstanding any other provision of law, a physician assistant may perform those medical services as set forth by the regulations adopted under this chapter when the services are rendered under the supervision of a licensed physician and surgeon who is not subject to a disciplinary condition imposed by the Medical Board of California prohibiting that supervision or prohibiting the employment of a physician assistant. The medical record, for each episode of care for a patient, shall identify the physician and surgeon who is responsible for the supervision of the physician assistant.

"...

"(c) (1) A physician assistant and his or her supervising physician and surgeon shall establish written guidelines for the adequate supervision of the

physician assistant. This requirement may be satisfied by the supervising physician and surgeon adopting protocols for some or all of the tasks performed by the physician assistant. The protocols adopted pursuant to this subdivision shall comply with the following requirements:

"(A) A protocol governing diagnosis and management shall, at a minimum, include the presence or absence of symptoms, signs, and other data necessary to establish a diagnosis or assessment, any appropriate tests or studies to order, drugs to recommend to the patient, and education to be provided to the patient.

"(B) A protocol governing procedures shall set forth the information to be provided to the patient, the nature of the consent to be obtained from the patient, the preparation and technique of the procedure, and the follow-up care.

"(C) Protocols shall be developed by the supervising physician and surgeon or adopted from, or referenced to, texts or other sources.

"(D) Protocols shall be signed and dated by the supervising physician and surgeon and the physician assistant.

"(2) (A) The supervising physician and surgeon shall use one or more of the following mechanisms to ensure adequate supervision of the physician assistant functioning under the protocols:

"(i) The supervising physician and surgeon shall review, countersign, and date a sample consisting of, at a minimum, 5 percent of the medical records of patients treated by the physician assistant functioning under the protocols within 30 days of the date of treatment by the physician assistant.

"(ii) The supervising physician and surgeon and physician assistant shall conduct a medical records review meeting at least once a month during at least 10 months of the year. During any month in which a medical records review meeting occurs, the supervising physician and surgeon and physician assistant shall review an aggregate of at least 10 medical records of patients treated by the physician assistant functioning under protocols. Documentation of medical records reviewed

during the month shall be jointly signed and dated by the supervising physician and surgeon and the physician assistant.

"(iii) The supervising physician and surgeon shall review a sample of at least 10 medical records per month, at least 10 months during the year, using a combination of the countersignature mechanism described in clause (i) and the medical records review meeting mechanism described in clause (ii). During each month for which a sample is reviewed, at least one of the medical records in the sample shall be reviewed using the mechanism described in clause (i) and at least one of the medical records in the sample shall be reviewed using the mechanism described in clause (ii).

"(B) In complying with subparagraph (A), the supervising physician and surgeon shall select for review those cases that by diagnosis, problem, treatment, or procedure represent, in his or her judgment, the most significant risk to the patient.

"..."

11. Section 3502.1 of the Code states, in pertinent part:

"(a) In addition to the services authorized in the regulations adopted by the Medical Board of California, and except as prohibited by Section 3502, while under the supervision of a licensed physician and surgeon or physicians and surgeons authorized by law to supervise a physician assistant, a physician assistant may administer or provide medication to a patient, or transmit orally, or in writing on a patient's record or in a drug order, an order to a person who may lawfully furnish the medication or medical device pursuant to subdivisions (c) and (d).

"(1) A supervising physician and surgeon who delegates authority to issue a drug order to a physician assistant may limit this authority by specifying the manner in which the physician assistant may issue delegated prescriptions.

"(2) Each supervising physician and surgeon who delegates the authority to issue a drug order to a physician assistant shall first prepare and adopt, or adopt, a written, practice specific, formulary and protocols that specify all criteria for the

use of a particular drug or device, and any contraindications for the selection. Protocols for Schedule II controlled substances shall address the diagnosis of illness, injury, or condition for which the Schedule II controlled substance is being administered, provided, or issued. The drugs listed in the protocols shall constitute the formulary and shall include only drugs that are appropriate for use in the type of practice engaged in by the supervising physician and surgeon. When issuing a drug order, the physician assistant is acting on behalf of and as an agent for a supervising physician and surgeon.

