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

In the Matter of the Accusation Against: Ron Kennedy, M.D. Physician's and Surgeon's Certificate No. C 36809 Respondent.	Case No. 800-2017-030287

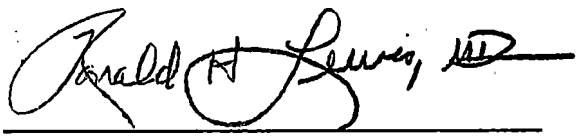
DECISION

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 May 7, 2021.

IT IS SO ORDERED: April 8, 2021.

MEDICAL BOARD OF CALIFORNIA



Ronald H. Lewis, M.D., Chair
Panel A

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

In the Matter of the Accusation Against:

RON KENNEDY, M.D.,

Physician's and Surgeon's Certificate No. C 36809

Respondent.

Agency Case No. 800-2017-030287

OAH No. 2020090549

PROPOSED DECISION

Administrative Law Judge Diane Schneider, State of California, Office of Administrative Hearings, heard this matter on February 1 through 3, 2021, by telephone and videoconference.

Lawrence Mercer, Deputy Attorney General, represented complainant William Prasifka, Executive Director of the Medical Board of California, Department of Consumer Affairs.

Michael Machat, Attorney at Law, represented respondent Ron Kennedy, M.D., who was present for the hearing.

The record closed and the matter was submitted for decision on February 3, 2021.

FACTUAL FINDINGS

1. Complainant Christine J. Lally[1] brought the Accusation in her official capacity as Interim Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On October 24, 1975, the Board issued Physician's and Surgeon's Certificate No. C 36809 (Certificate) to respondent Ron Kennedy, M.D. The Certificate will expire on July 31, 2021, unless renewed.

Summary of Case

3. The Accusation alleges that respondent committed unprofessional conduct (gross negligence, repeated acts of negligence and incompetence) in connection with vaccine exemptions that he issued to three school-aged children in 2017. Complainant contends that the vaccine exemptions were improperly issued because the exemptions lacked an appropriate medical rationale; they were issued for all vaccines; and they were permanent. Respondent disputes the allegations. He asserts that the vaccine exemptions he provided to Patients 1, 2 and 3,[2] were based upon

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[1] William Prasifka is currently the Board's Executive Director.

[2] The patients are referred to by numbers to protect their privacy.

sound medical evidence and were appropriate. The evidence at hearing was voluminous. The pertinent facts are summarized below.

Laws Relating to Vaccine Exemptions

4. Health and Safety Code section 120325 et seq. requires that children who are enrolled in school or in childcare centers be immunized against specified diseases unless a valid exemption applies. Health and Safety Code section 120325, subdivision (a), requires immunization against 10 childhood diseases and any other disease deemed appropriate by the California Department of Public Health, "taking into consideration the recommendations of the Advisory Committee on Immunization Practices of the United States Department of Health and Human Services, the American Academy of Pediatrics, and the American Academy of Family Physicians."

5. Health and Safety Code section 120325, subdivision (c), provides for exemptions from immunizations for medical reasons. Effective January 1, 2016, the Legislature amended Health and Safety Code section 120325 to eliminate personal beliefs as a basis for exemption from required immunizations. In order to obtain an exemption from immunizations for medical reasons, the child's parent must file a written statement by a licensed physician with the child's school or day care, to the effect that "the physical condition of the child is such, or medical circumstances relating to the child are such, that immunization is not considered safe, indicating the specific nature and probable duration of the medical condition or circumstances, including, but not limited to, family medical history, for which the physician and

surgeon does not recommend immunization." (Health & Saf. Code, § 120370, subd. (a).[3])

Complainant's Evidence

STANDARD OF CARE FOR ISSUING VACCINATION EXEMPTIONS

6. Complainant presented expert testimony from Dean Blumberg, M.D., regarding the standard of care for issuing vaccination exemptions. Dr. Blumberg graduated from Chicago Medical School in 1984. He completed an internship and residency in pediatrics at Massachusetts General Hospital and a fellowship in pediatric infectious diseases at University of California, Los Angeles. He has been licensed to practice medicine in California since 1987 and is board-certified in pediatrics and pediatric infectious diseases.

7. Dr. Blumberg is the Chief of U.C. Davis Children's Hospital, Division of Pediatric Infectious Diseases, Allergy & Immunology. He also holds a faculty appointment there as an Associate Professor of Pediatrics. Dr. Blumberg has held a variety of positions on committees relating to infection control; he has provided testimony to the California Legislature on matters relating to immunization exemptions; and he has performed research on new and existing childhood vaccines.

8. Dr. Blumberg explained that vaccines are extensively tested and vetted to make sure that they do not cause harm. Dr. Blumberg acknowledged that it is possible

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[3] Health and Safety Code section 120370 was amended, effective January 1, 2020, to include additional requirements in connection with obtaining medical exemptions from immunizations.

for a person to have a severe allergic reaction to a vaccine or suffer other injuries from vaccinations. Dr. Blumberg noted, however, that negative effects following a vaccination may be incidental to, and not caused by, the vaccine.

9. Dr. Blumberg's extensive experience in the field has familiarized him with the standard of care applicable to issuing medical exemptions for vaccinations in California. The American Academy of Pediatrics (AAP) is a generally accepted authority on pediatrics and childhood diseases. The AAP's Redbook, issued every few years, sets standards for pediatricians. Dr. Blumberg has worked with the AAP in the area of legislative advocacy; most of his work has been in the area of vaccine and vaccine policy.

10. Dr. Blumberg explained that physicians who issue immunization exemptions in California must provide a written statement establishing: (1) the patient has a physical or medical condition or medical circumstance such that the immunization is not required; (2) which vaccines are exempted; (3) whether the exemption is permanent or temporary; and if temporary, the expiration date of the exemption.

