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

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| In the Matter of the First Amended Accusation Against:<br><br>Robert Lamar Bjork, Jr., M.D.<br><br>Physician's & Surgeon's Certificate No. A 39787<br><br>Respondent. | Case No. 800-2022-092807 |

## 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 SEP 0 6 2024.

IT IS SO ORDERED: AUG 0 9 2024.

MEDICAL BOARD OF CALIFORNIA

Michelle Bholat, M.D., Interim Chair
Panel A

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

## In the Matter of the First Amended Accusation Against:

## ROBERT LAMAR BJORK, JR., M.D., Respondent

## Physician's and Surgeon's Certificate No. A 39787

## Case No. 800-2022-092807

## OAH No. 2023080592

## PROPOSED DECISION

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter by videoconference on May 28 through May 30, 2024.

Jason J. Ahn, Deputy Attorney General, represented complainant, Reji Varghese, Executive Director of the Medical Board of California (Board), Department of Consumer Affairs, State of California.

David Rosenberg and Nicolas J. Petruolo, Attorneys at Law, Rosenberg, Shpall, & Zeigen, represented respondent Robert Lamar Bjork, Jr., M.D., who was present throughout the hearing.

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on May 30, 2024.

## SUMMARY

Complainant proved by clear and convincing evidence that respondent committed gross negligence, repeated negligent acts, and engaged in unprofessional conduct when he issued immunization exemptions for five children without adequate reasons for doing so, and also issued overly broad lists of vaccine exemptions for four of these patients. After considering the evidence of record as a whole, including mitigating evidence, a two-year period of probation with the requirements that respondent be prohibited from issuing immunization exemptions, complete education courses to correct deficiencies in his practice, and comply with standard terms and conditions, would serve the interest of public protection.

## PROTECTIVE ORDER

A protective order has been issued on complainant's motion sealing Exhibits F and M. A reviewing court, parties to this matter, and a government agency decision maker or designee under Government Code section 11517 may review materials subject to the protective order provided that this material is protected from disclosure to the public. The names of patients in this matter are subject to a protective sealing order. No court reporter or transcription service shall transcribe the actual name of the patients.

## FACTUAL FINDINGS

### Jurisdictional Matters

1. On May 2, 1983, the Board issued Physician's and Surgeon's Certificate Number A 39787 to respondent. The certificate is set to expire on August 31, 2024, unless renewed. Respondent has no prior history of discipline.

2. On May 17, 2024, complainant filed the first amended accusation seeking revocation or suspension of respondent's certificate based upon three causes for discipline. Each cause for discipline concerns respondent's issuance of medical exemptions for vaccinations for five minor patients, namely: (1) gross negligence for his care and treatment of Patients A, B, C, D, and E; (2) repeated negligent acts for his care and treatment of Patients A, B, C, D, and E; and (3) general unprofessional conduct. Complainant also seeks recovery of investigation and enforcement costs.

3. Respondent timely filed a notice of defense to the accusation initially filed and served in this matter, and this hearing followed.

### The Medical Exemption from Immunization Process

4. As of January 1, 2016, personal belief exemptions from immunizations based on the personal beliefs of the parents or individuals are no longer accepted in the State of California. (Health and Saf. Code, § 120335, subds. (b) and (g)(3) ("SB 277"); see discussion of Assembly Committee on Health report relating to the legislative history of SB 277 in *Brown v. Smith* (2018) 24 Cal.App.5th 1135, at 1139.) In California, a licensed physician in a written statement may request immunization exemptions. Such exemptions identify whether: (1) the patient has a physical condition or medical circumstance such that the required immunization is not indicated; (2) which

vaccines are exempted; (3) whether the exemption is permanent or temporary, and expiration date if temporary. (Health and Saf. Code, § 120372, subd. (a)(2).)

5. Effective January 1, 2021, any medical exemptions from immunization (exemptions) for entry to schools and childcare facilities must be issued pursuant to the California Immunization Registry Medical Exemption (CAIR-ME) website, which the California Department of Public Health (CDPH) administers. (Health and Saf. Code, § 120372, subd. (a)(1).)

6. According to the CAIR-ME website, "Medical exemptions can only be issued by MDs or DOs licensed in California and must meet applicable Centers for Disease Control and Prevention (CDC), Advisory Committee on Immunization Practices (ACIP), and American Academy of Pediatrics (AAP) criteria."[1]

7. CDPH is required to review exemptions in CAIR-ME when:

- A school's or child care facility's immunization rate falls below 95 percent or
- A school or child care facility fails to provide reports of vaccination rates to CDPH or
- A doctor writes five or more medical exemptions per year beginning January 1, 2020.

8. The CDPH may also review a medical exemption if CDPH determines it is necessary to protect public health. CDPH may revoke a medical exemption for

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[1] <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/School/laws-exemptions.aspx (as of June 20, 2024)>

immunization where the exemption does not meet applicable CDC, ACIP, and AAP criteria or the standard of medical care. (Health and Saf. Code, § 120732, subd. (d)(3)(A) and (C).)

9. As referenced in this decision, respondent issued exemptions for these vaccines: diphtheria, tetanus, and acellular pertussis (DTab); hepatitis B (HepB); haemophilus influenzae type B (Hib); poliovirus (inactivated) (IPV); measles, mumps, and rubella (MMR); tetanus, diphtheria, and acellular pertussis (Tdap); rotavirus; and varicella (VAR).

## Evidence and Expert Testimony

10. Dean A. Blumberg, M.D., and Robert Hamilton, M.D., testified as complainant's and respondent's expert witnesses, respectively. Both experts submitted reports which were received as evidence. The evidence they reviewed consisted of patient medical records, the exemption requests respondent submitted on behalf of the patients, records from CDPH regarding the exemption requests, and the transcript of respondent's interview with the Board. The following factual findings are based on the testimony of those two witnesses, as well as related documentary evidence.

### TESTIMONY OF DEAN A. BLUMBERG M.D.

11. Dr. Blumberg has been board certified in pediatrics since 1989 and in pediatric infectious diseases since 1994. He received his medical education at Chicago Medical School and completed an internship and residency at Massachusetts General Hospital in Boston from 1984 to 1987, and a fellowship in Pediatric Infectious Diseases at the University of California, Los Angeles in 1990. Since 1996, he has held the position of Professor of Pediatrics, Division of Pediatric Infectious Diseases, at the University of California (UC) Davis, Children's Hospital. Since 2008, he has served as

Chief of the Division of Pediatric Infectious Diseases. Additionally, he is Chair of the Infectious Control Committee at Shriner's Hospital for Children in Northern California since 1997, and Chair of the Infection Prevention Advisory Council at Shriner's, a position he has held since 2000. Previously, Dr. Blumberg held academic appointments in pediatric medicine at UCLA School of Medicine's Division of Infectious Diseases. He is a member of numerous societies in the field of Pediatric Infectious Diseases. Dr. Blumberg is the recipient of numerous honors and awards.

12. Dr. Blumberg spends 30 percent of his time doing clinical work and is on call 30 percent of his time, which includes being on call at UC Davis and at Shriner's. The rest of his time is spent teaching. He has been a specialist for 34 years and never practiced general pediatric medicine. Dr. Blumberg typically does not vaccinate patients. He said general pediatricians should administer vaccines in their "medical home."

13. Dr. Blumberg has testified before the California Senate and Assembly regarding immunization exemptions, specifically SB 277. This legislation eliminated the good faith belief basis for immunization exemption vaccines. He also testified regarding other areas relating to vaccines.

14. Dr. Blumberg is the author of 51 peer reviewed articles in the field of vaccines and infectious diseases, and he has served as an outside reviewer for numerous medical journals.

15. Dr. Blumberg was tasked by the Board to review respondent's issuance of the medical exemptions from immunization for patients A, B, C, and D, and E, and determine whether respondent deviated from any standard of care, and the degree of any departure.

