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

In the Matter of the Accusation Against: Douglas Vern Hulstedt, M.D. Physician's & Surgeon's Certificate No A 42397 Petitioner.	Case No.: 800-2021-079497

ORDER DENYING PETITION FOR RECONSIDERATION

The Petition filed by Douglas Vern Hulstedt, M.D., for the reconsideration of the decision in the above-entitled matter having been read and considered by the Medical Board of California, is hereby denied.

This Decision remains effective at 5:00 p.m. on February 27, 2023.

IT IS SO ORDERED: FEB 27 2023

Reji Varghese
Reji Varghese
Interim Executive Director

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

In the Matter of the Accusation Against: **Douglas Vern Hulstedt, M.D.** **Physician's & Surgeon's Certificate No. A 42397** **Respondent.**	**Case No. 800-2021-079497** **ORDER GRANTING STAY** **(Government Code Section 11521)**

Douglas Vern Hulstedt, M.D., has filed a Request for Stay of execution of the Decision in this matter with an effective date of February 17, 2023, at 5:00 p.m.

Execution is stayed until February 27, 2023, at 5:00 p.m.

This Stay is granted solely for the purpose of allowing the Board time to review and consider the Petition for Reconsideration.

DATED: February 16, 2023

Jenni Jones for
Reji Varghese
Deputy Director
Medical Board of California

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

In the Matter of the Accusation Against: Douglas Vern Hulstedt, M.D. Physician's and Surgeon's Certificate No. A 42397 Respondent.	Case No. 800-2021-079497

DECISION

The attached Proposed 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 February 17, 2023.

IT IS SO ORDERED January 18, 2023.

MEDICAL BOARD OF CALIFORNIA

Laurie Rose Lubiano, J.D., Chair
Panel A

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

In the Matter of the Accusation Against:

DOUGLAS VERN HULSTEDT, M.D.,

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

Respondent.

Agency Case No. 800-2021-079497

OAH No. 2022100013

PROPOSED DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on November 8, 2022, by videoconference.

Deputy Attorney General Thomas Ostly appeared for complainant William Prasifka, Executive Director of the Medical Board of California.

Respondent Douglas Vern Hulstedt, M.D., appeared representing himself.

The matter was submitted for decision on November 8, 2022.

FACTUAL FINDINGS

1. The Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. A 42397 to respondent Douglas Vern Hulstedt, M.D., on December 30, 1985. At the time of the hearing, this certificate was active and was scheduled to expire December 31, 2023.

2. Acting in his official capacity as Executive Director of the Board, complainant William Prasifka signed an accusation against respondent on July 27, 2022. Respondent timely requested a hearing.

3. Complainant alleges that respondent committed extreme departures from the medical standard of care by giving advice and issuing statements exempting a child (Patient 1) on medical grounds from all vaccination, and that respondent violated Business and Professions Code section 2225.5 by refusing to release Patient 1's medical records to the Board in response to a request accompanied by parental authorization and later in response to a court order. On these grounds, complainant seeks revocation of respondent's certificate, civil monetary penalties, and reimbursement of enforcement costs.

Vaccination Exemptions for Patient 1

4. Patient 1 was born in mid-2011. He received some early childhood vaccinations between 2011 and 2013.

5. Patient 1's parents disagreed as to whether Patient 1 should receive additional vaccinations. A family court order regarding Patient 1 required his parents to make his medical decisions jointly, however.

6. On August 19, 2015, when Patient 1 was four years old, Patient 1's father took Patient 1 to respondent, a pediatrician in Monterey.[1] Respondent gave Patient 1's father a note, written on a prescription form and signed by respondent, stating, "Pt. family [with] autoimmune issues. 0 further vaccines recommended." Patient 1's parents used this note to satisfy a preschool's requirement that they demonstrate either that Patient 1 was up to date on his routine childhood vaccinations or that he met one of the then-existing criteria for exemption from those vaccinations. (See Health & Saf. Code, § 120325 et seq.) Respondent knew when he gave Patient 1's father this note that Patient 1's father intended to use it in this manner.

7. Medical records from the San Francisco pediatric practice where Patient 1's mother took him regularly (GetzWell Personalized Pediatrics) include a few records about Patient 1 from respondent. A note by respondent from his evaluation of Patient 1 on August 19, 2015, states "Mother Graves Disease."[2] It references no other autoimmune disease in Patient 1's family.