11. According to Dr. Blumberg, in determining whether to issue exemptions, the standard of care for primary care providers and specialists is to follow the recommendations for pediatric vaccination practices and immunizations issued in the AAP's Red Book and by the Centers for Disease Control and Prevention (CDC), Advisory Committee on Immunization Practices. Primary care physicians rely on the recommendations of the CDC and AAP regarding pediatric vaccination practices. Dr. Blumberg explained that these recommendations are collectively referred to as the guidelines. The guidelines are developed and regularly reviewed by the AAP's

Committee on Infectious Diseases and the CDC's Advisory Committee on Immunization Practices, and are based on statistics derived from data.

12. Dr. Blumberg explained that the CDC and AAP recognize the existence of contraindications or precautions that provide a rationale for a medical exemption from certain immunizations. A contraindication, such as a serious allergic reaction, poses a serious risk to a child if he or she is immunized. According to these authorities, medical exemptions for vaccines are appropriate where there is a contraindication for the vaccine – that is, where the recipient's condition or conditions increases the risk of a serious adverse reaction from the vaccine. Because there is not one common ingredient in vaccinations, each vaccine must be analyzed on an individual basis to determine if it poses a risk of a serious allergic reaction.

13. Medical exemptions may also be appropriate where a precaution exists, such as where a child has a moderate or severe illness that might increase the risk of an adverse reaction of the vaccine or might impair the effectiveness of the vaccine. Dr. Blumberg explained that when a precaution exists, the process of evaluating the risks and benefits of vaccination is nuanced. If a precaution exists, it may be appropriate to defer some or all vaccinations on a temporary basis until the illness has resolved.

PATIENT 1

14. Patient 1 came to the attention of the Board in August 2017, following a complaint filed by Alanna Lee, R.N. Lee works as a school nurse in the Fremont Unified School District. In her complaint, she expressed concerns that respondent was providing vaccination exemptions on a standardized form that did not comport with California law.

15. Patient 1 was entering seventh grade, and she had previously been exempted from vaccinations based on a personal belief exemption. Patient 1's parents opposed vaccines and on June 12, 2017, requested that Patient 1's primary care physician at Kaiser Permanente (Kaiser), Fremont, provide a medical exemption from vaccinations. Patient 1's primary care physician declined to provide such an exemption because Patient 1 had no prior history of an allergic reaction to vaccines. Although Patient 1 had apparently been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD), this diagnosis did not provide a basis for an exemption. According to Patient 1's medical records at Kaiser, Patient 1's mother indicated that she would find someone outside of Kaiser to provide a medical exemption letter.

16. Patient 1's family consulted with respondent in order to obtain a medical exemption. Respondent did not obtain medical records from Patient 1's primary care provider. In respondent's medical records for Patient 1 he wrote that Patient 1 "has always enjoyed good health." Respondent's physical examination of Patient 1 indicated that Patient 1's physical examination was normal with the exception of mild near-sightedness. Respondent documented in his medical record a long list of disorders in Patient 1's family, including: obsessive compulsive disorder (mother), attention deficit disorder (ADD) (father), ADHD (brother), orthorexia nervosa (sister), and a variety of disorders in her extended family (fibromyalgia, depression, anxiety, and autism). Respondent wrote that Patient 1's parents concluded that the "people in their family suffer from vaccine injuries in that all of those people have been vaccinated."

17. On July 17, 2017, respondent provided Patient 1 with a permanent vaccine exemption from all vaccines. The "Medical Vaccination Exemption" form provided to Patient 1 and signed by respondent stated that immunizations are

medically contraindicated due to a family history of a variety of conditions. Respondent wrote that the "major" reasons for the exemption were "autoimmune, respiratory and neuropsych illness in family." The form listed 15 vaccines. Respondent exempted Patient 1 from all of these vaccines.

PATIENTS 2 AND 3

18. Patients 2 and 3 are siblings who came to the attention of the Board after Rashya Henderson, Supervising Special Investigator for the Board, received an email on November 29, 2017, from Emely Hernandez, Immunization Coordinator for the Sonoma County Department of Health Services. Hernandez wrote that the father and grandparents of Patients 2 and 3 complained to Hernandez about respondent. Respondent had issued vaccine exemptions for Patients 2 and 3; they questioned whether the exemptions were appropriate and legal. At the time respondent provided the vaccine exemptions Patient 2 was about three years old and Patient 3 was about one year old.

19. Henderson embarked on investigating the complaint. On January 24, 2018, she asked respondent to provide medical records for Patients 2 and 3. He did not comply. She made further attempts to obtain the medical records from respondent on numerous occasions, which were unsuccessful. Ultimately, respondent produced the documents on June 24, 2019, after Henderson obtained a court order that required him to produce the medical records of Patients 2 and 3.

20. The vaccine exemptions were issued by respondent on September 26, 2017, during a consultation with the patients' mother, without the consent of their father. The parents of Patients 2 and 3 were separated at the time respondent

provided vaccination exemptions to their mother.[4] The mother of Patients 2 and 3 (mother) testified that at the time she consulted with respondent, she believed that she had full legal and physical custody of her children. This belief was not correct.

21. When mother consulted with respondent, she reported a maternal family history of illnesses and adverse reactions that occurred after a variety of immunizations. As a result of her family history, she was sincerely concerned about vaccinating her sons. Mother also reported to respondent that Patient 2 had been sick for two weeks after "Dtap" and sick with a high fever and a cough for three weeks after "HIB and PNUcn13." Patient 2's medical records from Kaiser, however, did not indicate that Patient 2 suffered an adverse reaction to these vaccines. At respondent's suggestion, mother obtained a gene variance report for Patient 3 from "livewello" that showed some variance in certain genes. She was afraid that if Patient 3 was vaccinated, he would have problems that might last his entire life. Mother described her sons as coughing and sick after they were vaccinated and stated that Patient 3 also had a headache and cried after he was vaccinated. Patient 3 was also diagnosed with eczema on November 7, 2018, by Megan Connick, M.D. Dr. Connick's note states that the eczema was not caused by vaccines. Mother stated that she does not necessarily believe this.