16. Dr. Blumberg in his report identifies the applicable standard of care as follows:

> Primary care providers and specialists follow national standards for pediatric vaccination practices and immunization recommendations from the Centers for Disease Control and Prevention issued through the Advisory Committee on Immunization Practices [ACIP] in concert with several professional medical organizations. In addition, the American Academy of Pediatrics [AAP] summarizes immunization recommendations in The Red Book. Contraindications (conditions in a recipient that increases the risk for a serious adverse reaction) and precautions (which may be relative) are conditions under which medical exemptions are appropriate.

17. Dr. Blumberg testified that the bases of his opinions regarding the standard of care are these authoritative sources developed by ACIP, AAP, and the CDC.

18. Dr. Blumberg further testified that he is familiar with the standard of care through teaching, attending medical conferences, taking continuing medical education courses, reading peer reviewed articles and journals and standard references relating to what is routinely expected in certain circumstances. He applied the standard of care applicable in 2021. Dr. Blumberg is familiar with the definitions of negligence and gross negligence.

19. Dr. Blumberg explained that the ACIP and AAP "Red Book" represent the consensus opinions of experts that have evolved over the years, and they represent

the standard of care. It is important as a matter of public health and safety to rely on this consensus instead of a doctor's personal opinions, for a doctor to issue an exemption only for valid medical reasons. Unless there are medical reasons for requested exemptions, doctors should not issue exemptions for a "pet theory" they have, as this would make schools less safe for children and staff. The goal, he stressed, was to make sure schools are safe for everyone attending them.

Dr. Blumberg stated there are specific contraindications and precautions that apply to individual vaccines. There are some precautions that are common to all vaccines, for example moderate or severe acute illness; this precaution would be temporary, resulting in deferral of immunization.

## Patient A

20. Patient A was a 12-year-old boy when he saw respondent on June 15, 2021. According to his medical records, Patient A's immunizations were up to date except for Tdap. The record documents Patient A was "under-immunized." No reactions to the Tdap vaccine, or other vaccines, are noted in the records. The physical examination was normal. Respondent assessed Patient A as a healthy pre-teen with good grades.

21. On June 17, 2021, respondent signed an immunization exemption letter for Patient A. He identified these reasons for his request:

> strong family history of autoimmune conditions, and the mother had a severe reaction to a flu shot approximately December 2014, that triggered pain, fatigue and headaches lasting several weeks. Maternal grandmother: Early-onset Multiple sclerosis; Maternal Aunt: Severe Systemic Lupus

Erythematosus; Severe shingles in father, aunt, and paternal grandmother.

The vaccine exemption was for DTaP, Hepatitis B, Hib, IPV, MMR, Tdap, and Var/VZV. The exemption request, he noted, was permanent. However, respondent said at his March 15, 2023, Board interview that he meant to issue a temporary exemption just for the Tdap vaccine. As discussed in more detail below, he had trouble navigating the CAIR-ME website. CDPH denied the revocation, and Patient A appealed.[2]

22. Dr. Blumberg stated that respondent departed from the standard of care in two respects: First, with respect to the issue of Tdap temporary exemption, and second, with respect to respondent's mistaken issuance of a permanent exemption for all vaccines.

23. Dr. Blumberg found the reasons for the temporary exemption based on the claimed family history as "unsupported," without a medical reason. He testified that the emphasis for an exemption needs to be on a medical reason; a parent's desire for an exemption is not a medical reason. Dr. Blumberg concluded that the departure was extreme because there was no medical reason for the requested exemption.

24. Dr. Blumberg further found the request for a permanent exemption for all vaccines to be a simple departure from the standard of care with respect to this patient. In reaching his conclusion, Dr. Blumberg stressed there is no common

[2] Patients A, D and E appealed CDPH's revocation of the exemptions. None of the appeals were granted.

"ingredient" among the different vaccines to warrant as a medical reason an exemption for all vaccines, let alone a permanent exemption.

25. Dr. Blumberg disagreed with Dr. Hamilton's opinion that there was no departure from the standard of care. Dr. Hamilton wrote in his report that a physician needs "a reason(s) for the request and that he/she [the physician] demonstrates that they listen to, evaluate the concerns of the requesting families, and educate them as to the value vaccines are to their child. The intention of the physician must be considered when judging these situations." Dr. Blumberg disagreed with Dr. Hamilton's opinion because respondent did not articulate a "medical reason" for the requested exemption within the standard of care articulated in the ACIP "Red Book." Respondent's "intention" is not an appropriate factor to assess whether respondent met this standard of care. Dr. Blumberg recognized, however, respondent's "commendable goal of being empathetic" as a matter of general medical practice. He repeated that the standard of care is to have a medical reason for issuing an exemption. And without this medical reason for an exemption, a child can't go to public school.

26. Dr. Blumberg also addressed respondent's assertion, as he argued in his hearing testimony and in closing, that respondent had a basis to request the exemption based on Health and Safety Code section 120372, subdivision (d)(3)(B). This subdivision identifies family history as a possible basis for the issuance of an exemption. This section was much discussed during the hearing and is quoted in full here:

> (B) Notwithstanding subparagraph (A), the department, based on the medical discretion of the clinically trained immunization staff member, may accept a medical exemption that is based on other contraindications or

precautions, including consideration of family medical history, if the issuing physician and surgeon provides written documentation to support the medical exemption that is consistent with the relevant standard of care.

27. Dr. Blumberg dismissed respondent's assertion that this section authorized respondent to issue the exemption for Patient A based on his unsupported reference to Patient A's family history. Dr. Blumberg stressed the statutory language, "consistent with the relevant standard of care" contradicts respondent's argument. As he explained, family history would not justify a medical exemption inconsistent with the standard of care.

## Patient B

28. On August 25, 2022, Patient B, a four-year-old girl at the time, saw respondent for a routine health check. The medical records identify a family history of only one DTaP vaccination. The medical record provides that Patient B had a family history of bipolar disorder, type II diabetes, psoriasis, anxiety, depression, post-traumatic stress disorder (PTSD), autoimmune alopecia areata, asthma, multiple allergies, food sensitivities, leaky gut, eczema, Alzheimer's dementia, cancer of intestines, colon cancer, Attention Deficit/hyperactivity Disorder (ADHD), possible seizures, and pervasive developmental disorder (PDD).

29. Respondent signed an immunization exemption letter on August 26, 2022, due to "[f]amily history of multiple disabling disease. Family history of disabling conditions with autoimmune disorder (uncle), pervasive development disorder 18 (half-sister), seizure disorder (sister) and possible ADHD (sister)." The exemption was for DTaP, Hepatitis B, Hib, IPV, MMR, Tdap, and Var/VZV. The exemption was

temporary, expiring on August 24, 2023. Respondent attached a handwritten list of Patient B's family's medical history. This exemption was through August 24, 2023. CDPH revoked the exemption.

30. Dr. Blumberg cited respondent's explanation for the exemption at his Board interview that he issued the exemption because Patient B's parents did not want Patient B to have any vaccines, and they wanted the exemption so that Patient B could attend school.

31. For the same reasons he identified above, Dr. Blumberg testified that respondent committed an extreme departure from the standard of care. None of the reasons respondent articulated in his exemption request were valid medical reasons for an exemption consistent with the ACIP and AAP. Respondent sought the exemption because Patient B's parents wanted the exemption so she could attend public school.

32. Dr. Blumberg noted that Patient B's parents believed there was an association between PDD and vaccines, and they wanted the exemption accordingly. An exemption cannot be based on the parents' personal beliefs. He recognized that the parents were scared, but there was no medical reason for the exemption request.

Dr. Blumberg stressed there is no association between a PDD, such as autism spectrum disorder, and vaccines. He quoted this statement from ACIP's Red Book in this regard:

> These claims [regarding the association between vaccines and PDDs] are false. Multiple, high-quality scientific studies have failed to substantiate any link between vaccines and

these (autism, immune function, and other poorly understood health conditions) health conditions.