"(b) "Drug order," for purposes of this section, means an order for medication that is dispensed to or for a patient, issued and signed by a physician assistant acting as an individual practitioner within the meaning of Section 1306.02 of Title 21 of the Code of Federal Regulations. Notwithstanding any other provision of law, (1) a drug order issued pursuant to this section shall be treated in the same manner as a prescription or order of the supervising physician,

"(2) all references to "prescription" in this code and the Health and Safety Code shall include drug orders issued by physician assistants pursuant to authority granted by their supervising physicians and surgeons, and (3) the signature of a physician assistant on a drug order shall be deemed to be the signature of a prescriber for purposes of this code and the Health and Safety Code.

"(c) A drug order for any patient cared for by the physician assistant that is issued by the physician assistant shall either be based on the protocols described in subdivision (a) or shall be approved by the supervising physician and surgeon before it is filled or carried out.

"(1) A physician assistant shall not administer or provide a drug or issue a drug order for a drug other than for a drug listed in the formulary without advance approval from a supervising physician and surgeon for the particular patient. At the direction and under the supervision of a physician and surgeon, a physician assistant may hand to a patient of the supervising physician and surgeon a properly

labeled prescription drug prepackaged by a physician and surgeon, manufacturer as defined in the Pharmacy Law, or a pharmacist.

"(2) A physician assistant may not administer, provide, or issue a drug order to a patient for Schedule II through Schedule V controlled substances without advance approval by a supervising physician and surgeon for that particular patient unless the physician assistant has completed an education course that covers controlled substances and that meets standards, including pharmacological content, approved by the board. The education course shall be provided either by an accredited continuing education provider or by an approved physician assistant training program. If the physician assistant will administer, provide, or issue a drug order for Schedule II controlled substances, the course shall contain a minimum of three hours exclusively on Schedule II controlled substances. Completion of the requirements set forth in this paragraph shall be verified and documented in the manner established by the board prior to the physician assistant's use of a registration number issued by the United States Drug Enforcement Administration to the physician assistant to administer, provide, or issue a drug order to a patient for a controlled substance without advance approval by a supervising physician and surgeon for that particular patient.

"(3) Any drug order issued by a physician assistant shall be subject to a reasonable quantitative limitation consistent with customary medical practice in the supervising physician and surgeon's practice.

"(d) A written drug order issued pursuant to subdivision (a), except a written drug order in a patient's medical record in a health facility or medical practice, shall contain the printed name, address, and telephone number of the supervising physician and surgeon, the printed or stamped name and license number of the physician assistant, and the signature of the physician assistant. Further, a written drug order for a controlled substance, except a written drug order in a patient's medical record in a health facility or a medical practice, shall include the federal

controlled substances registration number of the physician assistant and shall otherwise comply with the of Section 11162.1 of the Health and Safety Code. Except as otherwise required for written drug orders for controlled substances under Section 11162.1 of the Health and Safety Code, the requirements of this subdivision may be met through stamping or otherwise imprinting on the supervising physician and surgeon's prescription blank to show the name, license number, and if applicable, the federal controlled substances registration number of the physician assistant, and shall be signed by the physician assistant. When using a drug order, the physician assistant is acting on behalf of and as the agent of a supervising physician and surgeon.

"(e) The supervising physician and surgeon shall use either of the following mechanisms to ensure adequate supervision of the administration, provision, or issuance by a physician assistant of a drug order to a patient for Schedule II controlled substances:

(1) The medical record of any patient cared for by a physician assistant for whom the physician assistant's Schedule II drug order has been issued or carried out shall be reviewed, countersigned, and dated by a supervising physician and surgeon within seven days.