22. The father of Patients 2 and 3 (father) testified at hearing. He was upset that his former wife obtained vaccine exemptions without his consent from respondent, and he worried about his children's health. Respondent had never treated these children in the past. Father did not think there was any reason to support the exemptions. Patient 2 had received routine immunizations previously without any

[4] The parents are now divorced.

adverse reaction. Father asked respondent to withdraw the exemption; respondent said he did not know how to do so. Respondent was uncooperative with father. At one point, respondent left father a voicemail asking him to tell the Department of Public Health that the issue had been resolved and had occurred because the patients' mother had lied to respondent. Father spent a considerable amount of time and thousands of dollars in legal fees in order to obtain a rescission of the exemptions.

23. Respondent was not the primary care provider for Patients 2 and 3, and he did not obtain records from their primary care providers at Kaiser. Respondent referred to the children as "normal," following his physical examinations. He summarized the family history as including multiple cases of severe vaccine reactions and injuries, which in his view, contraindicated vaccinations.

24. On September 26, 2017, respondent provided Patients 2 and 3 with vaccine exemptions that permanently exempted them from all vaccines. The Medical Vaccination Exemption forms provided to Patients 2 and 3, and signed by respondent, stated that immunizations were medically contraindicated due to a family history of a variety of conditions. Respondent wrote that the "major" reasons for the exemption were "neuropsychiatric illness, allergic illness, and vaccine reaction or injury." The form listed 15 vaccines. Respondent exempted Patients 2 and 3 from all of these vaccines.

25. Ultimately, respondent rescinded his vaccine exemptions for Patients 2 and 3 by a letter dated January 8, 2018. Patients 2 and 3 were subsequently vaccinated and did not suffer adverse reactions.

EXPERT TESTIMONY REGARDING RESPONDENT'S VACCINE EXEMPTIONS

26. Dr. Blumberg reviewed pertinent medical records and documents and issued two reports, dated December 12, 2019, setting forth his opinions as to whether

respondent committed unprofessional conduct in connection with the vaccine exemptions that he issued to Patients 1, 2, and 3. His opinions, set forth below in Factual Findings 27 through 37, were persuasive.

Patient 1

27. Dr. Blumberg opined that, for several reasons, respondent's vaccine exemption for Patient 1 was an extreme departure from the standard of care. Dr. Blumberg explained that neither the CDC nor the AAP consider family history alone as a contraindication or precaution to routine immunizations. Dr. Blumberg reviewed Patient 1's medical records, including the records from her pediatrician, and did not see any medical evidence to support a contraindication or precaution to the administration of vaccines. None of the family conditions contained in respondent's medical records for Patient 1, or included on the Medical Exemption form, provided a basis for an exemption from vaccinations. Insofar as respondent's vaccine exemption was unsupported by factors that are recognized by the CDC or AAP as contraindications or precautions to vaccinations, Dr. Blumberg concluded that respondent's issuance of a medical exemption for immunizations to Patient 1 was an extreme departure from the standard of care.

28. Dr. Blumberg also opined that respondent's vaccine exemption for Patient 1 for all vaccines, also referred to as a global vaccine exemption, constituted an extreme departure from the standard of care because there is no common ingredient to all vaccines that would provide a contraindication or precaution to support an exemption from all vaccines. Additionally, Dr. Blumberg observed that while pursuant to the CDC and AAP guidelines, a specific contraindication might apply to an individual vaccine, or a precaution from a moderate or severe illness might justify a

temporary deferral of all immunization, neither situation was present in the instant case.

29. Dr. Blumberg also opined that respondent's provision of a permanent vaccine exemption for Patient 1 constituted an extreme departure from the standard of care because permanent exemptions are only appropriate when contraindications exist for specific vaccines and are not expected to be temporary. Contraindications might occur if an individual has a severe allergic reaction after a previous dose or to a vaccine component, or suffers from severe immunosuppression. Patient 1 did not have any condition that would justify a basis for a permanent exemption from immunizations.

30. Dr. Blumberg opined that respondent's issuance of a vaccine exemption to Patient 1 without an appropriate medical contraindication or precaution, made Patient 1 more vulnerable to preventable childhood diseases. Because immunizations are not 100 percent effective, respondent's conduct also posed a risk to other children who had been immunized, as well as children who are not immunized for legitimate reasons.

Patients 2 and 3

31. Dr. Blumberg opined that respondent's vaccination exemptions for Patients 2 and 3 also constituted an extreme departure from the standard of care. In forming his opinion, Dr. Blumberg noted that neither the CDC nor the AAP consider a family history of neuropsychiatric illnesses, nonspecific allergic illness, or vaccine reaction or injury as contraindications or precautions to routine immunizations. Dr. Blumberg also explained that a family history of illnesses that occurred at different times after a variety of vaccines does not establish that the vaccines caused the

illnesses, and is not recognized by the CDC or AAP as a contraindication or precaution to the administration of routine immunizations. For these reasons, Dr. Blumberg opined that the family history of medical conditions and vaccine injuries contained in respondent's medical records or included on the Medical Vaccination Exemption form did not provide an appropriate rationale for a vaccine exemption for Patients 2 or 3.

32. Dr. Blumberg also reviewed both patients' medical records from Kaiser and did not find any documentation that would support a contraindication or precaution to the administration of vaccinations. Patient 2 had previously received vaccinations and the medical records did not note any adverse effects from them.

33. Dr. Blumberg noted that Patient 3 suffered from eczema; this condition, however, is not caused by vaccines and does not provide a contraindication to receiving vaccinations. Dr. Blumberg also reviewed a gene variance report for Patient 3 that was obtained by his mother. He noted that using genetic tests as a basis to issue a vaccine exemption is far outside of mainstream medicine and is not supported by the CDC or AAP. Dr. Blumberg explained that although studies have been conducted to determine a possible connection between genetics and adverse reactions to vaccines, such a connection has not been scientifically demonstrated. Because genetic variances do not provide a contraindication to vaccinations, it is an extreme departure from the standard of care to exempt a child from vaccinations based on genetic variances.

Insofar as respondent's vaccine exemption was unsupported by factors that are recognized by the CDC or AAP as contraindications or precautions to the administration of vaccines, Dr. Blumberg concluded that respondent's issuance of a medical exemption for immunizations to Patients 2 and 3 was an extreme departure from the standard of care.

