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

In the Matter of the Accusation Against: Dan Orville Harper, M.D. Physician's & Surgeon's Certificate No. C 51231 Respondent.	Case No. 800-2017-038648

DECISION

The attached Stipulated Settlement and Disciplinary Order 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 October 1, 2021.

IT IS SO ORDERED September 1, 2021.

MEDICAL BOARD OF CALIFORNIA

Laurie Rose Lubiano, J.D., Chair
Panel A

ROB BONTA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General
TESSA L. HEUNIS
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Attorneys for Complainant

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

In the Matter of the Accusation Against: **DAN ORVILLE HARPER, M.D.** **509 South Cedros Avenue, Suite B** **Solana Beach, CA 92075** **Physician's and Surgeon's Certificate No. C 51231** Respondent.	Case Nos. 800-2017-038648 OAH No. 2021010545 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

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

PARTIES

1. William Prasifka (Complainant) is the Executive Director of the Medical Board of California (Board). He brought this action solely in his official capacity and is represented in this matter by Rob Bonta, Attorney General of the State of California, by Tessa L. Heunis, Deputy Attorney General.

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2. Respondent Dan Orville Harper, M.D. (Respondent), is represented in this proceeding by attorney David M. Balfour Esq., whose address is: 1925 Palomar Oaks Way, Suite 220, Carlsbad, CA 92008.

3. On or about July 1, 2003, the Board issued Physician's and Surgeon's Certificate No. C 51231 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2017-038648, and will expire on July 31, 2021, unless renewed.

JURISDICTION

4. On November 5, 2020, Accusation No. 800-2017-038648 was filed before the Board, and is currently pending against Respondent. A true and correct copy of Accusation No. 800-2017-038648 and all other statutorily required documents were properly served on Respondent. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 800-2017-038648 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and fully understands the charges and allegations in Accusation No. 800-2017-038648. Respondent has also carefully read, fully discussed with his counsel, and fully understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Having the benefit of counsel, Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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CULPABILITY

8. Respondent admits the complete truth and accuracy of each and every charge and allegation in Accusation No. 800-2017-038648.

9. Respondent agrees that his Physician's and Surgeon's Certificate No. C 51231 is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

10. This Stipulated Settlement and Disciplinary Order shall be subject to approval of the Board. The parties agree that this Stipulated Settlement and Disciplinary Order shall be submitted to the Board for its consideration in the above-entitled matter and, further, that the Board shall have a reasonable period of time in which to consider and act on this Stipulated Settlement and Disciplinary Order after receiving it. By signing this stipulation, Respondent fully understands and agrees that he may not withdraw his agreement or seek to rescind this stipulation prior to the time the Board considers and acts upon it.

11. The parties agree that this Stipulated Settlement and Disciplinary Order shall be null and void and not binding upon the parties unless approved and adopted by the Board, except for this paragraph, which shall remain in full force and effect. Respondent fully understands and agrees that in deciding whether or not to approve and adopt this Stipulated Settlement and Disciplinary Order, the Board may receive oral and written communications from its staff and/or the Attorney General's Office. Communications pursuant to this paragraph shall not disqualify the Board, any member thereof, and/or any other person from future participation in this or any other matter affecting or involving Respondent. In the event that the Board does not, in its discretion, approve and adopt this Stipulated Settlement and Disciplinary Order, with the exception of this paragraph, it shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party hereto. Respondent further agrees that should this Stipulated Settlement and Disciplinary Order be rejected for any reason by the Board, Respondent will assert no claim that the Board, or any

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member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this Stipulated Settlement and Disciplinary Order or of any matter or matters related hereto.

ADDITIONAL PROVISIONS

12. This Stipulated Settlement and Disciplinary Order is intended by the parties herein to be an integrated writing representing the complete, final and exclusive embodiment of the agreements of the parties in the above-entitled matter.

13. The parties agree that copies of this Stipulated Settlement and Disciplinary Order, including copies of the signatures of the parties, may be used in lieu of original documents and signatures and, further, that such copies shall have the same force and effect as originals.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or opportunity to be heard by Respondent, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

A. PUBLIC REPRIMAND

IT IS HEREBY ORDERED that Respondent Dan Orville Harper, M.D., Physician's and Surgeon's Certificate No. C 51231, shall be and is hereby Publicly Reprimanded pursuant to California Business and Professions Code section 2227, subdivision (a)(4). This Public Reprimand, which is issued in connection with Respondent's care and treatment of sibling patients A, B, C, and D, as set forth in Accusation No. 800-2017-038648, is as follows:

> On or about October 18, 2017, you failed to provide care and treatment for Patient A, Patient B, Patient C, and Patient D, in accordance with the standard of practice in the medical community, as more fully described in Accusation No. 800-2017-038648.