8. On May 22, 2017, in preparation for enrolling Patient 1 in full-day school, Patient 1's mother conferred by telephone with GetzWell Personalized Pediatrics pediatrician Julia Getzelman, M.D., about additional vaccinations. Dr. Getzelman recommended them, noting that Patient 1's mother said he had "not had any trouble" with prior vaccines and that Patient 1 had "no neuro-developmental concerns."

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[1] No evidence established whether respondent ever had met Patient 1 or his family before August 19, 2015.

[2] Graves' disease is an autoimmune disorder that causes hyperthyroidism.

9. The next day, Patient 1's father again took Patient 1 to respondent. Respondent gave Patient 1's father another note, written on a prescription form and signed by respondent, stating, "Pt. [with] family hx of autoimmune [disease]. No vaccines recommended." Respondent also gave Patient 1's father a signed letter stating that Patient 1 "is exempt from vaccinations until 21 years of age, due to family autoimmune disease. This includes DTAP, Hep A, Hep B, Tdap, IPV, HIB, PREVNAR, MMR, VARICELLA, Meningococcal, Flu Vaccine, and Gardasil."

10. Records in evidence from respondent's examination of Patient 1 on May 23, 2017, are only partially legible. Handwritten notes state that Patient 1 sometimes has "puffy eyes," and "strong reactions" to "bug bites." They also state, "Autoimm. dad and mom," "from time he was born constantly throwing up," "psoriasis, eczema, hyperhidrosis," "food allergies," and "celiac disease." These notes reflect a discussion with Patient 1's father, not any primary diagnoses by respondent based on examination, health history reflected in medical records, or laboratory testing.

11. Patient 1's mother conferred several times during the next few years with pediatricians at GetzWell Personalized Pediatrics and with Patient 1's father about vaccinating Patient 1. Patient 1 underwent extensive allergy testing, including testing specifically to identify potential allergies to various common vaccine preparations, which did not show that Patient 1 was likely to have any allergic reaction to any vaccine. Dr. Getzelman and her colleague Nicole Glynn, M.D., advised Patient 1's parents on multiple occasions that Patient 1 was a generally healthy child who had no medical reason not to receive routine childhood vaccinations. Nevertheless, no one was able to persuade Patient 1's father to consent to Patient 1's receiving further vaccines.

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12. Eventually, the family court overseeing custody issues between Patient 1's parents addressed their conflict over whether Patient 1 should receive additional vaccinations. In January 2021, respondent provided a declaration to the family court supporting Patient 1's father's wish that Patient 1 receive no further vaccinations. Respondent's declaration emphasized his medical credentials and long experience as a pediatrician. He explained his beliefs that vaccination already had harmed Patient 1 and that further vaccination would be medically risky.[3]

Standard of Care Regarding Childhood Vaccinations

13. Deborah Lehman, M.D., testified on complainant's behalf, after having reviewed records about Patient 1 and prepared a report. Dr. Lehman holds a California physician's and surgeon's certificate and is board-certified in pediatrics and pediatric infectious diseases. She is a clinical professor at the University of California, Los Angeles, School of Medicine.

14. The American Academy of Pediatrics (AAP) and the United States Centers for Disease Control and Prevention (CDC) issue and regularly update guidance for clinicians regarding diagnosing, treating, and preventing infectious disease. This guidance explains these organizations' recommendations for achieving effective

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[3] Based on Patient 1's mother's complaint to the Board, complainant alleges that the family court ordered that Patient 1's mother could arrange vaccinations for Patient 1. Complainant alleges further that Patient 1's father reacted to this order by killing both Patient 1 and himself. No non-hearsay evidence addressed these allegations.

immunity to infectious disease through vaccination,[4] and also their recommendations regarding circumstances in which a patient should not receive vaccination.

15. Dr. Lehman gave several examples of vaccine "contraindications," which are circumstances in which the AAP and CDC guidelines would counsel against vaccinating a particular patient with a particular product or at a particular time. These guidelines identify no circumstances in which every vaccine would be contraindicated for a patient during the patient's entire childhood, no matter what disease the vaccine targets, what mechanism of action it uses, or what specific ingredients it has.