"(2) If the physician assistant has documentation evidencing the successful completion of an education course that covers controlled substances, and that controlled substance education course (A) meets the standards, including pharmacological content, established in Sections 1399.610 and 1399.612 of Title 16 of the California Code of Regulations, and (B) is provided either by an accredited continuing education provider or by an approved physician assistant training program, the supervising physician and surgeon shall review, countersign, and date, within seven days, a sample consisting of the medical records of at least 20 percent of the patients cared for by the physician assistant for whom the physician assistant's Schedule II drug order has been issued or carried out.

Completion of the requirements set forth in this paragraph shall be verified and documented in the manner established in Section 1399.612 of Title 16 of the California Code of Regulations. Physician assistants who have a certificate of completion of the course described in paragraph (2) of subdivision (c) shall be deemed to have met the education course requirement of this subdivision.

"..."

12. California Code of Regulations, title 16, section 1399.540, states, in pertinent part:

"(a) A physician assistant may only provide those medical services which he or she is competent to perform and which are consistent with the physician assistant's education, training, and experience, and which are delegated in writing by a supervising physician who is responsible for the patients cared for by that physician assistant.

"(b) The writing which delegates the medical services shall be known as a delegation of services agreement. A delegation of services agreement shall be signed and dated by the physician assistant and each supervising physician. A delegation of services agreement may be signed by more than one supervising physician only if the same medical services have been delegated by each supervising physician. A physician assistant may provide medical services pursuant to more than one delegation of services agreement.

"...

"(d) A physician assistant shall consult with a physician regarding any task, procedure or diagnostic problem which the physician assistant determines exceeds his or her level of competence or shall refer such cases to a physician."

13. California Code of Regulations, title 16, section 1399.542, states:

"The delegation of procedures to a physician assistant under Section 1399.541, subsections (b) and (c) shall not relieve the supervising physician of primary continued responsibility for the welfare of the patient."

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14. California Code of Regulations, title 16, section 1399.545, states:

"(a) A supervising physician shall be available in person or by electronic communication at all times when the physician assistant is caring for patients.

"(b) A supervising physician shall delegate to a physician assistant only those tasks and procedures consistent with the supervising physician's specialty or usual and customary practice and with the patient's health and condition.

"(c) A supervising physician shall observe or review evidence of the physician assistant's performance of all tasks and procedures to be delegated to the physician assistant until assured of competency.

"(d) The physician assistant and the supervising physician shall establish in writing transport and back-up procedures for the immediate care of patients who are in need of emergency care beyond the physician assistant's scope of practice for such times when a supervising physician is not on the premises.

"(e) A physician assistant and his or her supervising physician shall establish in writing guidelines for the adequate supervision of the physician assistant which shall include one or more of the following mechanisms:

"(1) Examination of the patient by a supervising physician the same day as care is given by the physician assistant;

"(2) Countersignature and dating of all medical records written by the physician assistant within thirty (30) days that the care was given by the physician assistant;

"(3) The supervising physician may adopt protocols to govern the performance of a physician assistant for some or all tasks. The minimum content for a protocol governing diagnosis and management as referred to in this section shall include the presence or absence of symptoms, signs, and other data necessary to establish a diagnosis or assessment, any appropriate tests or studies to order, drugs to recommend to the patient, and education to be given the patient. For protocols

governing procedures, the protocol shall state the information to be given the patient, the nature of the consent to be obtained from the patient, the preparation and technique of the procedure, and the follow-up care. Protocols shall be developed by the physician, adopted from, or referenced to, texts or other sources. Protocols shall be signed and dated by the supervising physician and the physician assistant. The supervising physician shall review, countersign, and date a minimum of 5% sample of medical records of patients treated by the physician assistant functioning under these protocols within thirty (30) days. The physician shall select for review those cases which by diagnosis, problem, treatment or procedure represent, in his or her judgment, the most significant risk to the patient;

"(4) Other mechanisms approved in advance by the board.

