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9

10 **BEFORE THE**  
11 **MEDICAL BOARD OF CALIFORNIA**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 17-2009-197800

14 **HITENDRA SHAH, M.D.**  
23341 Golden Springs, #210  
15 Diamond Bar, CA 91765

16 Physician's and Surgeon's Certificate No. A 36638

17 Respondent.  
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**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER FOR PUBLIC  
REPRIMAND**

19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Linda K. Whitney ("Complainant") is the Executive Director of the Medical Board of  
23 California ("Board or Medical Board"). She brought this action solely in her official capacity and  
24 is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by  
25 Deputies Attorney General Kerry Weisel and David Carr.

26 2. Respondent Hitendra Shah, M.D. ("Respondent") is represented in this proceeding by  
27 attorney Richard M. Ewaniszyk, 14350 Civic Drive, Suite 100, Victorville, California 92392.  
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**DISCIPLINARY ORDER**

1  
2 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 36638,  
3 issued to Respondent Hitendra Shah, M.D., is hereby publicly reprimanded pursuant to Business  
4 and Professions Code section 2227. This public reprimand, which is issued in connection with  
5 Respondent's conduct as set forth in Accusation No. 17-2009-197800, states:

6  
7 During the interval between November 1, 2008 and March 2009 you were  
8 the sole physician practicing medicine at the PMS Treatment Clinic, a  
9 medical clinic owned and operated by Helen Anderson, a person not  
10 licensed to render professional services. Your practice of medicine at  
11 the PMS Treatment Clinic promoted and furthered the corporate practice  
12 of medicine, in violation of both the Moscone-Knox Professional Corporation  
13 Act and the Medical Practice Act, which constitutes unprofessional conduct.


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**ACCEPTANCE**

I have carefully read the above Stipulated Settlement and Disciplinary Order for Public Reprimand and have fully discussed it with my attorney, Richard M. Ewaniszyn. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order for Public Reprimand voluntarily, knowingly, and intelligently and agree to be bound by the Decision and Order of the Medical Board of California.

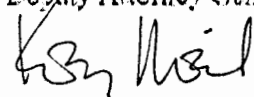
DATED: 4-11-2012   
HITENDRA SHAH, M.D.  
Respondent

I have read and fully discussed with Respondent Hitendra Shah, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order for Public Reprimand. I approve its form and content.

DATED: 4/12/2012   
RICHARD EWANISZYK  
Attorney for Respondent

**ENDORSEMENT**

The foregoing Stipulated Settlement and Disciplinary Order for Public Reprimand is respectfully submitted to the Medical Board of California.

DATED:   
  
Respectfully submitted,  
  
KAMALA D. HARRIS  
Attorney General of California  
JOSE R. GUERRERO  
Supervising Deputy Attorney General  
DAVID CARP  
Deputy Attorney General  
  
KERRY WEISEL  
Deputy Attorney General  
Attorneys for Complainant

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**EXHIBIT A**

**Accusation No. 17-2009-197800**

1 KAMALA D. HARRIS  
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8 *Attorneys for Complainant*

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO January 3, 2012  
BY: J. Kelch ANALYST

10 BEFORE THE  
11 MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
12 STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. 17 2009 197800

14 **HITENDRA SHAH, M.D.**  
23341 Golden Springs, #210  
15 Diamond Bar, CA 91765

ACCUSATION

16 Physician's and Surgeon's Certificate No. A 36638

17 Respondent.

18  
19 Complainant alleges:

20 **PARTIES**

21 1. Linda K. Whitney ("Complainant") brings this Accusation solely in her official  
22 capacity as the Executive Director of the Medical Board of California.

23 2. On or about April 27, 1981, the Medical Board of California issued Physician's  
24 and Surgeon's certificate Number A 36638 to Hitendra Shah, M.D. ("Respondent"). The  
25 Physician's and Surgeon's certificate was in full force and effect at all times relevant to the  
26 charges brought herein and will expire on January 31, 2013, unless renewed.

27 3. At all times herein, Helen Anderson was not licensed by the Medical Board of  
28 California as a physician and surgeon, nor was she licensed by the Osteopathic Medical Board of



1 California as an osteopathic physician, nor was she licensed by the California Board of Registered  
2 Nursing as a registered nurse.

3 4. At all times herein, "The Premenstrual Syndrome Treatment Clinic," also known  
4 as the "Premenstrual Syndrome Medical Clinic and Thyroid Center," in Arcadia, California was  
5 not registered with the California Secretary of State as a California professional medical  
6 corporation.

