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 Yuşuf 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.
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
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.”
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.

///
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