"(f) The supervising physician has continuing responsibility to follow the progress of the patient and to make sure that the physician assistant does not function autonomously. The supervising physician shall be responsible for all medical services provided by a physician assistant under his or her supervision."

FIRST CAUSE FOR DISCIPLINE

(Aiding and Abetting Unlicensed Practice of Medicine)

15. Respondent has subjected his license to disciplinary action under sections 2227 and 2234, as defined by sections 2052, subdivision (b), and 2264, of the Code, in that he aided and abetted the unlicensed practice of medicine, as more particularly alleged hereinafter:

16. In or about November 2015, Respondent was introduced to Mark Flores, P.A. (P.A. Flores). P.A. Flores informed Respondent that he wanted to start a home-based healthcare business that allowed him to work independently with some physician oversight. Soon thereafter, Respondent agreed to serve as P.A. Flores' supervising physician, and they established protocols for patient charting. Respondent and P.A. Flores entered into a written contract for this business relationship, which provided that Respondent would earn thirty (30) percent of any payments P.A. Flores received for his medical services.

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17. In or about March 2016, P.A. Flores ordered prescription pads for his business entitled, "Medical Concierge Services – Physician Assistants, Inc.," which contained both P.A. Flores' and Respondent's names and DEA numbers.

18. From about April 2016, through in or around September 2016, Respondent received multiple phone calls from various pharmacies seeking confirmation of prescriptions for controlled substances written by P.A. Flores. On multiple occasions throughout that time, Respondent responded to those inquires by authorizing the prescriptions written by P.A. Flores.

19. Between in or around November 2015, through in or around February 2017, Respondent ostensibly served as P.A. Flores' supervising physician. Throughout that time, the two never established a Delegation of Services Agreement nor did Respondent ever review any of P.A. Flores' patient charts.

20. From about November 2015, through February 2017, P.A. Flores wrote approximately 1,849 prescriptions for controlled substances.

21. On March 23, 2017, after selling controlled substances to undercover officers, P.A. Flores was arrested and charged with distribution and possession with intent to distribute hydrocodone and alprazolam. On August 20, 2018, P.A. Flores was convicted and sentenced to prison for a term of 37 months.

SECOND CAUSE FOR DISCIPLINE

(Gross Negligence)

22. Respondent has further subjected his Physician's and Surgeon's Certificate A128203 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of the Code, in that he committed gross negligence, as more particularly alleged in paragraphs 15 through 21, and which included but was not limited to, the following:

(a) Failing to provide adequate supervision to P.A. Flores; and

(b) Allowing P.A. Flores to prescribe controlled substances without properly evaluating his experience, knowledge, and ability to prescribe safely and competently.

THIRD CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

23. Respondent has further subjected his Physician's and Surgeon's Certificate No. A128203 to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c), of the Code, in that he committed repeated negligent acts, as more particularly alleged in paragraphs 15 through 22, above, which are hereby incorporated by reference and re-alleged as if fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE

(Violation of State Laws Regulating Dangerous Drugs and/or Controlled Substances)

24. Respondent has further subjected his Physician's and Surgeon's Certificate No. A128203 to disciplinary action under sections 2227 and 2234, as defined by sections 2238 and 3502.1, of the Code, in that he has violated a state law or laws regulating dangerous drugs and/or controlled substances, as more particularly alleged in paragraphs 15 through 23 above, which are hereby incorporated by reference and re-alleged as if fully set forth herein.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

25. Respondent has further subjected his Physician's and Surgeon's Certificate No. A128203 to disciplinary action under sections 2227 and 2234, as defined by section 2234, of the Code, in that he has engaged in unprofessional conduct, as more particularly alleged in paragraphs 15 through 24 above, which are hereby incorporated by reference and re-alleged as if fully set forth herein.

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 No. A128203, issued to Yusuf S. Ruhullah, M.D. ;

2. Revoking, suspending or denying approval of Yusuf S. Ruhullah, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Yusuf S. Ruhullah, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED:
May 7, 2019

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

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