34. For the reasons outlined in Factual Finding 28 with respect to Patient 1, Dr. Blumberg opined that respondent's global vaccine exemptions for Patients 2 and 3 constituted an extreme departure from the standard of care.

35. For the reasons outlined in Factual Finding 29 with respect to Patient 1, Dr. Blumberg opined that respondent's permanent vaccine exemptions for Patients 2 and 3 constituted an extreme departure from the standard of care.

36. For the reasons outlined in Factual Finding 30 with respect to Patient 1, Dr. Blumberg opined that respondent's vaccine exemptions for Patients 2 and 3 posed a risk of harm to them and other children.

INADEQUATE AND INACCURATE MEDICAL RECORDS FOR PATIENTS 1, 2 AND 3

37. Dr. Blumberg observed that respondent's medical records for Patients 1, 2 and 3 were inadequate and inaccurate for several reasons. The Medical Vaccination Exemption forms he issued to Patients 1, 2 and 3, contained inaccuracies because the list of exempted vaccines is outdated. For example, respondent checked that the polio (OPV or IPV) vaccine was included in his exemption but the polio OPV is no longer given in the United States. Additionally, respondent exempted Patients 1, 2 and 3 from the human papilloma virus (HPV), the meningococcus and the influenza vaccines, but these vaccines are not required for school entry. Additionally, respondent's Medical Vaccination Exemption form exempted Patients 2 and 3 from the BDG (tuberculosis) vaccine, which is not required in school or routinely administered to children in the United States. The medical histories for Patients 1, 2 and 3 were also inadequate and incomplete because respondent failed to obtain their medical records from their primary care providers.

Respondent's Evidence

EDUCATION AND TRAINING

38. Respondent graduated from the University of Texas, Galveston, Medical School in 1969. He attended a one-year rotating internship at Minneapolis General Hospital and completed a three-year residency at the University of Texas, Galveston, in psychiatry and neurology.

MEDICAL PRACTICE

39. Respondent practiced psychiatry in the public mental health system in Denver before moving to California in 1976. Respondent practiced psychiatry in San Francisco and had privileges at a number of hospitals, including St. Francis and California Pacific Medical Center. After what he describes as 20 years of a "rip-roaring" practice, he transitioned to writing books and offering seminars, domestically and internationally, in order to help people improve their relationships.

40. In 1994, respondent also became interested in nutritional medicine, and wrote a book on this subject. In 2002, respondent opened an Anti-Aging Medical Clinic in Santa Rosa. Respondent is 77 years old. In January 2020, he largely retired from the practice of medicine. He explained that he still "does a little telemedicine" with about 18 patients. His patients call him about every nine months.

41. This is respondent's first disciplinary matter before the Board. Respondent has never been sued for malpractice.

RESPONDENT'S VIEWS REGARDING THE STANDARD OF CARE AND VACCINES

42. Respondent began providing medical exemptions from vaccinations after the personal belief exemption was eliminated in January 2016. He based these exemptions on his determination that vaccinations posed a risk of harm to his patients. He has declined requests for medical exemptions from vaccinations in cases where he did not believe that an exemption was appropriate.

43. Respondent was open and honest regarding his views regarding the standard of care and vaccines. Respondent is critical of what he referred to as the vaccine industry. He believes that the vaccine industry does not provide the public with all of the possible consequences of vaccines. He also believes that the vaccine industry has been relieved of responsibility for any "bad actions."

44. Respondent does not regard the standard of care as a "law"; therefore, he believes that he is not bound by it. Respondent views the standard of care as what the "mainstream medical community says." Respondent believes that his practice of issuing vaccine exemptions was justified and based upon his evaluation of the risk of vaccines to a particular patient, rather than the standards set by medical authorities such as the AAP or CDC. In particular, he believes that vaccines should not be given to individuals with gene variances or to individuals whose family history includes conditions that pose a risk of serious adverse consequences from vaccinations.

45. In his view, doctors who disagree with the AAP's and CDC's standards for issuing vaccine exemptions are "singled out." For this reason, respondent said that experts that he might have called to testify on his behalf did not want to become involved, for fear of being "shut down" by the Board.

46. Respondent no longer issues vaccine exemptions, but if he did, he stated that he would issue time-limited exemptions rather than permanent ones. Respondent, however, still favors issuing global exemptions to all vaccines because he believes that all vaccines contain toxic heavy metals.

EXEMPTIONS ISSUED TO PATIENTS 1, 2 AND 3

Patient 1

47. Patient 1's parents came from Fremont to respondent's office in Santa Rosa in order to obtain a vaccine exemption. Respondent provided a medical vaccine exemption to Patient 1 based on her family history of a variety of conditions. The conditions are listed in Factual Findings 16 and 17; the major reason for the exemption was the presence of autoimmune, respiratory and neuropsychological conditions. In discussing his concerns about Patient 1's family history, respondent explained that, in his view, autism correlates with vaccinations. He was aware that Patient 1 had a primary care physician, but he did not see a reason to contact that physician because Patient 1 did not have any health problems.

Patients 2 and 3

48. Respondent thought that the mother of Patients 2 and 3 had sole physical and legal custody of her sons. Had respondent known that this was not the case, he would have contacted the father and obtained his consent prior to providing the vaccine exemptions. Respondent also testified that the mother of Patients 2 and 3 told him that the father did not "have a problem" with vaccine exemptions.

49. According to respondent, the vaccine industry does not want to admit that the genetics of children may suggest a likelihood of developing certain conditions

from vaccines. Respondent explained that he issued vaccine exemptions to Patient 3 because of "genetics." In respondent's view, certain gene variances contained in the livewello report presented an increased risk of harm to Patient 3 from vaccines. He also stated that the family history of the mother of Patients 2 and 3 justified the vaccine exemptions. Respondent was aware that Patients 2 and 3 had a primary care physician, but he felt that the medical records that their mother provided to him were sufficient.

OTHER MATTERS

50. After the problem occurred with the father's lack of consent to the vaccine exemptions issued to Patients 2 and 3, respondent began requiring both parents to consent to vaccine exemptions.