(General Recommendations on Immunization: Recommendations of the Advisory Committee on Immunization Practices [The Red Book], "Discussing Vaccines with Patients," Table 1.4 Common Misconceptions/Myths about Vaccines, January 28, 2011, page 152.)

33. Dr. Blumberg further found an extreme departure because he requested an overly broad exemption for all vaccines. As he stated with respect to Patient A, there is no ingredient common to all vaccines that would serve as a contraindication. He characterized the departure as extreme.

## Patient C

34. On August 25, 2022, Patient C, who was a then five-year-old girl, saw respondent for a routine health check with possible ADHD. Her records document that Patient C has excellent growth and development, she was found to have otitis media (a middle ear infection), and respondent notes she had a negative electroencephalogram (EEG). The record documents a possible seizure disorder and "Petit-mal syndrome as an infant."

35. Patient C's record also includes a family history of bipolar, diabetes type 2, psoriasis, anxiety, depression, PTSD, autoimmune alopecia areata, asthma, multiple allergies and food sensitivities, leaky gut, eczema, Alzheimer's, dementia, cancer of intestines, colon cancer, ADHD, possible seizures, and PDD.

36. Respondent signed and submitted an exemption on August 26, 2022, due to "Encephalopathy, Possible seizure disorder, focal seizures, family history of

auto-immune disorder (uncle), sibling with pervasive developmental disorder of unknown cause, symptoms of attention deficit disorder and hyperactivity." The exemption was for the DTaP vaccination, expiring on August 24, 2023. CDPH revoked the exemption.

37. Respondent signed a second exemption request on August 29, 2022, due to "Seizures and family history of disabling diseases. Seizure disorder, family of Pervasive development disorder, and autoimmune disease." The exemption was for Hepatitis B, Hib, IPV, MMR, Tdap, and Var/ VZV, expiring on August 24, 2023. This exemption was also revoked.

38. Dr. Blumberg referenced respondent's statement at his board interview for the exemption. Respondent said that Patient C's parents did not want her to have any vaccines based on their belief that that vaccines may be linked to a PDD. They believed that Patient C's half-sister developed a PDD after being vaccinated. Patient C's parents based their belief, per respondent, on "articles" they read, along with other information they encountered. Patient C's parents wanted the exemption so she may attend school without being vaccinated.

39. For the same reasons he articulated with regard to his opinions for respondent's departure from the standard of care with respect to the requested exemptions for Patients A and B, Dr. Blumberg stated that respondent departed from the standard of care for the issuance of the exemption for Patient C. He found the departure to be extreme. Respondent did not cite a medical reason for the exemption and based the exemption request on Patient C's parents' belief in an unsubstantiated association between a PDD and vaccines.

40. Dr. Blumberg testified that seizures may be a contraindication, but Patient C had a reported remote in time seizure when she was six months old, this seizure is not documented, and no *current* medical reason or contraindication warranted the exemption request. If a seizure is a matter of concern, and if a child had an uncontrolled seizure, the child should be referred to a neurologist. He stated that it was unlikely Patient C had encephalopathy and a seizure disorder because they are generally considered serious medical conditions for which most parents would seek immediate medical care, and the child would need to be referred to neurologist. There is no record this occurred with respect to Patient C.

At any rate, even if there was a documented seizure, a global exemption for all vaccines was not appropriate because there were vaccines Patient C could have received.

41. Dr. Blumberg characterized the departure as extreme because there was no medical reason for the exemption request, even with the reported history of a remote seizure.

42. Dr. Blumberg identified the next issue as an exemption for all vaccines. As he previously stated, each vaccine is different; there is no common ingredient for all vaccines that would serve as a contraindication warranting an exemption request for all vaccines for Patient C being given to the child, unless the child was acutely ill. There was no evidence Patient C was acutely ill. He found an extreme departure on this issue.

43. Dr. Blumberg disagreed with Dr. Hamilton's opinion that there was no departure based on the parents' belief the child had a seizure after being administered the vaccines. Dr. Hamilton believed respondent did not depart from the standard of care because he was trying to work with the parents to get Patient C vaccinated based

on their belief the child had a seizure disorder. Dr. Blumberg reiterated that the parents' belief does constitute a medical reason for a vaccine exemption. Dr. Blumberg said that respondent can maintain a medical relationship with Patient C and continue to work with them towards the goal of having Patient C vaccinated. But he noted school attendance requires that an exemption be for medical reasons.

### Patient D

44. Patient D saw respondent on August 8, 2022, for a routine health check. At the time he was five years old. Patient D's records include his immunization record documenting two doses each of DTaP-IPV/Hib, HepB, PCV, and rotavirus pentavalent. Respondent's parents declined further vaccinations at this visit.

45. Patient D's parents were concerned he was developmentally delayed and had attention deficit disorder (ADD). Respondent's plan was for a full assessment of Patient D with a possible evaluation by an occupational therapist and completion of an ADD questionnaire. His plan was also to issue an exemption. His note records that Patient D should be evaluated for learning disabilities and an Individualized Education Plan (IEP). An IEP is developed for children in public schools who have developmental delays or are at risk of developmental delays. The record notes that respondent discussed vaccines at length with Patient D's parents.

46. On August 12, 2022, respondent signed an immunization exemption letter for Patient D, due to "Encephalopathy. Developmental delay, autism spectrum disorder, attention deficit disorder." The exemption was for DTaP vaccination and expired on August 10, 2023. CDPH revoked the exemption.

47. Patient D returned to see respondent on September 22, 2022, for a consultation regarding Patient D's developmental delay. A normal physical

examination was noted. The plan was to obtain an ADHD questionnaire and an IEP. The record documents that Patient D's abnormal behavior started on the day of his six-month vaccines, and he required an exemption from vaccines.

48. Respondent signed an additional exemption letter on September 23, 2022, due to:

> Adverse reaction to vaccines. Irritability after 4 month vaccines, but after 6 months vaccines, started "head-banging" on the way home, and completely changed personality to become "whiney, distant, reduced eye contact, and has had delayed development ever since. He is still very challenged for speech and social development and is scheduled for an ADI-ID evaluation and an IEP at school. He is in a very delicate condition, and cannot afford to take any risk of further arresting his development with another reaction to vaccines at this time.

The exemption was for DTaP, Hepatitis B, I-lib, IPV, MMR, Tdap, Var/VZV vaccinations. The exemption was temporary, expiring on September 22, 2023. CDPH revoked the exemption. Patient D appealed the revocation.

Respondent included in Patient D's record a letter from Patient D's parent dated September 28, 2022, appealing CDPH's revocation of the exemption. In her letter, Patient D's parent states that Patient D experienced "adverse reactions to his four month vaccines and then an extremely severe reaction to his six month vaccines." She notes further he had increased crying after the four-month vaccines and was diagnosed with colic, he had decreased lower extremity activity, less verbal sounds,

and appeared less engaged. The day after the six-month vaccines, he began hitting his head. This resolved after several months.

49. Dr. Blumberg cited respondent's explanation for the exemption at his Board interview that he issued the exemption because the mother believed that the immunizations Patient D received in 2015 and 2016 caused autism, and that she would like to enroll him in school without receiving immunizations.

50. Dr. Blumberg found that respondent departed from the standard of care with respect to the immunization request for Patient D, and he found the departure to be extreme. He stated none of the reasons respondent cited for the exemption request justified the request. As previously noted, the concern for the relationship between autoimmune disorders and vaccines is a "false" reason to claim an exemption. He commented that Patient B's "headbanging" at four or six months after he received vaccines is not a medical reason, and no diagnosis was given to associate the headbanging with autism. Even with this history, as Patient D's parent recalled it, the headbanging at that age does not constitute a medical reason, or contraindication, per the CDC or AAP to not immunize a child.

51. Dr. Blumberg further found an extreme departure because he requested an overly broad exemption for all vaccines and as noted with respect to Patient A, there is no ingredient common to all vaccines that would serve as a contraindication.

52. Dr. Blumberg said in addition that, even if one were to credit Patient D's parents' belief, no one ingredient is common to all vaccines that would justify an exemption for all vaccines.