A. EDUCATION COURSE. Within 60 calendar days of the effective date of this Decision, 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 60 hours. 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 60 hours of CME in satisfaction of this condition within one (1) year of the effective date of the Decision.

B. PROHIBITED PRACTICE. Respondent is prohibited from making or issuing any written exemption from immunization, or any other written statements providing that any child is exempt from the requirements of Chapter 1 (commencing with Section 120325, but excluding Section 120380) and Sections 120400, 120405, 120410, and 120415 of the Health and Safety Code. After the effective date of this Decision, all patients being treated by Respondent shall be notified of this prohibition. 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; 2) 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 a period of three (3) years from the effective date of the Decision.

As used in this section, "patient(s)" refers to minor patients and their parents, custodians and other legal guardians.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, David M. Balfour Esq. I fully understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. C 51231. Having the benefit of counsel, I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly,

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and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

I fully understand that, after signing this stipulation, I may not withdraw from it, that it shall be submitted to the Medical Board of California for its consideration, and that the Board shall have a reasonable period of time to consider and act on this stipulation after receiving it. By entering into this stipulation, I fully understand that, upon formal acceptance by the Board, I shall be publically reprimanded by the Board and shall be required to comply with all of the terms and conditions of the Disciplinary Order set forth above. I also fully understand that any failure to comply with the terms and conditions of the Disciplinary Order set forth above shall constitute unprofessional conduct and will subject my Physician's and Surgeon's Certificate No. C 51231 to disciplinary action.

DATED: 05-24-21

DAN ORVILLE HARPER, M.D.
Respondent

I have read and fully discussed with Respondent Dan Orville Harper, M.D., the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: May 24, 2021

DAVID M. BALFOUR ESQ.
Attorney for Respondent

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May 24 21, 11:08a p.1

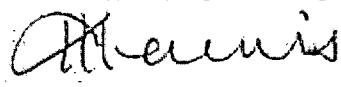
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

DATED: 6/01/2021

Respectfully submitted,

ROB BONTA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General



TESSA L. HEUNIS
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 800-2017-038648

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Attorneys for Complainant

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

In the Matter of the Accusation Against:	Case No. 800-2017-038648
Dan Orville Harper, M.D. **509 South Cedros Avenue, Suite B** **Solana Beach, CA 92075-2900** **Physician's and Surgeon's Certificate No. C 51231,** Respondent.	**A C C U S A T I O N**

PARTIES

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

2. On or about July 1, 2003, the Medical Board issued Physician's and Surgeon's Certificate Number C 51231 to Dan Orville Harper, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2021, unless renewed.

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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 2220 of the Code states:

> Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter. The board shall enforce and administer this article as to physician and surgeon certificate holders, including those who hold certificates that do not permit them to practice medicine, such as, but not limited to, retired, inactive, or disabled status certificate holders, and the board shall have all the powers granted in this chapter for these purposes...

STATUTORY PROVISIONS

5. 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.
>
> ...

6. 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:
>
> (a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.
>
> ...

(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.

...

7. Unprofessional conduct under Business and Professions Code section 2234 is conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine.[1]

FACTUAL ALLEGATIONS

8. At all relevant times, respondent was a Family Practitioner and Functional Medicine Physician in solo practice.

9. Patient A[2] (born April 2007), Patient B (born November 2008), Patient C (born August 2010), and Patient D (born September 2012), are the minor children of divorced parents, Parent X and Parent Y.

10. On or about October 18, 2017, Parent X brought the four minor children to consult respondent regarding vaccine exemptions. At the time of the consultation, all four children received their medical care from, and/or had a primary care physician within, the Kaiser Permanente health system.

11. Parent X informed respondent that Parent X's mother and aunts had Hashimoto's autoimmune thyroiditis, and that Parent X was being treated for ulcerative colitis.

12. Respondent never reviewed any medical records for Parent X or for any relatives.

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[1] *Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.

[2] The names of the patients and their parents are known to all parties but not disclosed to protect their privacy.

13. Parent X further reported to respondent that Patient A had had a severe vaccine reaction with Patient A's second set of vaccines, including a fever of 104 degrees for a day, and three days of lethargy and poor feeding. Patient A reportedly had some shivering but "no true seizure symptoms."

14. Respondent never reviewed any medical records for the four minor children.

15. Kaiser records show that, contrary to Parent X's report to respondent, Patient A had not previously received any vaccinations; consequently, Patient A had also not had any adverse reactions to any vaccinations.

16. Parent X was also reportedly concerned regarding Parent X's alleged homozygous MTHFR gene SNP[3] that "caused some of Parent X's health issues."

17. No documentary confirmation that Parent X has any mutation(s) on the MTHFR gene, whether homozygous or otherwise,[4] can be found in any of the four minor patients' charts.