51. At hearing, respondent was asked if he would do anything differently if he was presented with patients asking for vaccine exemptions today. Respondent stated that he would issue time-limited rather than permanent exemptions.

52. Respondent regards himself on being law-abiding and sincerely believes that he did not break any law in connection with Patients 1, 2 and 3. Respondent explained that if his practice included issuing vaccine exemptions today, he would follow the recently enacted statutory amendments pertaining to issuing medical exemptions from immunizations.[5]

[5] See Health and Safety Code sections 120372 and 120370.

Ultimate Findings

53. Dr. Blumberg's conclusions were persuasive; and because respondent did not present any expert testimony at hearing, they were also unrebutted. It is therefore found that based upon the matters set forth in Factual Findings 27 through 36, respondent committed acts of gross negligence and repeated negligence in connection with the vaccine exemptions he issued to Patients 1, 2 and 3. Additionally, it is found that based on the matters set forth in Factual Finding 37, respondent's medical records for these patients were inadequate and inaccurate.

54. Although the Accusation also alleges that respondent committed acts of incompetence in connection with the vaccine exemptions he issued to Patients 1, 2 and 3, Dr. Blumberg did not conclude, in his report or at hearing, that respondent's conduct constituted incompetence. As no expert opinion was presented to support the allegations of incompetence, no finding can be made that respondent was incompetent in connection with his provision of vaccine exemptions to Patients 1, 2 and 3.

LEGAL CONCLUSIONS

1. It is complainant's burden to demonstrate the truth of the allegations by "clear and convincing evidence to a reasonable certainty," and that the allegations constitute cause for discipline of respondent's Certificate. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

2. Business and Professions Code section 2227 authorizes the Board to take disciplinary action against licensees who have been found to have committed violations of the Medical Practice Act. Business and Professions Code section 2234,

included in the Medical Practice Act, provides that a licensee may be subject to discipline for committing unprofessional conduct, which includes conduct that is grossly negligent (Bus. & Prof. Code, § 2234, subd. (b)), repeatedly negligent (Bus. & Prof. Code, § 2234, subd. (c)), or incompetent (Bus. & Prof. Code, § 2234, subd. (d)). Pursuant to Business and Professions Code section 2266, a licensee's failure to maintain adequate and accurate records also constitutes unprofessional conduct.

First Cause for Discipline (Gross Negligence, Repeated Negligent Acts, and Incompetence Stemming from Issuance of Vaccine Exemption with Inappropriate Rationale)

3. An extreme departure from the standard of care constitutes gross negligence. (*Kearl v. Board of Medical Quality Assurance* (1986) 189 Cal.App.3d 1040, 1052.) By reason of the matters set forth in Factual Findings 27, 31 through 33 and 53, the evidence established that respondent engaged in conduct that was grossly negligent and repeatedly negligent when he issued vaccine exemptions to Patients 1, 2 and 3 without an appropriate medical rationale. Cause for license discipline therefore exists pursuant to Business and Professions Code sections 2227 and 2234, subdivisions (b) and (c).

4. The Accusation also alleges that respondent's conduct constituted incompetence pursuant to Business and Professions Code section 2234, subdivision (d). In *Kearl, supra,* 189 Cal.App.3d at pp. 1054-1055, the Court of Appeal explained the criteria for determining whether conduct constitutes incompetence in professional licensing matters:

> The term "incompetency" generally indicates "an absence of qualification, ability or fitness to perform a prescribed duty

> or function." (*Pollack v. Finder* (1978) 85 Cal.App.3d 833, 837.) Incompetency is distinguishable from negligence, in that one "may be competent or capable of performing a given duty but negligent in performing that duty." (*Id.* at p. 838.)

As no expert opinion was presented to support the allegations of incompetence, no finding can be made that respondent was incompetent in connection with his provision of vaccine exemptions to Patients 1, 2 and 3. (Factual Finding 54.) Accordingly, cause for license discipline based on incompetence does not exist pursuant to Business and Professions Code sections 2227 and 2234, subdivision (d).

Second Cause for Discipline (Gross Negligence, Repeated Negligent Acts, and Incompetence Stemming from Issuance of Global Vaccine Exemptions)

5. By reason of the matters set forth in Factual Findings 28, 34 and 53, the evidence established that respondent engaged in conduct that was grossly negligent and repeatedly negligent when he issued global vaccine exemptions to Patients 1, 2 and 3. Cause for license discipline therefore exists pursuant to Business and Professions Code sections 2227 and 2234, subdivisions (b) and (c).

6. By reason of the matters set forth in Legal Conclusion 4, cause for license discipline does not exist based on incompetence pursuant to Business and Professions Code sections 2227 and 2234, subdivision (d).

Third Cause for Discipline (Gross Negligence, Repeated Negligent Acts, and Incompetence Stemming from Issuance of Permanent Vaccine Exemptions)

7. By reason of the matters set forth in Factual Findings 29, 35 and 53, the evidence established that respondent engaged in conduct that was grossly negligent and repeatedly negligent when he issued permanent vaccine exemptions to Patients 1, 2 and 3. Cause for license discipline therefore exists pursuant to Business and Professions Code sections 2227 and 2234, subdivisions (b) and (c).

8. By reason of the matters set forth in Legal Conclusion 4, cause for license discipline does not exist based on incompetence pursuant to Business and Professions Code sections 2227 and 2234, subdivision (d).

Fourth Cause for Discipline (Inadequate and Inaccurate Records)

9. By reason of the matters set forth in Factual Findings 37 and 53, the evidence established that respondent failed to maintain adequate and accurate records in connection with his provision of vaccine exemptions to Patients 1, 2 and 3. Cause for license discipline therefore exists pursuant to Business and Professions Code section 2266, in conjunction with Business and Professions Code section 2234.

Disciplinary Determination

10. As cause for discipline has been established, the appropriate level of discipline must be determined. At the outset, it is noted that in exercising its disciplinary functions, protection of the public is the Board's paramount concern. (Bus. and Prof. Code, § 2229, subd. (a).) The Board's Manual of Disciplinary Orders and Disciplinary Guidelines (Disciplinary Guidelines) (12th ed., 2016) recommend, at a

minimum, stayed revocation and five years' probation, subject to appropriate terms and conditions, for respondent's misconduct under Business and Professions Code sections 2234 and 2266. The maximum discipline for each of these violations is revocation of his Certificate.