53. Dr. Blumberg again addressed Dr. Hamilton's opinion that respondent's exemption request was justified because respondent was trying to provide a medical

home for Patient D. He disagreed with Dr. Hamilton on this. Even without the exemption request, respondent could have been a medical home for Patient D and continued to provide care to him.

### Patient E

54. On August 17, 2022, Patient E, who was a 17-year-old girl at the time, saw respondent for a routine checkup with chronic fatigue. Her record documents a family history of autoimmune disease, systemic sclerosis, hypothyroid, celiac disease, diabetes, and Raynaud's syndrome.

55. Respondent signed an immunization exemption request for Patient E on August 18, 2022. As the basis for his request, he cited "High risk of autoimmune disease caused by vaccines. Extensive family history of severe autoimmune disease, such as hypothyroidism, systemic sclerosis, type 1 diabetes, CREST syndrome." The exemption was for DTaP, Hepatitis B, IPV, MMR, Tdap, and Var/ VZV, and expired on August 16, 2023. CDPH revoked the exemption. Patient E appealed the revocation.

56. On January 9, 2023, Patient E received "catch-up" immunization for the Tdap, IPV, Hepatitis B, MMR, and VAR vaccines, with no severe reactions noted. On February 13, 2023, Patient E received catch-up immunizations for the Tdap, IPV, Hepatitis B, VAR, and MMR vaccines, again with no severe reactions noted.

57. Dr. Blumberg cited respondent's explanation at his Board interview that he issued the vaccination exemptions because Patient E's parents wanted Patient E to attend school without being immunized due to concerns that vaccines may cause developmental delay, encephalopathy, and autoimmune diseases.

58. Dr. Blumberg found that respondent departed from the standard of care in issuing the exemption because none of the reasons respondent cited for the request were valid medical reasons. Patient E's parents wanted the exemption based on their personal belief, and this was not a medical reason. He found the departure to be extreme.

59. In addition, Dr. Blumberg found an extreme departure because respondent requested an overly broad exemption for all vaccines and as noted with respect to all the patients, he repeated that there is no ingredient common to all vaccines that would serve as a contraindication.

60. Dr. Blumberg disagreed with Dr. Hamilton's conclusion that there was no departure for respondent's exemption request for Patient E. Dr. Hamilton stated that the risk of not being in school outweighed her parents' belief that there "may" be, as Dr. Hamilton wrote, a causal relationship between vaccines and autoimmune diseases. Dr. Blumberg repeated there is no link between autoimmune diseases and vaccines based on millions of students having received vaccines. It is thus false to attribute such a relationship. He further disagreed with Dr. Hamilton that an exemption should be made so a child can go to school. Patient E's parents' decision to not have her child immunized was their parental decision, and not a medical decision.

At the same time, Dr. Blumberg recognized that respondent's goal to give Patient E a "medical home" was laudable. He also acknowledged that Patient E received "catch up" vaccinations, and was up to date on her vaccines by February 13, 2023.

## TESTIMONY OF ROBERT HAMILTON, M.D.

61. Dr. Hamilton has practiced pediatric medicine since 1984, and founded his own practice, Pacific Ocean Pediatrics, in 1996. Dr. Hamilton served as Chief Resident in the Pediatric Department at UCLA from 1983 to 1984. Dr. Hamilton is board certified in pediatrics.

Dr. Hamilton reviewed, as he documents in his report, the following materials: Discovery, AGO 001 to 502, the transcript and audio of respondent's Board interview, Dr. Blumberg's report, and respondent's curriculum vitae.

62. In his report, Dr. Hamiton identifies the standard of care as follows:

> The Standard of Care for issuing an Immunization Exemption is for the physician issuing the exemption to have a reason(s) for the request and that he/she demonstrates that they listen to, evaluate the concerns of requesting families, and educate them as to the value vaccines are to their child. The intention of the physician must be considered when judging these situations.

63. Regarding this standard of care, Dr. Hamilton offers this comment:

> Standard of Care also recognizes nuance when dealing with families who are choosing not to vaccinate their children. More recently, there are more and more families in the community who are strongly opposed to vaccines for various, often incorrect, reasons. These present difficult situations for physicians and require that they establish and

gain trust with these families so that the process of education can occur. This process takes time. The issuance of a temporary Immunization Exemption can represent one facet of the physician's strategy in dealing with such a family.

Finaly, the CAIR-ME website, established in 2021, for first-time users can be confusing and errors of inputting the Immunization Exemption should be understood.

64. Dr. Hamilton, in his report, does not state he disagrees with the standard of care Dr. Blumberg identifies in his report. Nonetheless, at the hearing respondent sought to elicit testimony from Dr. Hamilton whether he agreed with Dr. Blumberg's definition of the standard of care. Complainant objected to this line of questioning as a disclosure violation under Business and Professions Code section 2334, subdivision (a)(2)(A). This section required Dr. Hamilton's expert report to contain "a complete statement of all opinions" Dr. Hamilton would express at the hearing, "and the bases and reasons for each opinion." (Bus. & Prof. Code, 2334, subd. (a)(2)(A).) Dr. Hamilton in his report did not state he disagrees with the standard of care articulated by Dr. Blumberg. Complainant's motion was sustained, and Dr. Hamilton was not permitted to testify regarding any disagreement with Dr. Blumberg's definition.

65. As a preliminary matter, Dr. Hamilton emphasized he recognizes the importance as a public safety matter of vaccines. By rough count, he has administered thousands of vaccines over the years. He recognizes concerns, however, that parents have regarding the safety of vaccines. He described the question of the safety of vaccines as a gray area, and not a black and white issue, that requires a nuanced approach in terms of dealing with parents who do not want their children vaccinated.

He explained that he has seen in his own practice an increase in the number of parents who don't want their children vaccinated. The task, as he put it, is to try to encourage "anti-vax" parents to have their children vaccinated, and this may require issuance of temporary exemptions.

66. Regarding each of the patients at issue, Dr. Hamilton stressed that respondent was faced with difficult situations, and respondent appropriately exercised this nuanced approach with his goal to work with the families to have the children vaccinated.

67. Based on his review of respondent's Board interview, Dr. Hamilton stressed that respondent is not an "anti-vax" physician but is, in fact, a strong proponent of vaccines. Respondent, he noted, has a 95 percent vaccination rate in his practice, which is the similar rate Dr. Hamilton has in his practice. Dr. Hamilton said that respondent did not want to abandon the children and families; he wanted to provide a medical home to each of the families and children. He commented that two of the five children ended up of being vaccinated, albeit after CDPH denied the exemption requests.

### Patient A

68. With regard to Patient A, Dr. Hamilton testified that respondent acted within the standard of care based on respondent's belief, as he expressed it in his subject interview, that there may be a linkage "between vaccine induced inflammation [related to the Tdap vaccine] . . . and a broader inflammatory response that can

manifest itself later in life and in a host of other autoimmune processes."[3] Dr. Hamilton recognizes in his report that not all practitioners hold this view. He adds that "humility" is required regarding the practice of medicine in general, and respondent's opinion "may, indeed, prove to be correct as we continue to gain further knowledge in the days to come."

69. Regarding the opinion that respondent departed from the standard of care by issuing a permanent exemption for all vaccines, Dr. Hamilton said this was an honest mistake on respondent's part due to trouble navigating the CAIR-ME online system, and not a departure from the standard of care.

## Patients B and C

70. With regard to Patient B and Patient C, who are siblings, Dr. Hamilton stated respondent did not depart from the standard of care because he was trying to "buy time" to encourage their parents to have them vaccinated. He posed the problem respondent faced as a dilemma "of denying the family an exemption," with the result that the children could not attend school, or issuing an exemption to get them educated "since the parents were adamant about not giving vaccines."

71. For both children, respondent decided to issue the exemptions to "buy time" with the parents to get them to agree to have their children vaccinated. He stressed that respondent's intention was not to recommend no vaccines; he was hoping to establish a working relationship and trust with this family.

