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

12 In the Matter of the Accusation Against:

Case No. 800-2018-044591

13 **Michael Fielding Allen, M.D.**
14 **800 Howe Ave Ste 370**
Sacramento CA 95825-3965

A C C U S A T I O N

15 **Physician's and Surgeon's Certificate No. G**
16 **73771**

17 Respondent.

18
19 **PARTIES**

20 1. William Prasifka (Complainant) brings this Accusation solely in his official capacity
21 as the Executive Director of the Medical Board of California, Department of Consumer Affairs
22 (Board).

23 2. On or about April 7, 1992, the Medical Board issued Physician's and Surgeon's
24 Certificate Number G 73771 to Michael Fielding Allen, M.D. (Respondent). The Physician's and
25 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
26 herein and will expire on March 31, 2022, unless renewed.
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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 states:

(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

(1) Have his or her license revoked upon order of the board.

(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.

5. Section 2234 of the Code, states:

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:

... (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 provides that the failure to maintain adequate and accurate records is 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

1 Department of Health and Human Services, the American Academy of Pediatrics, and the
2 American Academy of Family Physicians.

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

7 (c) Exemptions from immunization for medical reasons.

8 (d) For the keeping of adequate records of immunization so that health departments,
9 schools, and other institutions, parents or guardians, and the persons immunized will be able to
10 ascertain that a child is fully or only partially immunized, and so that appropriate public agencies
11 will be able to ascertain the immunization needs of groups of children in schools or other
12 institutions.
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14 (e) Incentives to public health authorities to design innovative and creative programs that
15 will promote and achieve full and timely immunization of children.

16 8. Health and Safety Code section 120370 provides, in pertinent part:

17 (a) If the parent or guardian files with the governing authority a written statement by a
18 licensed physician to the effect that the physical condition of the child is such, or medical
19 circumstances relating to the child are such, that immunization is not considered safe, indicating
20 the specific nature and probable duration of the medical condition or circumstances, including,
21 but not limited to, family medical history, for which the physician does not recommend
22 immunization, that child shall be exempt from the requirements of Chapter 1 (commencing with
23 Section 120325, but excluding Section 120380) and Sections 120400, 120405, 120410, and
24 120415 to the extent indicated by the physician's statement.
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27 **FACTUAL ALLEGATIONS**

1 9. At all relevant times, Respondent Michael Fielding Allen, M.D., was a physician and
2 surgeon with a specialization in pediatrics at his office in San Francisco, California. Beginning in
3 2018, the Board received complaints that Respondent was issuing vaccine exemptions that did not
4 appear to be appropriate or valid.

5 10. Patient 1,¹ a six-year-old male child, was seen by a nurse practitioner and Respondent
6 on September 18, 2018, and on March 5, 2019. The chief complaint was stated to be a request for
7 a medical exemption because the child “gets sick a lot.” Respondent issued a temporary two-
8 month exemption on October 8, 2018, which expired on December 6, 2018. The exemption
9 applied to many vaccines, including vaccines for which the six-year-old was not eligible, and
10 “any other immunization deemed necessary, now and/or in the future.” Respondent issued an
11 additional two-month exemption on December 10, which expired on February 10, 2019. Because
12 the exemption expired, Patient 1 was not permitted to attend school from February 12, 2019, and
13 until Respondent provided a further, permanent exemption on March 4, 2019. A school nurse
14 reported to the Board that the child’s mother attributed the delay to the family’s lack of funds to
15 pay Respondent for another exemption letter. In a subsequent interview with the Board,
16 Respondent stated that he provided the temporary exemptions to permit the child to attend school
17 while the family prepared a family medical history. Respondent stated that he based his
18 permanent vaccine exemption on a sibling history of vaccine reactions, paternal family history of
19 multiple vaccine reactions, the child’s history of asthma and allergies and what Respondent
20 termed “neurologic vulnerability.” He also considered a family history of Alzheimer’s disease to
21 be pertinent because of what he termed neurotoxins in vaccines.

22 11. Patient 2, a three-year-old female child, was seen by Respondent on August 3, 2018
23 and October 16, 2018. She had received her scheduled vaccinations up to age 15 months from her
24 treating physicians at Kaiser, after which the family refused further immunizations. The child’s
25 parents requested a vaccine exemption from Respondent based upon the child’s reaction of
26 “fussiness, fever and rash by injection sites after vaccines.” The parents also reported a reaction to
27 a Vitamin K shot by Patient 2’s sibling (Patient 3), but stated that neither child’s vaccine reactions

28 ¹ Patient names are redacted to protect privacy.

1 would be found in the records because their primary care providers said the responses were
2 normal. In a vaccine exemption, dated October 29, 2018, Respondent listed Patient 2's vaccine
3 reaction, her sibling's vaccine reaction² and a long list of family autoimmune disorders, allergies
4 and mental illnesses. In a subsequent interview, Respondent stated that that his primary concerns
5 in exempting the child from all presently required vaccines, as well as any deemed necessary in
6 the future, were the "vaccine" reactions of Patient 2 and her sibling and the family history of
7 vaccine reactions and autoimmune disorders.