Respondent argues that the allegations against him should be dismissed because he acted in a manner that he believed was in the best interests of Patients 1, 2 and 3. Respondent's argument for dismissal lacks merit in that he has been found to have committed multiple acts of gross negligence and repeated acts of negligence in connection with inappropriately issuing vaccine exemptions to three patients.

Respondent also argues that he should be exempt from discipline pursuant to Business and Professions Code section 2234.1 because the treatment or advice he rendered to Patients 1, 2 and 3 involved "alternative or complementary medicine." Respondent's reliance on this statute is misplaced for several reasons. First, section 2234.1, subdivision (b), defines alternative or complementary medicine as

> those health care methods of diagnosis, treatment or healing that are not generally used but that provide a reasonable potential for therapeutic gain in a patient's medical condition that is not outweighed by the risk of the health care method.

Respondent's provision of vaccine exemptions to Patients 1, 2 and 3 does not fall within the purview of the statutory definition of alternative or complementary medicine because, as the testimony of Dr. Blumberg established, respondent's conduct placed his patients and the public at risk, and these risks outweighed any potential for therapeutic gain.

In a similar vein, Business and Professions Code section 2234.1, subdivision (a)(1), requires that "medical indication exists for the treatment or advice or it is provided for health and well-being." The expert testimony of Dr. Blumberg dispelled any claim that respondent's provision of vaccinations was medically indicated or that it supported the health and well-being of respondent's patients.

Last, physicians are excepted from discipline under Business and Professions Code section 2234.1 "*solely* on the basis that the treatment or advice that he or she rendered to a patient is alternative or complementary medicine" (emphasis added). Such is not the case here, because respondent is subject to discipline on the basis of his commission of gross negligence and repeated acts of negligence. As complainant aptly stated, this statute is not meant to be used as a "get out of jail free card" to respondents who would otherwise be subject to discipline for conduct that exposed their patients to a risk of harm.

In the instant case, respondent committed grossly negligent conduct in connection with the vaccine exemptions he issued to Patients 1, 2 and 3. Expert testimony established that the vaccine exemptions he issued were an extreme departure from the standards for vaccination practices and immunization recommendations promulgated by the CDC and AAP: the exemptions lacked an appropriate medical rationale, they applied to all vaccines, and they were permanent. Expert testimony also established that respondent's conduct created a risk of harm to Patients 1, 2 and 3 as well as other children.

Respondent is steadfast in his belief that his conduct was in the best interests of his patients. Respondent's belief that he is not bound by the standard of care and his refusal to align his conduct with it, is of great concern. Respondent's misconduct was egregious and was aggravated by his failure to respond to the request made by the

father of Patients 2 and 3 to withdraw the vaccine exemptions, and by respondent's failure to comply with the Board investigator's request to produce the medical records of Patients 2 and 3.

Although respondent's conduct posed a threat to the public safety, he credibly testified that he no longer issues medical exemptions for vaccines; and he agreed that if such a case arose again, he would comply with recently enacted laws pertaining to the issuance of medical exemptions from vaccinations. At age 77, respondent is largely retired. He has practiced medicine for over 45 years, and this is his first disciplinary matter before the Board.

Complainant suggests, and it is found, that the appropriate discipline in this matter is five years' probation on terms and conditions designed to protect the public. While respondent's conduct was extremely serious, given the fact that he is largely retired and is no longer issuing vaccine exemptions, it is unlikely to recur in the future. The fact that respondent has not received any prior discipline in his 45 years of practice was also considered in making this determination.

Accordingly, respondent's Certificate will be placed on probation for five years, subject to the terms and conditions set forth below. This Order is consistent with the Board's statutory obligation to fashion disciplinary orders that aid in the rehabilitation of the licensee while also protecting the public. (Bus. & Prof. Code, § 2229.)

ORDER

Physician's and Surgeon's Certificate No. C 36809, issued to respondent Ron Kennedy, M.D., is revoked; however, revocation is stayed, and respondent is placed on probation for five years under the following terms and conditions.

1. Clinical Competence Assessment Program

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a clinical competence assessment program approved in advance by the Board or its designee. Respondent shall successfully complete the program not later than six months after respondent's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The program shall consist of a comprehensive assessment of respondent's physical and mental health and the six general domains of clinical competence as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties pertaining to respondent's current or intended area of practice. The program shall take into account data obtained from the pre-assessment, self-report forms and interview, and the Decision, Accusation, and any other information that the Board or its designee deems relevant. The program shall require respondent's on-site participation for a minimum of three and no more than five days as determined by the program for the assessment and clinical education evaluation. Respondent shall pay all expenses associated with the clinical competence assessment program.

At the end of the evaluation, the program will submit a report to the Board or its designee which unequivocally states whether the respondent has demonstrated the ability to practice safely and independently. Based on respondent's performance on the clinical competence assessment, the program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, evaluation or treatment for any medical condition or psychological condition, or anything else affecting respondent's practice of medicine. Respondent shall comply with the program's recommendations.

Determination as to whether respondent successfully completed the clinical competence assessment program is solely within the program's jurisdiction.

If respondent fails to enroll, participate in, or successfully complete the clinical competence assessment program within the designated time period, 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 not resume the practice of medicine until enrollment or participation in the outstanding portions of the clinical competence assessment program have been completed. If respondent did not successfully complete the clinical competence assessment program, respondent shall not resume the practice of medicine until a final decision has been rendered on the accusation and/or a petition to revoke probation. The cessation of practice shall not apply to the reduction of the probationary time period.

2. 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. 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 Continuing Medical Education 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.

3. Monitoring – Practice

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 and Accusation, and a 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 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 shall submit a quarterly written report to the Board or its designee which includes an evaluation of respondent's performance, indicating whether respondent's practices are within the standards of practice of medicine 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 be assuming 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 equivalent to the one offered by the Physician Assessment and Clinical Education Program at the University of California, San Diego School of Medicine, 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.