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[3] Specifically, at the interview, respondent said, "the component of the Tdap vaccine will cause an inflammatory reaction."

## Patient D

72. With regard to Patient D, Dr. Hamilton testified that respondent did not depart from the standard of care because he was faced with a difficult situation that required him to work with Patient D's parent. She attributed the child's possible autism and ADD due to his reaction to a vaccine when he was four and six months old. His intention was to give Patient D a medical home to develop a trusting relationship with her parents.

## Patient E

73. Concerning Patient E, Dr. Hamilton said that respondent did not deviate from the standard of care. He reached this conclusion due to respondent's opinion that vaccines "stir up inflammation" and "'may' play a causative role in some of the conditions." Dr. Hamilton's reference is found in respondent's Board interview where he said that inflammation caused by vaccines could "initiate" autoimmune diseases in people who are at risk.

Dr. Hamilton commented that Patient E's parents had a lengthy list of autoimmune processes and they were concerned about their daughter developing a debilitating condition. Dr. Hamilton further commented that attributing vaccines as a cause of these many autoimmune processes has not been scientifically proven. But, he added that the "list is impressive," and respondent believes that vaccines "stir up" inflammation and "may" play a causative role in some of these conditions.

74. Dr. Hamilton stated that respondent was trying to meet the personal need of Patient D who wanted to go to high school and graduate with her friends. He described this as a "real-life situation" that required more than a "knee-jerk" response that required empathy, kindness, and understanding.

## RESPONDENT'S TESTIMONY

75. Respondent's testimony is summarized here as follows:

76. Respondent obtained his medical degree from the University of North Carolina, Chapel Hill, in 1981, and completed an internship and residency at Children's Hospital in Los Angeles in 1984. Respondent is Board certified in General Pediatrics. He is the owner and sole practitioner of Sea Breeze Pediatrics. He is also the Chairman and President and owner of BioTelesis Corporation, which conducts medical and cancer research and prepares educational documents.

77. Respondent is a proponent of vaccines; he has a 90 to 95 percent vaccination rate among his patients. He believes it is very important that children be vaccinated to protect children and the community. Respondent developed a script for his staff to use when persons call who want an exemption. He has his staff tell these people that they must come into the office for an assessment. Respondent does not charge for immunization exemptions.

78. Respondent also believes there is an inflammatory response to vaccines that could initiate autoimmune disease conditions. He disagrees with the AAP's and Dr. Blumberg's assertion that the link between vaccines and various conditions is "false." He said that we do not now have the scientific tools to assess such a possible link.

79. Respondent believes that it is appropriate to issue temporary immunization exemptions while he monitors patients. He does not believe the CDC's or APIC's guidelines represent the only criteria to issue an exemption. He recognizes these guidelines, but he said they are not complete. He said it is appropriate to cite "family history" as basis for an exemption. In this regard, he cited Health and Safety

Code section 120372, subdivision (d)(3)(B), which as he reads it means that "family history" can be a factor in issuing an exemption. He added that a contraindication is a clear and absolute indication like a clear indication, whereas a precaution is the doctor's assessment of risk based on the doctor's understanding of the patient's risk and family history.

80. Respondent has encountered parents who refuse to have their children vaccinated and such situations have increased tenfold. He believes this is due to the COVID pandemic, these parents' reactions to the pandemic, and their general distrust of the medical profession due to the handling of the pandemic. A lot of people, he said, believe that COVID ingredients are being included in the vaccines. Parents have told him this.

81. Respondent added there are times parents have legitimate concerns. Reactions to vaccines are the most common legitimate concern.

82. Respondent's ultimate goal is to get his patients vaccinated. His job is not to give up on any patient but to provide all his patients with a medical home. He said he exercised a lot of judgment in this respect, and it takes a lot of time. He emphasized that if a child is not vaccinated, the child cannot attend public school. This would have negative effects on children, the loss of social interaction and emotional development.

83. If parents do not want their children vaccinated, he tells parents they have a right to their opinions. One of his primary jobs is to educate parents, and he tries to assure parents that vaccines are safe and thoroughly tested.

84. Respondent addressed his treatment of each of the patients in this matter. With regard to Patient A, he said he spent time with Patient A's mother and

tried to encourage her to have her child vaccinated. He discussed her concerns with her. He explained the risk of not being vaccinated, specifically the risk of Patient A contracting tetanus and meningitis. His custom and practice when discussing vaccines with parents who do not want to have their children vaccinated is to ask them why they believe this and try to educate them on the importance of vaccines.

Respondent intended to issue the exemption for just one vaccine, not all of them, and for the exemption to be temporary. He had trouble navigating the CAIR-ME website to do this and mistakenly hit "all vaccines" when he meant to hit the key for "one vaccine," and he also mistakenly hit the "permanent" key on the website when he intended to issue a temporary exemption. He said he never does permanent exemptions.

Patient A is still his patient, and the patient eventually received the Tdap vaccine.

85. With regard to Patient B, the patient's family history included an uncle with an autoimmune disease and a half-sister with PDD and ADHD. Patient B's parents did not go into great detail about this, but they believed Patient B's half-sister had a reaction to a vaccine that led to the child's intellectual decline. They could not describe the uncle's autoimmune disease. Nonetheless, respondent said the family history was "significant," and the reasons they cited for not having the child vaccinated, including concerns about getting ADHD, were valid reasons. Respondent felt the parent's concern was sincere. The parents were laden with guilt, and he wanted to build trust to get the child vaccinated. He said other pediatricians had turned the family away due to their resistance to having Patient B vaccinated. He wanted to give the family a medical home.

86. With regard to Patient C, who was Patient B's sister, she had had no vaccines to date. She was hyperactive and had trouble focusing on vision tests. Her parents had a strong belief that the vaccine contributed to her half-sister's PDD. Respondent said they were "terrified" of having their child vaccinated. They were opposed to Patient C getting any vaccines. They also believed that Patient C may have a seizure disorder; they observed her sitting in place for 10 to 15 seconds without blinking. Based on his observation of the child, he issued the exemption due to encephalopathy. However, in his note dated August 25, 2022, respondent did not document his observation in this regard.

Respondent repeated his goal was to have the child vaccinated. At the same time, he said he acted within his clinical discretion to assign risk as a matter of precaution, which he believed he did with regard to Patient C.

87. With regard to Patient D, respondent testified that Patient D had a significant reaction to vaccines. Per the record of his previous pediatrician dated February 21, 2018, when the patient was two years old, after receiving a vaccine, he started banging his head and was zoning out. It took three months to resolve. The parent wanted to hold off on getting him vaccinated until kindergarten. The pediatrician noted he received an immunization exemption. Respondent stated that "clearly" Patient D had some kind of reaction to vaccines. He also said that Patient D had a strong family history that warranted an exemption.

88. Respondent cited an exemption another pediatrician issued for Patient D on September 20, 2020, for polio, DTaP, MMR and varicella. The exemption was temporary through July 2022. The basis for the exemption by prior pediatrician is recorded in the notes as follows: "severe developmental regression after vaccines as

infant, a strong family history of autoimmune disorders." The physician noted, however, that Patient D "will resume [illegible] required vaccines for school in 2022."

89. Respondent testified he discussed vaccines at length with Patient D's parents and Patient D's need to be assessed for an IEP. He testified that children with IEPs "automatically" are exempt from being vaccinated. However, he later equivocated on this point, noting that children, if qualified for an IEP, would not need to get vaccinated "in the majority of cases." There is no evidence that Patient D had an IEP.

90. With regard to Patient E, she was 17 years old when she saw respondent. She was never vaccinated. The norm, as respondent, put it in the context of discussing her lack of vaccines at her age, is to be fully vaccinated. On November 6, 2017, another physician had written a "permanent" immunization exemption for all then current vaccines "and any vaccines added to the [CDC] list in the future" due to her strong family history of "hyperimmune conditions" and "autoimmune diseases."