16. Dr. Lehman noted that neither a family history of autoimmune disease generally, nor a parental history of Graves' disease specifically, is a contraindication to any vaccination. Although a history of extreme allergic reaction to a specific vaccine preparation or ingredient may be a contraindication to further vaccination with the offending product, ordinary environmental or seasonal allergies (such as to pollen, dander, dust, insect bites, or foods) are not vaccine contraindications. Finally, Dr. Lehman noted that Patient 1's documented medical history of eczema would have put him at greater risk of serious harm from some vaccine-preventable diseases (such as chicken pox) than a child without eczema; as to these diseases, Patient 1's eczema was a strong personal reason for him to receive vaccination, not to avoid it.

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[4] "Vaccination," as Dr. Lehman used that term, means use of a pharmaceutical product to induce immune response to one or more infectious microorganisms. Dr. Lehman explained that vaccine products vary widely with respect to their ingredients, and also with respect to the mechanisms by which they cause recipients to develop immune response.

17. Dr. Lehman testified that the standard of care in California for pediatricians is to follow the AAP and CDC guidelines with respect to vaccination. A pediatrician should recommend and administer vaccines to children in accordance with the guidelines, modifying the guidelines' vaccination schedules only for patients as to whom the pediatrician diagnoses and documents vaccine contraindications that also conform to the guidelines.

18. Upon review of all medical records available to her about Patient 1, Dr. Lehman identified no contraindication to Patient 1's receiving vaccinations in accordance with the AAP and CDC guidelines. In particular, in reviewing the sparse, cryptic records available from respondent, she identified no basis for him to have advised Patient 1's father against vaccinating Patient 1, and no basis for respondent to have issued "medical" exemptions for Patient 1's parents to present to his schools. In Dr. Lehman's opinion, respondent's advice to Patient 1's father and the medical exemptions respondent issued were extreme departures from the standard of care.

19. Respondent did not testify to explain his medical reasoning with respect to the recommendations he made regarding Patient 1. Furthermore, respondent offered no expert opinion to contradict Dr. Lehman's opinion. Finally, as described below in Findings 21 through 30, if respondent had any other medical records about Patient 1 that might have explained his reasoning,[5] he refused to provide them.

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[5] Records from GetzWell Personalized Pediatrics include a note from a "Well Child Visit" among respondent, Patient 1, and Patient 1's father on October 22, 2020, stating respondent's view that "vaccines <u>always</u> have unavoidable risks."

20. Dr. Lehman's opinion is persuasive. The standard of care for a California pediatrician considering whether a child should or should not receive any particular childhood vaccination is to evaluate the child in accordance with the AAP and CDC guidelines.

a. By issuing long-term exemptions from all vaccination to Patient 1 on putative "medical" grounds, without evaluating Patient 1 carefully and thoroughly in accordance with the AAP and CDC guidelines, respondent committed extreme departures from the standard of care.

b. Moreover, the medical records about Patient 1 that were in evidence from GetzWell Personalized Pediatrics showed that if respondent had evaluated Patient 1 in accordance with the AAP and CDC guidelines, he could have satisfied the standard of care only by recommending routine vaccinations to Patient 1. On this basis as well, respondent committed extreme departures from the standard of care by granting, rather than refusing, Patient 1's father's request for "medical" exemptions to vaccination.

Refusal to Produce Medical Records

21. Patient 1's mother complained to the Board that respondent had grossly misinformed Patient 1's father, and had issued unwarranted vaccination exemptions for Patient 1. She provided some documents with her complaint, and authorized the Board to seek records about Patient 1 from several physicians, including respondent.

22. On October 4, 2021, Board Special Investigator Chris Jensen mailed Patient 1's mother's authorization to respondent, and requested certified copies of all respondent's medical records regarding Patient 1.

23. Respondent replied to this request by letter dated October 22, 2021, titled, "CONDITIONAL ACCEPTANCE READ CAREFULLY." He provided no records, no statement to the effect that he had no records, and no comprehensible or potentially meritorious objection to Jensen's request.[6]

24. On November 18, 2021, a Board staff member personally served an investigative subpoena to respondent, demanding that he produce his complete medical records regarding Patient 1.