8 12. Patient 3, the nine-month-old male sibling of Patient 2, was also seen by Respondent
9 at the August 3, 2018 and October 16, 2018 visits. As stated, Patient 3 had not been vaccinated.
10 He was jaundiced at birth and had not received the Hepatitis B vaccine, but only got a Vitamin K
11 shot. At his initial visit, his parents reported teething, colic, food sensitivity and "hard to get to
12 sleep," but an otherwise healthy infant. As with Patient 3's sibling, Respondent's plan was to
13 obtain a family history. At his Board interview, Respondent stated that the medical circumstances
14 that stood out as priority were the infant's Vitamin K shot reaction, where he reportedly went
15 limp, the sibling's vaccine reaction and family history of vaccine reactions and autoimmune
16 disorders. Kaiser records for Patient 3 reflect the advice of his treating physicians to adhere to the
17 standard immunization schedule.

18 13. Patient 4, an unvaccinated two-year nine-month-old male, was seen on February 5
19 and August 9, 2019. Patient 4 had been diagnosed with Autism Spectrum Disorder (ASD) and
20 was receiving applied behavior analysis (ABA) and other therapies. Respondent's exemption,
21 dated February 17, 2019 is based on the autism diagnosis, family history of vaccine
22 reactions/anaphylaxis (without reference to a specific vaccine) family history of autoimmune
23 disease and sibling's developmental delay. Respondent's records, which are in parts illegible,
24 indicate that the child's parents were interested in a modified vaccine schedule; nevertheless,
25 Respondent wrote a permanent exemption from all vaccines. At a subsequent interview,
26 Respondent was asked if he had any concerns that, having received a permanent and global
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28 ² Patient 3 had not received any vaccinations as of the date of the exemption.

1 exemption, the child might not be vaccinated. Respondent did not accept any responsibility and
2 stated that the permanent exemption was “just my opinion.”

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4 14. Patient 5, a 21-month-old male infant was seen by Respondent for the purpose of
5 obtaining a vaccine exemption on October 27, 2017. The child’s mother stated that his Kaiser
6 physicians would not provide him with an exemption and his daycare facility was requesting
7 updated immunization records. The conditions reported in the parental report include a potential
8 unknown syndrome (with genetic testing pending), developmental delay and constipation. On
9 November 30, 2017, Respondent provided a permanent and global exemption from all vaccines,
10 including any that might be required in the future. In a subsequent interview, Respondent stated
11 that the significant matters underlying his exemption were the child’s reported vaccine reaction to
12 the Hepatitis B vaccine and his Vitamin K shot after birth, as well as family history of adverse
13 reactions following immunization, allergic conditions and autoimmune disease.

14 15. Patient 6, a five-year-old female, was seen by Respondent on August 14 and
15 September 25, 2018, for a “vaccine consult.” Patient 6 received a temporary exemption on June 6,
16 2018, before her first appointment with Respondent. Respondent’s records for this patient are
17 largely illegible. At a subsequent interview, Respondent stated that the temporary exemption was
18 based upon a verbal report that a sibling had an adverse reaction and was given because the child
19 “needed to be in school.” On September 20, 2018, Respondent provided a permanent and global
20 vaccine exemption based upon a reported sibling vaccine reaction, the child’s history of eczema
21 and “neurological vulnerability” as well as a family history of autoimmune disorders, allergies
22 and mental health disorders.

23 **CAUSE FOR DISCIPLINE**

24 **(Gross Negligence, Incompetence/Inadequate records)**

25 16. Respondent Michael Fielding Allen, M.D. is guilty of unprofessional conduct and his
26 certificate is subject to disciplinary action under section 2234 and/or 2234(b) and/or 2234(c)
27 and/or 2234(d) and/or 2266 in that Respondent engaged in acts of unprofessional conduct, gross
28 and/or repeated negligence and/or demonstrated incompetence in issuing vaccine exemptions to

1 Patients 1 through 6, and failed to keep adequate and accurate records, including but not limited
2 to, the following:

3 A. Respondent provided vaccine exemptions that were not based upon generally
4 accepted standards established by the Centers for Disease Control and Prevention (CDC), through
5 the Advisory Committee on Immunization Practices (ACIP), and the American Academy of
6 Pediatrics (AAP), as published in the Red Book;

7 B. Respondent routinely provided exemptions that were based upon remote and
8 irrelevant personal and family history, including allergic conditions and autoimmune diseases;

9 C. Respondent demonstrated a lack of basic medical knowledge regarding immunization
10 practices and vaccine safety;

11 D. Respondent extended his exemptions to vaccines that might be required in the future,
12 including those not yet developed, e.g. SARS-CoV-2, for which he had no basis to do a
13 risk/benefit analysis;

14 E. Respondent demonstrated a lack of basic medical knowledge regarding the risk to
15 child and to the public health posed by failure to vaccinate;

16 F. Respondent failed to obtain and/or failed to document informed refusal or to have
17 parents sign an AAP-recommended Refusal to Vaccinate form and his records are in parts
18 illegible.

19 **PRAYER**

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

22 1. Revoking or suspending Physician's and Surgeon's Certificate Number G 73771,
23 issued to Michael Fielding Allen, M.D.;

24 2. Revoking, suspending or denying approval of Michael Fielding Allen, M.D.'s
25 authority to supervise physician assistants and advanced practice nurses;

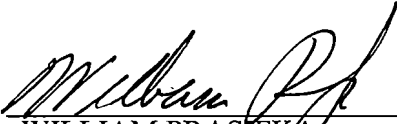
26 3. Ordering Michael Fielding Allen, M.D., if placed on probation, to pay the Board the
27 costs of probation monitoring; and

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

DATED: DEC 14 2020



WILLIAM PRASIFKA
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California.
Complainant

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