### 7 JURISDICTION

8 5. This Accusation is brought before the Medical Board of California, under the  
9 authority of the following laws. All section references are to the Business and Professions Code  
10 unless otherwise indicated.

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

15 7. Section 119 of the Code provides, in pertinent part, that it is a misdemeanor for a  
16 person to "[l]end[] his or her license to any other person or knowingly permit[] the use thereof by  
17 another" or to "[k]nowingly permit[] any unlawful use of a license issued to him or her."

18 8. Section 125 of the Code provides as follows:

19 "Any person licensed under Division 1 (commencing with section 100), Division 2  
20 (commencing with section 500), or Division 3 (commencing with section 5000) is guilty of  
21 a misdemeanor and subject to the disciplinary provisions of this code applicable to him or  
22 her, who conspires with a person not so licensed to violate any provision of this code, or  
23 who, with intent to aid or assist that person in violating those provisions does either of the  
24 following:

25 "(a) Allows his or her license to be used by that person.

26 "(b) Acts as his or her agent or partner."

27 9. Section 2051 of the Code provides that a "physician's and surgeon's certificate  
28 authorizes the holder to use drugs or devices in or upon human beings and to sever or penetrate

1 the tissues of human beings and to use any and all other methods in the treatment of diseases,  
2 injuries, deformities, and other physical and mental conditions.”

3 10. Section 2052 of the Code provides as follows:

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

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

18 “(c) The remedy provided in this section shall not preclude any other remedy  
19 provided by law.”

20 11. Section 2264 of the Code provides that “[t]he employing, directly or indirectly, the  
21 aiding, or the abetting of any unlicensed person or any suspended, revoked, or unlicensed  
22 practitioner to engage in the practice of medicine or any other mode of treating the sick or  
23 afflicted which requires a license to practice constitutes unprofessional conduct.”

24 12. Section 2272 of the Code provides that “[a]ny advertising of the practice of  
25 medicine in which the licensee fails to use his or her own name or approved fictitious name  
26 constitutes unprofessional conduct.”

27 13. Section 2285 of the Code provides in pertinent part that “[t]he use of any fictitious,  
28 false, or assumed name, or any name other than his own by a licensee . . . or as the name of a

1 professional corporation, in any public communication, advertisement, sign, or announcement of  
2 his or her practice without a fictitious-name permit obtained pursuant to section 2415 constitutes  
3 unprofessional conduct.”

4 14. Section 2286 of the Code provides that “[i]t shall constitute unprofessional  
5 conduct for any licensee to violate, to attempt to violate, directly or indirectly, to assist in or abet  
6 the violation of, or to conspire to violate any provision or term of Article 18 (commencing with  
7 Section 2400), of the Moscone-Knox Professional Corporation Act (Part 4 commencing with  
8 Section 13400) of Division 3 of Title 1 of the Corporations Code), or of any rules and regulations  
9 duly adopted under those laws.”

10 15. Section 2400 of the Code provides, in pertinent part, that “[c]orporations and other  
11 artificial legal entities shall have no professional rights, privileges, or powers.”

12 16. Section 2402 of the Code provides that “[t]he provisions of Section 2400 do not  
13 apply to a medical or podiatry corporation practicing pursuant to the Moscone-Knox Professional  
14 Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the  
15 Corporations Code) and this article, when such corporation is in compliance with the  
16 requirements of these statutes and all other statutes and regulations now or hereafter enacted or  
17 adopted pertaining to such corporations and the conduct of their affairs.”

18 17. Section 2406 of the Code provides in pertinent part that “a medical or podiatry  
19 corporation is a corporation which is authorized to render professional services, as defined in  
20 Sections 13401 and 13401.5 of the Corporations Code, so long as that corporation and its  
21 shareholders, officers, directors and employees rendering professional services who are  
22 physicians, psychologists, registered nurses, optometrists, podiatrists or, in the case of a medical  
23 corporation only, physician assistants, are in compliance with the Moscone-Knox Professional  
24 Corporation Act [Corporations Code section 13400 et seq.], the provisions of this article and all  
25 other statutes and regulations now or hereafter enacted or adopted pertaining to the corporation  
26 and the conduct of its affairs.”

27 18. Section 2408 of the Code provides in pertinent part that “[e]xcept as provided in  
28 Sections 13401.5 and 13403 of the Corporations Code, each shareholder, director and officer of a

1 medical or podiatry corporation . . . shall be a licensed person as defined in Section 13401 of the  
2 Corporations Code.”