25. In response to the subpoena described in Finding 24, respondent sent Jensen a letter reminding Jensen that respondent had made the demands in the letter identified above in Finding 23 and offering Jensen an additional three days to reply to these demands. He provided no records, no statement to the effect that he had no records, and no comprehensible or potentially meritorious objection to the subpoena.

26. In January 2022, acting in her official capacity as Director of the California Department of Consumer Affairs, Kimberly Kirchmeyer filed a petition in the San Francisco Superior Court for an order compelling respondent to comply with the subpoena described in Finding 24.

27. Respondent did not oppose the petition described in Finding 26 in the court. He did send Jensen a document on February 16, 2022, titled, "NOTICE OF

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[6] The response included 35 numbered paragraphs, beginning with a demand that Jensen prove "that this a proper venue for me to testify in" and ending with a lengthy statement purporting to be an excerpt from a *British Medical Journal* article regarding medical experimentation on human subjects. It instructed Jensen to reply "under your full commercial liability, rebutting each of the points of the undersigned."

VIOLATION OF ESTOPPEL AND LAWFUL CLAIM FOR DAMAGES," demanding that Jensen cease all efforts to require any action from respondent and enclosing respondent's "fee schedule" for any further "violation of my natural, unalienable, constitutionally protected and secured Rights."

28. On April 5, 2022, the San Francisco Superior Court entered an order directing respondent to comply on or before April 18, 2022, with the subpoena described in Finding 24. A Board staff member served that order to respondent the same day.

29. On April 16, 2022, respondent sent notice to Jensen and to Kirchmeyer's counsel that he needed "leave of court for 45 days" to provide a proper response to the order described in Finding 28. He decorated this notice with two-cent postage stamps, and styled himself as "Douglas-Vern: Hulstedt, Beneficiary."

30. As of the hearing date, respondent had provided no medical records regarding Patient 1 to the Board, and no statement or testimony to the effect that he has no such records.

Refusal to Participate in Hearing in Good Faith

31. Before the hearing, respondent barraged complainant's counsel as well as the Office of Administrative Hearings by mail with documents that did not state any cognizable prehearing motions. At the hearing, he repeatedly demanded that the administrative law judge and complainant's counsel answer irrelevant or incomprehensible questions, and asserted the same objections over and over.

32. Despite having clearly requested a hearing, respondent declined at the hearing to offer any documents into evidence, and also declined to testify or to offer

testimony from any other witnesses. Respondent attempted only to call witnesses to whom he had not served subpoenas in accordance with the Administrative Procedure Act, and who could not in any event have offered relevant testimony.

33. Respondent stated repeatedly throughout the hearing that he did not "understand" the proceedings. He did not mean by this phrase that he lacked comprehension. Rather, he meant that he did not acknowledge either the Board's or the administrative law judge's authority.

Costs

34. Since January 1, 2022, the Board has incurred $520 in costs for investigative services relating to this matter. Complainant's claim for reimbursement of these costs is supported by a declaration that complies with California Code of Regulations, title 1, section 1042, subdivision (b)(1). The costs are reasonable.

35. Since January 1, 2022, the Board also has incurred $49,040 in costs for legal services provided to complainant by the California Department of Justice in this matter. Complainant's claim for reimbursement of these costs is supported by a declaration that complies with California Code of Regulations, title 1, section 1042, subdivision (b)(2). The costs are reasonable in light of the matters summarized in Findings 31 through 33.

LEGAL CONCLUSIONS

1. The Board may take disciplinary action against respondent only if clear and convincing evidence establishes cause for such action. The factual findings above rest on clear and convincing evidence.

Unprofessional Conduct

2. The Board may suspend or revoke respondent's physician's and surgeon's certificate if he has engaged in unprofessional conduct (Bus. & Prof. Code, §§ 2227, 2234.)

VACCINE RECOMMENDATIONS AND EXEMPTIONS

3. Unprofessional conduct includes medical practice reflecting gross negligence, repeated negligence, or incompetence. (Bus. & Prof. Code, § 2234, subds. (b), (c), (d).) The matters stated in Findings 4 through 20 constitute cause for discipline against respondent for gross negligence, repeated negligence, and incompetence.