91. Respondent developed a plan for Patient E, as recorded in Patient E's January 9, 2023, note, to have her receive all her vaccines through the "catch up" vaccine schedule. This schedule is designed for under-immunized children to get them fully vaccinated. Respondent said he was able to get the parents to agree to this after several hours of consulting with them. Patient E, as noted earlier, received all her vaccines. Respondent testified that Patient E is the perfect example what he was trying to do as far as encouraging parents who did not initially want their children vaccinated to get them vaccinated.

92. In the context of his claim that children with IEPs are automatically exempt from receiving vaccines, respondent commented that Patient E was in an IEP "in the past."

93. After the accusation was filed, respondent took education courses to address the Board's concerns. He took CME courses in child, adolescent, and adult immunization schedules on January 24, 2024, and CDC approved courses on vaccines on January 18, 19, and 20, 2024. On October 21, 2023, he completed an eight-hour course through the University of California San Diego's Physician Assessment and Clinical Education Program (UCSD PACE Program) to improve his communication with patients.

94. In response to questions on cross-examination to explain his views regarding the links between vaccines and autoimmune disorders, respondent stressed he disagrees that the link between vaccines and autoimmune disorders is "false." As he put it, there is no scientific proof one way or the other that vaccines cause autoimmune diseases, and no significant evidence such a link is false.

95. Respondent testified further that Dr. Blumberg did not do his "homework" regarding common ingredients. Based on his research in immunology, he believes there are common ingredients to all vaccines, contrary to what Dr. Blumberg said. He believes Dr. Blumberg's opinions are not based on scientific evidence.

## RESPONDENT'S DOCUMENTARY EVIDENCE

96. Respondent submitted the following character letters and documentation regarding CMEs he completed:

97. A letter dated September 23, 2023, from Robert L. Warner, M.D., co-founder of Coast Pediatrics. Dr. Warner writes in his letter that he has known respondent since 2006 as a fellow pediatrician who has collaborated with respondent on multiple patients over the years. He knows respondent to be a dutiful, ethical, and caring physician who takes great responsibility in ensuring the care of his patients.

98. A letter dated October 24, 2023, from Scott R. Miller, M.D. Dr. Miller states in his letter that he has known respondent as a colleague on the medical staff at Scripps Memorial Hospital in La Jolla and they have had several patients in common over the years. Respondent also has been the pediatrician to Dr. Miller's three children for over 20 years. He describes respondent as the consummate professional, and he cared for his children in an extremely thorough and judicious matter. He adds that respondent was also proactive in administering vaccines to his children. In looking at the accusation against respondent he regards the allegations of negligence against him to be out of character.

99. In a letter dated October 9, 2023, Erik Stark, M.D., states that respondent has acted as an exemplary pediatrician to both of Dr. Stark's sons since 2018. He diligently administered vaccines to both of them. He also updated his wife's measles vaccine. He describes respondent's care for his family as unwavering, as he has consistently provided delivered excellent attention.

100. Respondent also submitted certificates of completion for these CME courses, previously referenced: A certificate of completion dated January 24, 2024, in Child, Adolescent and Adult Immunization Schedules, and certificates of completion of courses in vaccines administered by the CDC on January 18, 2024, January 19, 2024, and January 20, 2024. In addition, respondent received a certificate of completion of 21.50 AMA PRA Category 1 credits in a course administered by the AAP in pediatrics on May 5, 2023, and 5 AMA PRA Category 1 credits in a course administered by the AAP in pediatrics on September 20 and 27, 2023. This course includes courses in vaccines and topics in school health.

101. Respondent also successfully completed a Patient-Physician Communication Course administered by UCSD's PACE Program on October 21, 2023.

## The Parties' Arguments

102. In closing complainant argued that Dr. Blumberg's testimony should be accepted. Respondent committed multiple extreme departures from the standard of care with respect to each of the five patients by issuing exemptions without medical bases to the five patients. The standard of care Dr. Blumberg cited applies to general practitioners and specialists. This standard of care is based on extensive and updated scientific evidence, and it incorporated a wide range of opinions in its formulation.

Against the extensive scientific evidence, respondent's belief that the evidence does not show one way or another a connection between vaccines and autoimmune disorders is baseless. The evidence shows no such connection.

Similarly, respondent's belief that there is a common ingredient to all vaccines is also without basis, despite his pointed attack on Dr. Blumberg because he felt Dr. Blumberg "didn't do his homework" on this question. Complainant commented that respondent's own expert, Dr. Hamilton, did not address the lack of a common ingredient among vaccines because he could not challenge Dr. Blumberg's opinion on this question.

Regarding Dr. Hamilton's opinions, his task was to defend the indefensible. He stated that the applicable standard of care for a physician to issue an immunization exemption is for the physician to "have a reason" for the exemption, and that the physician's "intention" is not a factor. This is not the standard of care.

In summary, complainant asserted that respondent believes he is right and everyone else is wrong, and as a result, he would continue to commit violations of the standard of care for issuing exemptions. At the same time, complainant recognizes

respondent is not an "anti-vax" doctor. But the net result is the same because patients can get exemptions contrary to the standard of care.

Complainant, accordingly, asks that respondent be placed on probation for a time period consistent with the Board's disciplinary guidelines with these restrictions: a prohibition against issuing immunization exemptions, a practice monitor, solo practice prohibition, education courses, and other terms and conditions consistent with public protection.

103. Respondent argued that the case against respondent warrants dismissal. He accused Dr. Blumberg of being a "scholastic" physician, sitting in an ivory tower because he does not typically vaccinate patients. Dr. Hamilton's opinion that respondent met the standard of care should be accepted over Dr. Blumberg's.

Respondent emphasized that respondent could consider family history in the exemptions he issued, per Health and Safety Code section 120732, subdivision (b)(3)(B), and he acted reasonably. Further, in deciding to issue an exemption, the situation is not black and white. A compassionate physician, like respondent, should not turn patients away but provide them with a medical home and work with them to get them vaccinated. Two of the five patients at issue in this matter were vaccinated.

In looking at the totality of the evidence it would be a disservice to restrict respondent. He should not be disciplined because he was trying to be compassionate, and he exercised his best judgment. In addition, the patients were not harmed by his conduct.

## Evaluation

104. In evaluating the evidence in this matter, the respective qualifications of the experts are considered, and their opinions are assessed based on the evidence of record. California courts have repeatedly underscored that an expert's opinion is only as good as the facts and reasons upon which that opinion is based. (*Kennemur v. State of California* (1982) 133 Cal.App.3d 907, 924.)

After giving due consideration to the respective qualifications of both experts, their opinions, and the evidence they relied upon in reaching their respective opinions, Dr. Blumberg's testimony that respondent departed from the standard of care in issuing exemptions for all the patients in this matter is found more persuasive than Dr. Hamilton's opinions. His opinions are accepted accordingly, with the exception of his conclusion that respondent committed negligence when he mistakenly issued an overly broad list of exemptions for Patient A. As found below, respondent credibly testified he made a mistake when he did this.

105. Other than this, Dr. Blumberg's opinions are found persuasive for these reasons:

As a recognized expert in pediatric infectious diseases, Dr. Blumberg is very qualified to speak to the standard of care for issuing exemptions based on his extensive experience and training in the field of pediatric infectious diseases. He articulated the standard of care in clear and precise terms based on authoritative sources he cited and based on his extensive experience and training. He reached his conclusions based on the medical records, exemptions, and respondent's statements at his Board interview. He testified in a dispassionate manner, answered all questions thoroughly, and he did not hesitate to commend respondent in several instances as a

compassionate and empathetic physician with regard to his care of the patients in this matter. To refer to Dr. Blumberg as an "ivory tower physician" was a mischaracterization, at best.