3 19. Section 2415 of the Code provides, in pertinent part, as follows:

4 “(a) Any physician and surgeon or any doctor of podiatric medicine, as the case  
5 may be, who as a sole proprietor, or in a partnership, group, or professional corporation,  
6 desires to practice under any name that would otherwise be a violation of Section 2285 may  
7 practice under that name if the proprietor, partnership, group, or corporation obtains and  
8 maintains in current status a fictitious-name permit issued by the Division of Licensing,<sup>1</sup> or,  
9 in the case of doctors of podiatric medicine, the California Board of Podiatric Medicine,  
10 under the provisions of this section.

11 “(b) The division or the board shall issue a fictitious-name permit authorizing the  
12 holder thereof to use the name specified in the permit in connection with his, her, or its  
13 practice if the division or the board finds to its satisfaction that:

14 “(1) The applicant or applicants or shareholders of the professional corporation  
15 hold valid and current licenses as physicians and surgeons or doctors of podiatric medicine,  
16 as the case may be.

17 “(2) The professional practice of the applicant or applicants is wholly owned and  
18 entirely controlled by the applicant or applicants.

19 “(3) The name under which the applicant or applicants propose to practice is not  
20 deceptive, misleading, or confusing.

21 “(c) Each permit shall be accompanied by a notice that shall be displayed in a  
22 location readily visible to patients and staff. The notice shall be displayed at each place of  
23 business identified in the permit.”

24 20. Corporations Code section 13401, a part of the Moscone-Knox Professional  
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26 <sup>1</sup> Effective January 1, 2008, the Legislature abolished the divisions of the Medical Board  
27 of California. Under Business and Professions Code section 2002, any reference to the “Division  
28 of Medical Quality” or the “Division of Licensing” in the Medical Practice Act, Business and  
Professions Code section 2000 et seq., or any other provision of law now refers to the Medical  
Board.

1 Corporation Act, provides, in pertinent part, as follows:

2 “(a) ‘Professional services’ means any type of professional services that may be  
3 lawfully rendered only pursuant to a license, certification, or registration authorized by the  
4 Business and Professions Code , the Chiropractic Act, or the Osteopathic Act.

5 “(b) ‘Professional corporation’ means a corporation organized under the General  
6 Corporation Law or pursuant to subdivision (b) of Section 13406 which is engaged in  
7 rendering professional services in a single profession, except as otherwise authorized in  
8 Section 13401.5, pursuant to a certificate of registration issued by the governmental agency  
9 regulating the profession as herein provided and that in its practice or business designates  
10 itself as a professional or other corporation as may be required by statute. However, any  
11 professional corporation or foreign professional corporation rendering professional services  
12 by persons duly licensed by the Medical Board of California or any examining committee  
13 under the jurisdiction of the board . . . shall not be required to obtain a certificate of  
14 registration in order to render those professional services.

15 “ . . . .

16 “(d) ‘Licensed person’ means any natural person who is duly licensed under the  
17 provisions of the Business and Professions Code, the Chiropractic Act, to render the same  
18 professional services as are or will be rendered by the professional corporation or foreign  
19 professional corporation of which he or she is or intends to become, an officer, director,  
20 shareholder, or employee.”

21 21. Corporations Code section 13401.5 provides, in pertinent part, that certain  
22 enumerated licensed persons may be shareholders, officers, directors, or professional employees  
23 of a professional medical corporation so long as the sum of all shares owned by those licensed  
24 persons does not exceed 49 percent of the total number of shares of the professional medical  
25 corporation and so long as the number of those licensed persons owning shares in the professional  
26 medical corporation so designated does not exceed the number of persons licensed by the  
27 governmental agency regulating the medical profession.



1           26.     The PMS Treatment Clinic—150 N. Santa Anita, #755, Arcadia, California  
2 91006—is a medical practice that has provided “bio-identical” hormone replacement treatment to  
3 treat premenstrual syndrome and other medical conditions since its inception. Since at least  
4 February 2008, the Clinic has also provided hormone replacement treatment for men.

5           27.     The PMS Treatment Clinic obtains “bio-identical” hormones from compounding  
6 pharmacies, keeps a supply of them at the Clinic, and dispenses them to the Clinic’s patients.  
7 These “bio-identical” hormones are dangerous drugs under Business and Professions Code  
8 section 4022.

9           28.     Ms. Anderson lists herself on the Clinic door as the Director of the PMS Treatment  
10 Clinic.