FAILURE TO PRODUCE MEDICAL RECORDS

4. Unprofessional conduct also includes failing or refusing to comply with a court order directing a physician to produce medical records for a Board investigation. (Bus. & Prof. Code, §§ 2225.5, subd. (d), 2234, subd. (a).) The matters stated in Findings 21 through 30 constitute cause for discipline against respondent for such failure.

Civil Monetary Penalties

5. Business and Professions Code section 2225.5., subdivisions (a)(1) and (e), authorize the Board to impose a civil monetary penalty of $1,000 per day, up to a maximum of $10,000, for a physician's failure or refusal to provide records to the Board in response to a request that includes the patient's authorization to release the records. The matters stated in Findings 21 through 23, 25, and 30 constitute cause to impose the maximum penalty of $10,000 for respondent's failure to provide the requested records to the Board.

6. Business and Professions Code section 2225.5., subdivisions (b)(1) and (e), also authorize the Board to impose a civil monetary penalty of $1,000 per day, up to a maximum of $10,000, for a physician's failure or refusal to provide records to the Board in response to a court order enforcing a subpoena for those records. The matters stated in Findings 24 through 30 constitute cause to impose the maximum penalty of $10,000 for respondent's failure to provide the requested records to the Board in response to the court order enforcing the subpoena.

Costs

7. A physician who has committed a violation of the laws governing medical practice in California may be required to pay the Board the reasonable costs of the investigation and enforcement of the case, but only as incurred on and after January 1, 2022. (Bus. & Prof. Code, § 125.3.) The matters stated in Findings 34 and 35 establish that these costs for this matter total $49,560.

8. In *Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth the standards by which a licensing board or bureau must exercise its discretion to reduce or eliminate cost awards to ensure that the board or bureau does not deter licensees with potentially meritorious claims from exercising their administrative hearing rights. The court held that a licensing board requesting reimbursement for costs relating to a hearing must consider the licensee's "subjective good faith belief" in the merits of his position and whether the licensee has raised a "colorable challenge" to the proposed discipline. (*Id.*, at p. 45.) The board also must consider whether the licensee will be "financially able to make later payments." (*Ibid.*) Last, the board may not assess full costs of investigation and enforcement when it has conducted a "disproportionately large investigation." (*Ibid.*)

9. All these matters have been considered. They do not justify any reduction in respondent's obligation to reimburse the Board for its reasonable costs.

Disciplinary Considerations

10. The matters stated in Findings 4 through 20 establish that respondent did not base his medical recommendations for Patient 1 on any principle reflecting the community standard of care. He fails to understand, or has affirmatively rejected, scientific concepts regarding disease transmission, immunity, and public health. The Board cannot allow respondent to continue holding himself out to the community as a licensed medical professional.

11. Moreover, the matters stated in Findings 21 through 33 confirm respondent's belief that the Board lacks authority to investigate or to control his medical practice. Even if respondent's unprofessional conduct arguably might warrant an order placing him on probation, these matters show that the Board could not reasonably expect respondent to comply with any probation conditions or monitoring.

12. Finally, respondent argued that revocation of his certificate would be overly harsh, because even if his recommendations against vaccinating Patient 1 were unprofessional conduct they caused Patient 1 no actual harm. To the contrary, and as summarized in Findings 4 through 20, respondent not only delayed Patient 1's receipt of immunizations that would have protected Patient 1 and his community against common childhood diseases, but also contributed to conflict between Patient 1's parents. Respondent's failure to appreciate the profound harm he caused confirms that public safety requires the Board to revoke his medical license.

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ORDER

1. Physician's and Surgeon's Certificate No. A 42397, held by respondent Douglas Vern Hulstedt, M.D., is revoked.

2. Respondent shall pay a total civil monetary penalty of $20,000 to the Board: $10,000 under Business and Professions Code section 2225.5, subdivision (a)(1), and $10,000 under Business and Professions Code section 2225.5, subdivision (b)(1).

3. Respondent shall pay the Board $49,560 to reimburse the Board for its reasonable costs to investigate and prosecute this matter.

DATE: 11/17/2022

Juliet E. Cox

JULIET E. COX
Administrative Law Judge
Office of Administrative Hearings