4. Notification

Within seven days of the effective date of this Decision, respondent shall provide a true copy of this Decision and 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.

5. Supervision of Physician Assistants and Advanced Practice Nurses

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

6. 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.

7. 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.

8. General Probation Requirements

Compliance with Probation Unit: Respondent shall comply with the Board's probation unit and all terms and conditions of this Decision.

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(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 license.

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 30 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.

9. 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.

10. 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 in California 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; and Quarterly Declarations.

11. 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.

12. 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, or 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.

13. 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 certificate. 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.

14. 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: 03/02/2021

Diane Schneider

DIANE SCHNEIDER (Mar 2, 2021 15:53 PST)

Administrative Law Judge

Office of Administrative Hearings

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

In the Matter of the Accusation Against: **Ron Kennedy, M.D.** **2448 Guerneville Road, Suite 800** **Santa Rosa, CA 95403** **Physician's and Surgeon's Certificate No. C 36809,** Respondent.	Case No. 800 2017-030287 **ACCUSATION**

PARTIES

1. Christine J. Lally (Complainant) brings this Accusation solely in her official capacity as the Interim Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about October 24, 1975, the Medical Board issued Physician's and Surgeon's Certificate Number C 36809 to Ron Kennedy, 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 July 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 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

5. Section 2234 of the Code states, 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.

(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

(d) Incompetence.

6. Section 2266 of the Code states:

The failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct.

OTHER STATUTES

7. Health and Safety Code section 120325 provides:

In enacting this chapter, but excluding Section 120380, and in enacting Sections 120400, 120405, 120410, and 120415, it is the intent of the Legislature to provide:

(a) A means for the eventual achievement of total immunization of appropriate age groups against the following childhood diseases:

(1) Diphtheria.

(2) Hepatitis B.

(3) Haemophilus influenza type b.

(4) Measles.

(5) Mumps.

(6) Pertussis (whooping cough).

(7) Poliomyelitis.

(8) Rubella.

(9) Tetanus.

(10) Varicella (chickenpox).

(11) Any other disease deemed appropriate by the department, taking into consideration the recommendations of the Advisory Committee on Immunization Practices of the United States Department of Health and Human Services, the American Academy of Pediatrics, and the American Academy of Family Physicians.

(b) That the persons required to be immunized be allowed to obtain immunizations from whatever medical source they so desire, subject only to the condition that the immunization be performed in accordance with the regulations of the department and that a record of the immunization is made in accordance with the regulations.

(c) Exemptions from immunization for medical reasons.

(d) For the keeping of adequate records of immunization so that health departments, schools, and other institutions, parents or guardians, and the persons immunized will be able to ascertain that a child is fully or only partially immunized, and so that appropriate public agencies will be able to ascertain the immunization needs of groups of children in schools or other institutions.

(e) Incentives to public health authorities to design innovative and creative programs that will promote and achieve full and timely immunization of children.

8. At all relevant times, former Health and Safety Code section 120370 provided, in pertinent part:

(a) If the parent or guardian files with the governing authority a written statement by a licensed physician to the effect that the physical condition of the child is such, or medical circumstances relating to the child are such, that immunization is not considered safe, indicating the specific nature and probable duration of the medical condition or circumstances, including, but not limited to, family medical history, for which the physician does not recommend immunization, that child shall be exempt from the requirements of Chapter 1 (commencing with Section 120325, but excluding Section 120380) and Sections 120400, 120405, 120410, and 120415 to the extent indicated by the physician's statement.

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FACTUAL ALLEGATIONS

9. At all relevant times, Respondent Ron Kennedy, M.D., was a physician and surgeon providing medical care at his Anti-Aging Medical Clinic in Santa Rosa, California. Respondent is not a pediatrician and at all relevant times he was not the primary care physician for the three children discussed herein.

10. In 2015, the California Legislature amended Health and Safety Code section 120325 to eliminate personal beliefs as a basis for exemption from required immunizations for school-aged children. Consequently, school-aged children not subject to any other exception were required to have immunizations for 10 vaccine-preventable childhood illnesses as a condition of public school attendance. After the statutory amendment became effective, the Medical Board began receiving complaints from schools, primary care providers and parents that physicians were issuing medical exemptions from required vaccinations that did not appear to have a bona fide medical basis.

11. Beginning in 2016, Respondent began issuing medical exemptions from required vaccinations to school-aged children. In 2017, the Immunization Coordinator at the Sonoma County Department of Public Health Services reported receipt of multiple complaints from schools and preschools expressing concerns about permanent medical exemptions issued by Respondent.

12. On August 17, 2017, the Board received a complaint from a school nurse that Patient 1[1] presented a vaccine exemption from Respondent that did not appear to be valid. The complaint stated that Patient 1 was a female student entering the 7th Grade, who previously had a personal belief exemption and, after the personal belief exemption was eliminated, presented a permanent medical exemption from all required vaccinations issued by Respondent. The complaint stated that the child's school records did not contain any medical information that would support a vaccine exemption.

13. On June 24, 2019, pursuant to a court order, the Board obtained Respondent's records for Patient 1. Respondent's records stated that Patient 1 "has always enjoyed good health." He

[1] Patient names are redacted to protect privacy interests.

also documented that the child had previously been exempted from vaccines based on personal beliefs and that her parents, who opposed vaccinations, were consulting Respondent for the purpose of obtaining a medical exemption. Patient 1's personal history was negative for any condition that would contraindicate any vaccine. Respondent's review of systems was normal. Respondent's physical examination was within normal limits, with only mild myopia noted.

14. On the date of his evaluation, July 17, 2017, Respondent gave Patient 1 a "Medical Vaccine Exemption" that was permanent and applied to all vaccines. The basis for the vaccine exemption, as documented on the form and in Respondent's records, was a family history of obsessive compulsive disorder in mother, ADD in father, ADHD in brother, and depression and anorexia nervosa in sister; as well as a variety of other disorders in extended family. The exemption form, which was otherwise boilerplate, contained Respondent's handwritten annotation that the reason for the exemption was "autoimmune, respiratory, neuropsych illness in family."