Dr. Hamilton did not directly dispute Dr. Blumberg's articulation of the standard of care. Instead, he opined that respondent did not depart from the standard of care due to a standard he articulated that considered respondent's "intention" to have the children vaccinated. His opinion here is not persuasive. Such a standard of care would replace California current law requiring there be a medical basis for an exemption with one where the physician's intentions are the determining factor. Such is neither the law nor the standard of care, especially in light of the fact that California eliminated the personal belief basis for immunization exemption.

106. In his analysis of respondent's care of the five children, Dr. Hamilton stressed the need to have a nuanced approach to applying the standard of care. But it is not clear what he meant by this. By "nuanced approach," it appears that Dr. Hamilton believes a physician can grant a temporary medical exemption so long as the physician's ultimate aim is to gain the trust of the patient with the ultimate goal of having the patient fully vaccinated. This is simply not a persuasive standard of care and contradicts the legislative intent that an exemption only be granted for medical necessity.

107. It is also noted that Dr. Hamilton sought to excuse respondent's issuance of the exemptions due to the cultural climate of anti-vaccine parents who aggressively do not want their children vaccinated. This cultural climate does not excuse failing to follow the standard of care. And issuing exemptions to accommodate parents who do not want their children vaccinated is an abdication of the physician's responsibility.

108. With this noted, Dr. Hamilton's opinion of respondent's care is not entirely discounted. Dr. Hamilton, who did not know respondent personally, and is a well-qualified and experienced pediatrician, acted as a thoughtful character witness for respondent. He described him as a conscientious, compassionate, and caring pediatrician who was trying to work with families who did not want their children vaccinated to try to get these children vaccinated.

109. Respondent's testimony is found credible. He presented as wanting to help the children at issue in this matter to become vaccinated, and he made good faith efforts towards this goal. His testimony that he made a mistake when he issued permanent exemptions for all vaccines for Patient A due to his problem navigating the CAIR-ME website is found credible.

110. With regard to his compliance with the standard of care, respondent does not believe he acted outside the standard of care despite evidence to the contrary. He bases his view on a *possible* link between vaccines and autoimmune disorders, and his belief there are common ingredients among vaccines to justify the broad exemptions he issued. He also feels he exercised sound judgment in issuing the exemptions as a matter of precaution. His opinions in these respects are not persuasive and he did not exercise sound judgment as a matter of precaution. Respondent's belief in the possibility of a link between vaccines and autoimmune disorders – without any sound medical justification – is not a justifiable ground for issuing the exemptions or otherwise a defense to the applicability of the standard of care Dr. Blumberg identified. Respondent's testimony regarding common ingredients among vaccines was no more than a personal attack against Dr. Blumberg for "not doing his homework," and is not credited.

111. With respect to his argument that he correctly issued the exemptions based on "family history" per Health and Safety Code section 120732, subdivision (d)(3)(B), his argument is not accepted. Under this section consideration of family history needs to be made "*consistent with the relevant standard of care*" [emphasis added]. As Dr. Blumberg persuasively stated, this required "medical" or "good" reasons for the exemption consistent with this standard of care. Per Dr. Blumberg's accepted testimony, respondent did not have good medical reasons for the exemptions he issued: he recited family histories based on a link between vaccines and autoimmune disorders and other disorders which is not based on scientific evidence but based on parents' fears and their desire to have their children attend public schools. With regard to Patient C, who had a reported seizure remote in time, Dr. Blumberg stated there was no evidence of a current seizure, and the child was not referred to a neurologist for assessment. Regarding Patient B, respondent testified that the family history was "significant," yet Patient B's parents could not describe the uncle's autoimmune disease. In general, respondent seemed to accept uncritically the family's descriptions of their family histories.

112. In his effort to justify the exemptions he issued respondent stressed that children in IEPs are "automatically" exempt from vaccines per his reading of Health and Safety Code section 120335, subdivision (h).[4] There are two problems with this: First, this appears to be a post hoc justification as he did not assert this automatic exemption as a basis for any of his submitted exemptions; and second, there was no

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[4] This section reads as follows: "This section does not prohibit a pupil who qualifies for an [IEP] . . . from accessing any special education and related services required by his or her [IEP]."

evidence in the children's medical records that they were on IEPs at the time he issued the exemptions. It is not necessary, thus, to address whether this section "automatically" grants an immunization exemption for students with IEPs.

113. Finally, the matter of respondent's desire to give the patients a medical home needs to be addressed. This is a worthy goal and respondent was sincere in this respect. His efforts to give these children a medical home show he acted as an empathetic and compassionate pediatrician. He did not, however, explain why issuing exemptions was a prerequisite to giving these patients a medical home. He could have continued to treat them, educated their parents on the importance of having their children vaccinated, and listened to their concerns. It appears he was trying to give a medical home to parents who only wanted a medical home if the pediatrician issued the exemptions they wanted. It additionally appears they were "shopping" for receptive pediatricians who would issue such exemptions. As a matter of the public safety health and safety, this is a concern.

## Costs of Enforcement

114. Complainant seeks recovery of enforcement and investigative costs in the total amount of $49,555.00[5] for the period between May 10, 2023, and May 27, 2024, pursuant to Business and Professions Code section 125.3.

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[5] The declaration of prosecution costs refers to the Attorney General's total cost to be billed as $48,825, while immediately above the declaration the declaration references the sum of $45,825, which is the amount identified in the Cost of Suit Summary attached to the declaration. The $48,825 sum for the prosecution of this

115. In support of the request for recovery of investigative costs, the Health Quality Investigation Unit (HQIU) of the Division of Investigation submitted a declaration requesting $2,230 signed by a representative of HQIU who certified these costs. The declaration details the work performed by two HQIU investigators, the time spent on each task, and the hourly rate.

116. Complainant, in addition, submitted a declaration requesting $1,500 for the expenses billed by complainant's expert, Dr. Blumberg. This declaration is signed by a designated representative of the Board and details the time spent and hourly rate for Dr. Blumberg's evaluation of case related materials, report writing, hearing preparation and examinations.

117. In support of the request for recovery of enforcement costs, the Deputy Attorney General who prosecuted the case signed an updated cost declaration dated May 28, 2024, requesting $45,825 relating to the legal work performed in this matter. Attached to the declarations are two documents entitled "Master Time Activity by Professional Type." These documents identify the tasks performed, the dates legal services were provided, who provided the services, the time spent on each task, and the hourly rate for the Supervising Deputy Attorney General, Deputies Attorney General, and analysts, from May 10, 2023, through May 27, 2024, for the total prosecution costs.

118. The Deputy Attorney General's declaration identifies the specific tasks performed to satisfy the requirements of section 1042, subdivision (b). California Code

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matter appears to be in error and is not used in the calculation of the prosecution costs in this matter.

of Regulations, title 1, section 1042, subdivision (b), requires that this declaration must include "specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs."

119. The prosecution costs, costs submitted by HQIU, and costs associated with Dr. Blumberg's work on this matter are found to be reasonable under the requirements of section 1042, subdivision (b).

Therefore, the total reasonable costs of enforcement of this matter are $49,555. Respondent did not present evidence regarding his ability to pay costs.

## LEGAL CONCLUSIONS

### Purpose of Physician Discipline

1. The purpose of the Medical Practice Act (Chapter I, Division 2, of the Business and Professions Code) is to assure the high quality of medical practice; in other words, to keep unqualified and undesirable persons and those guilty of unprofessional conduct out of the medical profession. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 574.)

The purpose of administrative discipline is not to punish, but to protect the public by eliminating those practitioners who are dishonest, immoral, disreputable or incompetent. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.)

### Burden and Standard of Proof

2. Complainant bears the burden of proof of establishing that the charges in the accusation are true.

The standard of proof in an administrative action seeking to suspend or revoke a physician's certificate is clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) Clear and convincing evidence requires a finding of high probability, or evidence so clear as to leave no substantial doubt; sufficiently strong evidence to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

## Cause Exists to Impose Discipline Against Respondent's License

### FIRST CAUSE FOR DISCIPLINE

3. Complainant proved by clear and convincing evidence that respondent committed gross negligence pursuant to Business and Professions Code section 2234, subdivision (b), when he issued immunization exemptions for Patients A, B, C, D, and E without adequate reasons based on Dr. Blumberg's persuasive testimony consistent with the evidence of record, as found above.