11           29.     Ms. Anderson also goes by the name Holly Anderson. Ms. Anderson has had a  
12 radio program advertising the PMS Treatment Clinic on radio station KKLA entitled “The  
13 Women’s Clinic” since at least February 2008. On the radio program Ms. Anderson describes  
14 herself as the founder and director of the PMS Treatment Clinic and advertises the Clinic as  
15 “Holly Anderson’s PMS Treatment Clinic.”

16           30.     The PMS Treatment Clinic has a website, [www.pms-treatment-clinic.com](http://www.pms-treatment-clinic.com), which  
17 identifies Ms. Anderson as the “Founder and Director” of the Clinic and notes that there are  
18 “[m]edical doctors on staff.”

19           31.     Since the PMS Treatment Clinic’s inception, Ms. Anderson has hired physicians to  
20 staff the Clinic. All or nearly all of the PMS Treatment Clinic’s patients’ medical records have  
21 remained at the Clinic through the years as these physicians have come and gone.

22           32.     On August 16, 2002, Dr. Shah applied for a fictitious name permit for the name  
23 Premenstrual Syndrome Medical Clinic. The application listed himself and David Freeman, M.D.  
24 as employees who would be practicing under the name. This permit was issued September 13,  
25 2002 and, after several renewals, expired September 30, 2010.

26           33.     Dr. Shah was hired by Helen Anderson as an independent contractor and worked  
27 at the Clinic with another physician intermittently during 2002 through 2006. He was hired by  
28 Helen Anderson again in late 2007 and was designated the “Medical Director” of the Clinic. He

1 remained through the end of January 2008. He was hired again by Helen Anderson to act as  
2 “Medical Director” from November 1, 2008 through March 2009.

3 34. Each time Dr. Shah assumed employment at the Clinic, the medical records of the  
4 Clinic’s patients were already there and he simply assumed the care of the Clinic’s patients.

5 35. Without doing an analysis of the costs of running the practice, Dr. Shah agreed to  
6 accept a flat percentage of 25% of the Clinic’s gross receipts as his compensation for treating the  
7 Clinic’s patients. Ms. Anderson’s corporation kept 75% of the gross receipts.

8 36. The “management fees” for diagnostic procedures provided by Dr. Shah were also  
9 assessed using a percentage of gross receipts. Depending on whether Ms. Anderson or Dr. Shah  
10 provided the equipment and/or technician, the fee varied from 75% to 50% of gross patient  
11 receipts. The decision of whether to provide a technician was in the sole discretion of Ms.  
12 Anderson.

13 37. Dr. Shah gave Ms. Anderson, an unlicensed individual, complete and full access to  
14 his charts, books, and records.

15 38. Ms. Anderson set the billing rates charged by the Clinic and had veto power over  
16 any changes in billing rates.

17 39. Ms. Anderson was in charge of new business development for the Clinic including  
18 community relations, publications, and communications. During the time that Dr. Shah was  
19 “Medical Director” of the Clinic, he permitted Ms. Anderson to produce infomercials and  
20 maintain a PMS Treatment Clinic website. On her radio program/infomercial broadcast on  
21 station KKLA, Ms. Anderson described herself as the founder and Director of the PMS Treatment  
22 Clinic and the Clinic as “Holly Anderson’s PMS Treatment Clinic”; on the PMS Treatment Clinic  
23 website, Ms. Anderson identified herself as the “Founder and Director” of the Clinic and noted  
24 that the Clinic had medical doctors “on staff.”

25 40. Dr. Shah did not have control over the income of the Clinic and did not have  
26 access to the Clinic’s bank accounts. All funds for services were to be deposited into one of Ms.  
27 Anderson’s bank accounts.  
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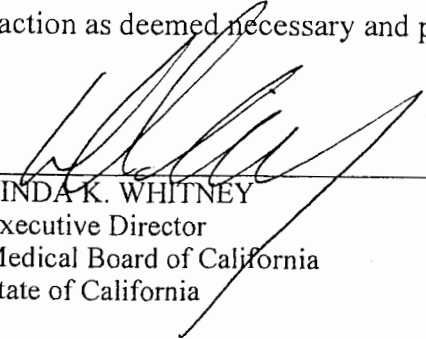




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4. Taking such other and further action as deemed necessary and proper.

DATED: January 3, 2012

  
LINDA K. WHITNEY  
Executive Director  
Medical Board of California  
State of California  
  
*Complainant*