18. On or about October 18, 2017, respondent issued vaccine exemptions to all four minor children for all vaccinations, permanently. The vaccine exemptions stated:

> [Patient A] should not receive vaccinations in view of strong family history of autoimmune disorders, family member with vaccination reaction, and personal detoxification weakness, due to risk of developing autoimmune syndromes induced by adjuvants in vaccine.
>
> [Patient B] should not receive vaccinations in view of strong family history of autoimmune disorders, family member with vaccination reaction, and personal history of weak detoxification, due to risk of developing autoimmune syndromes induced by adjuvants in vaccine.
>
> [Patient C] should not receive vaccinations in view of strong family history of autoimmune disorders, family member with vaccination reactions and personal weak detoxification due to risk of developing autoimmune syndromes induced by adjuvants in vaccine.
>
> [Patient D] should not be vaccinated in view of strong family history of

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[3] Methylenetetrahydrofolate reductase, or MTHFR, is an enzyme that breaks down the amino acid homocysteine. The MTHFR gene that codes for this enzyme has the potential to mutate, which can either interfere with the enzyme's ability to function normally or completely inactivate it. Mutations of this gene are relatively common, and some people believe these mutations may be associated with health issues.

[4] A person may have one or two mutations (or variants) on the MTHFR gene. Inheriting the identical mutations from both parents is known as homozygous (or homozygosity); inheriting different forms of the gene from the two parents is known as heterozygous (or heterozygosity).

autoimmune disorders, family member with severe reaction to vaccines, and weak detox system due to risk of developing autoimmune syndromes induced by adjuvants in vaccine.

19. On or about November 14, 2017, Patient A presented to a Kaiser clinic with symptoms of cough and congestion. He was found to be positive for Bordetella Pertussis (whooping cough)[5] and appropriately treated.

20. Parent Y was informed by a Kaiser provider that none of the four siblings had any qualifying medical conditions such as to exempt them from the California mandatory vaccination requirements.

FIRST CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

21. Respondent Dan Orville Harper, M.D., is subject to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c), of the Code, in that he committed repeated negligent acts in his care and treatment of Patient A, Patient B, Patient C, and Patient D, as more particularly alleged hereafter:

22. Respondent provided a permanent exemption from all vaccines to Patient A based on inadequate and inaccurate information, including an unverified family history of medical conditions, a false and undocumented history of adverse vaccine reaction(s), and the undocumented presence of mutations on the MTHFR gene in Parent X.

23. Respondent provided a permanent exemption from all vaccines to Patient B based on inadequate and inaccurate information, including an unverified family history of medical conditions, a false and undocumented history of adverse vaccine reaction(s), and the undocumented presence of mutations on the MTHFR gene in Parent X.

24. Respondent provided a permanent exemption from all vaccines to Patient C based on inadequate and inaccurate information, including an unverified family history of medical conditions, a false and undocumented history of adverse vaccine reaction(s) and the undocumented presence of mutations on the MTHFR gene in Parent X.

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[5] Whooping cough is a very contagious, vaccine-preventable disease that can cause serious and sometimes life-threatening complications.

25. Respondent provided a permanent exemption from all vaccines to Patient D based on inadequate and inaccurate information, including an unverified family history of medical conditions, a false and undocumented history of adverse vaccine reaction(s) and the undocumented presence of mutations on the MTHFR gene.

SECOND CAUSE FOR DISCIPLINE

(General Unprofessional Conduct)

26. Respondent Dan Orville Harper, M.D. is further subject to disciplinary action under sections 2227 and 2234 of the Code, in that he has engaged in conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming to a member in good standing of the medical profession, as more particularly alleged in paragraphs 8 through 25, above, which are hereby incorporated by reference and re-alleged as if fully set forth herein.

DISCIPLINARY CONSIDERATIONS

27. To determine the degree of discipline, if any, to be imposed on Respondent Dan Orville Harper, M.D., Complainant alleges that on or about March 3, 2017, in a prior disciplinary action titled In the Matter of the Accusation Against Dan Orville Harper, M.D., before the Medical Board of California, in Case Number 11-2012-223668, Respondent's Physician's and Surgeon's Certificate No. C 51231 was revoked, stayed, and placed on probation for three years for gross negligence, repeated negligent acts, failure to maintain adequate and accurate records, and general unprofessional conduct. That decision is now final and is incorporated by reference as if fully set forth herein.

PRAYER

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

1. Revoking or suspending Physician's and Surgeon's Certificate Number C 51231, issued to Respondent Dan Orville Harper, M.D.;

2. Revoking, suspending or denying approval of Respondent Dan Orville Harper, M.D.'s authority to supervise physician assistants and advanced practice nurses;

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3. Ordering Respondent Dan Orville Harper, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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

DATED: November 5, 2020

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