4. Complainant also proved by clear and convincing evidence that respondent committed gross negligence pursuant to Business and Professions Code section 2234, subdivision (b), when he issued an overly broad list of exemptions to Patients B, C, D, and E based on Dr. Blumberg's persuasive testimony consistent with the evidence of record, as found above.

### SECOND CAUSE FOR DISCIPLINE

5. Complainant proved by clear and convincing evidence that respondent committed repeated negligent acts pursuant to Business and Professions Code Section 2234, subdivision (c), based on the above findings in the First Cause for Discipline except with regards to respondent's issuance of a permanent exemption for multiple

vaccines for Patient A. Respondent mistakenly issued a permanent exemption for multiple vaccines for Patient A due to his difficulty navigating the CAIR ME website.

**THIRD CAUSE FOR DISCIPLINE**

6. Complainant proved by clear and convincing evidence that respondent committed unprofessional conduct as found above under the First and Second Causes for Discipline. (*Shea v. Board of Medical Examiners*, *supra*, 81 Cal.App.3d at 575.)

## The Board's Disciplinary Guidelines and Evaluation Regarding the Degree of Discipline

7. With causes for discipline having been found, a determination needs to be made regarding the degree of discipline and the terms and conditions to impose.

As noted, the purpose of an administrative proceeding seeking the revocation or suspension of a professional license is not to punish the individual, the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*Fahmy*, *supra*, 38 Cal.App.4th at p. 817.)

The Board's Manual of Model Disciplinary Orders and Disciplinary Guidelines (12th Edition 2016) offers this guidance concerning the imposition of discipline:

> The Board expects that, absent mitigating or other appropriate circumstances such as early acceptance of responsibility, demonstrated willingness to undertake Board-ordered rehabilitation, the age of the case, and evidentiary problems, Administrative Law Judges hearing cases on behalf of the Board and proposed settlements submitted to the Board will follow the guidelines, including

those imposing suspensions. Any proposed decision or settlement that departs from the disciplinary guidelines shall identify the departures and the facts supporting the departure.

8. For each of the violations established relating to respondent's care and treatment of Patients A, B, C, D, and E, the Board's disciplinary guidelines provide that revocation is the maximum discipline and provide the following minimum recommended terms and conditions:

> For gross negligence and repeated negligent acts under Business and Professions Code section 2234, subdivisions (b) and (d), . . . revocation, stayed, and five years' probation, with conditions including an education course, prescribing practices course, professionalism program (ethics course), clinical competence assessment program, monitoring, solo practice prohibition, and prohibited practices. In cases charging repeated negligent acts with one patient, a public reprimand may, in appropriate circumstances, be ordered.

## Disciplinary Considerations and Disposition Regarding the Degree of Discipline

9. After considering the Board's guidelines, evidence of mitigation, and the evidence of record as a whole, it is determined that a two-year probation period with minimal terms and conditions would be consistent with public protection. This conclusion is made for these reasons: Respondent issued an overly broad list of exemptions without adequate reasons to five children. He offered little assurance he

would not engage in this conduct again. He believes he correctly issued the exemptions based on his personal belief that vaccines possibly may initiate autoimmune disorders and his further unsupported belief that there are common ingredients among all vaccines to warrant issuance of the broad exemptions. Respondent, in addition, took great pains to justify his conduct: For reasons that are not clear, he argued that children with IEPs are automatically exempt from the vaccine requirement even though he did not list this as a reason he issued exemptions, nor were his patients on IEPs when he issued the exemptions. He also argued that family history alone is a basis to warrant exemptions when Health and Safety Code section 120732 states clearly that exemptions issued due to consideration of family history must be made consistent with the standard of care. He sought to explain his conduct by stressing he wanted to give a medical home to children whose parents did not want their children vaccinated. But he did not explain why he needed to issue exemptions to do this, when he could have provided a medical home for them without issuing the exemptions. As commented above, it seems he wanted to accommodate parents who were shopping for pediatricians who would give them the exemptions they sought.

10. With this noted, a number of factors warrant a significant departure from the guidelines. Respondent is a well-regarded pediatrician in his community who has been practicing pediatric medicine since 1983 without a history of discipline. As a mitigating factor, respondent had the laudable goal to give the families of these children a medical home to convince the parents to get their children vaccinated, and he acted in good faith towards this goal. With two of the patients, he succeeded in this regard. In addition, respondent completed courses in vaccines and improving his communication skills with patients prior to this hearing to allay the Board's concerns. With all this considered, to require a long period of probation with a solo practice prohibition, and prohibition against supervising physician extenders would not

advance public protection. Education courses directed at correcting deficiencies in his practice and a prohibition against issuing immunization exemptions would serve this interest.

## Costs of Enforcement

11. Under Business and Professions Code section 125.3, complainant may request that an administrative law judge "direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case." "A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case." (Bus. & Prof. Code, § 125.3, subd. (c).)

12. Another consideration in determining costs is *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32. In *Zuckerman*, the California Supreme Court decided, in part, that in order to determine whether the reasonable costs of investigation and enforcement should be awarded or reduced, the administrative law judge must decide: (a) whether the licensee has been successful at hearing in getting charges dismissed or reduced; (b) the licensee's subjective good faith belief in the merits of his or her position; (c) whether the licensee has raised a colorable challenge to the proposed discipline; (d) the financial ability of the licensee to pay; and (e) whether the scope of the investigation was appropriate to the alleged misconduct. The scope of the investigation was appropriate to the allegations. The charges were sustained, and respondent provided no evidence regarding his ability to pay the costs.

13. After consideration of the factors under *Zuckerman, supra,* a reduction of 50 percent, or $24,777.50 against the amount of reasonable costs of $49,555 is required because respondent successfully argued against the period of probation and terms and conditions complainant sought. Accordingly, reasonable costs are assessed at $24,777.50.

## ORDER

Certificate No. A 39787 issued to respondent Robert Lamar Bjork, Jr., M.D., is revoked. However, the revocation is stayed, and respondent is placed on probation for two years on the following terms and conditions:

1. Education Courses

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

2. Notification

Within seven (7) days of the effective date of this Decision, respondent shall provide a true copy of this Decision and First Amended 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.

3. Prohibited Practice

During probation, respondent is prohibited from issuing immunization exemptions. After the effective date of this Decision, all patients being treated by respondent shall be notified that the respondent is prohibited from issuing immunization exemptions. Any new patients must be provided this notification at the time of their initial appointment.

Respondent shall maintain a log of all patients to whom the required oral notification was made. The log shall contain the: 1) patient's name, address and phone number; patient's medical record number, if available; 3) the full name of the person making the notification; 4) the date the notification was made; and 5) a description of the notification given. Respondent shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the Board or its designee, and shall retain the log for the entire term of probation.

4. 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.

5. 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.

6. General Probation Requirements

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

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

Each condition of probation contained in this Order is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

7. 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.

8. Non-practice While on Probation

Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of respondent's return to practice. Non-practice is defined as any period of time respondent is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If respondent resides in California and is considered to be in non-practice, respondent shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve respondent from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

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

Respondent's period of non-practice while on probation shall not exceed two (2) 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.

9. 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.

10. 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.

11. License Surrender

Following the effective date of this Decision, if respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request to surrender his license. The Board reserves the right to evaluate respondent's request and to exercise its discretion in

determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the Board or its designee and respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

12. 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.

13. Probation Monitoring and Enforcement Costs

Respondent shall pay the costs associated with the enforcement of this matter in the amount of $24,777.50. Respondent may negotiate a payment plan with the Board. In addition, respondent shall pay 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: June 26, 2024

Abraham M. Levy (Jun 26, 2024 16:05 PDT)

ABRAHAM M. LEVY

Administrative Law Judge

Office of Administrative Hearings