15. On or about November 29, 2017, the Medical Board received a complaint from the father of Patients 2 and Patient 3; male children aged 3 years and 1 year of age. The children's parent complained that Respondent had provided the children with vaccine exemptions without his consent and without a bona fide medical reason. Pursuant to a court order, the Board obtained the children's pediatric records from their primary care provider at Kaiser Permanente. The pediatric records were significant for no documented allergies or medical problems that might be a precaution or contraindication to a specific vaccine. The children's father reported that prior to Respondent's issuance of vaccine exemptions the children had received some immunizations and did not have any adverse reactions.

16. On June 24, 2019, pursuant to court order, the Board obtained Respondent's records for Patients 2 and 3. Respondent's records for Patient 2 contain a history from the mother that Patient 2 was "sick" after previous vaccinations; however, the mother also apparently provided Patient 2's immunization record that indicated that the child had received vaccinations and had no significant medical problems. Respondent reported the physical examination of the child as normal. Nonetheless, he issued a vaccine exemption on September 26, 2017. According to his

medical records, the exemption issued based upon a maternal family history of a variety of events occurring after immunizations to her and to various relatives. The reasons stated for the exemption are indicated by checked boxes on the form for "neuropsychiatric illness, allergic illness, vaccine reaction or injury." The exemption is permanent and global, applying to all vaccines. Respondent's records for Patient 3 are similar in content and refer to Patient 3 as a "normal one year old child." Respondent also issued a permanent exemption from all vaccines for Patient 3.

17. On January 8, 2018, after the children's father demanded that he do so, Respondent rescinded his vaccine exemptions for Patients 2 and 3.

18. The Board obtained medical records for Patients 2 and 3 relating to their subsequent pediatric care. Both children ultimately received their scheduled vaccinations without event.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence/Repeated Negligent Acts/Incompetence)

(Inappropriate Rationale for Medical Exemption)

19. Respondent Ron Kennedy, M.D. is subject to disciplinary action under sections 2234 and/or 2234(b) and/or 2234(c) and/or 2234(d) in that Respondent engaged in unprofessional conduct, was grossly negligent and/or committed repeated acts of negligence and/or was incompetent in his care and treatment of Patients 1, 2 and 3. The circumstances are as follows:

20. Respondent based his vaccine exemptions on factors not considered contraindications or precautions by the guidelines issued by the Centers for Disease Control and Prevention or the American Academy of Pediatrics. In the case of Patient 1, Respondent relied upon a family history of autoimmune, respiratory and what respondent termed neuropsychiatric disorders. In the case of Patients 2 and 3, Respondent based his exemptions upon a family history of several illnesses occurring at variable times after a variety of vaccines, albeit such the history does not indicate that vaccines caused the illnesses. The standard of care for a primary care provider, consultant and specialist is to follow national standards for pediatric vaccination practices and immunization recommendations from the CDC, issued through the Advisory Committee on Immunization Practices, and the American Academy of Pediatrics, as summarized in The Red

Book. Neither a family history of disorders, such as that documented by Respondent for Patient 1, nor a family history of various illnesses at various times after a variety of vaccines, such as that documented by Respondent for Patients 2 and 3, constitute contraindications or precautions recognized by the CDC or AAP; hence Respondent's exemptions fall below the standard of care.

SECOND CAUSE FOR DISCIPLINE

(Gross Negligence/Repeated Negligent Acts/Incompetence)

(Global Vaccine Exemptions)

21. Respondent Ron Kennedy, M.D. is subject to disciplinary action under sections 2234 and/or 2234(b) and/or 2234(c) and/or 2234(d) in that Respondent engaged in unprofessional conduct, was grossly negligent and/or committed repeated acts of negligence and/or was incompetent in his care and treatment of Patients 1, 2 and 3. The circumstances are as follows:

22. Respondent issued exemptions to all vaccines. There is no ingredient common to all vaccines. There are some specific contraindications apply to individual vaccines and some precautions, such as an acute illness, might require temporary deferral of immunization until the illness has resolved. Patients 1, 2 and 3, as documented in Respondent's records, did not have any contraindication or precaution, as defined by the CDC and AAP that would exempt them from any recommended vaccine. Providing an exemption to all vaccines falls below the standard of care.

THIRD CAUSE FOR DISCIPLINE

(Gross Negligence/Repeated Negligent Acts/Incompetence)

(Permanent Vaccine Exemptions)

23. Respondent Ron Kennedy, M.D. is subject to disciplinary action under sections 2234 and/or 2234(b) and/or 2234(c) and/or 2234(d) in that Respondent engaged in unprofessional conduct, was grossly negligent and/or committed repeated acts of negligence and/or was incompetent in his care and treatment of Patients 1, 2 and 3. The circumstances are as follows:

24. Respondent issued exemptions that were permanent in duration. Permanent exemptions to specific vaccines are appropriate when contraindications are present and not expected to be temporary, for example a severe allergic reaction, e.g. anaphylaxis, after a

previous dose or to a vaccine component, or severe immunosuppression and live vaccines. As stated above, a temporary condition, such as an acute illness, might be a precaution until the illness resolved. Patients 1, 2 and 3, as documented in Respondent's records, did not have any events or conditions recognized by the CDC or AAP as a medical basis for a permanent exemption from immunizations. Providing a permanent exemption falls below the standard of care.

FOURTH CAUSE FOR DISCIPLINE

(Inadequate and Inaccurate Records)

25. Respondent Ron Kennedy, M.D. is subject to disciplinary action under section 2266 in that he failed to maintain adequate and accurate records. As set forth above, Respondent's records fail to document a medical indication for the vaccine exemptions that he issued. Histories inadequately documented and objective findings do not support the plan for vaccine exemptions. Respondent failed to obtain prior medical records from the children's treating pediatricians. His exemptions are boilerplate, list multiple conditions without specification and exempt the children even from vaccines no longer routinely used.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number C 36809, issued to Ron Kennedy, M.D.;

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

3. Ordering Ron Kennedy, 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: JAN 2 9 2020

CHRISTINE J. LALLY
Interim Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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