

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

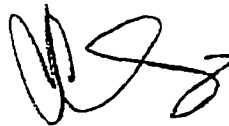
DECISION

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

1 ROB BONTA
Attorney General of California
2 MATTHEW M. DAVIS
Supervising Deputy Attorney General
3 TESSA L. HEUNIS
Deputy Attorney General
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8 *Attorneys for Complainant*

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**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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1 CULPABILITY

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

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

7 CONTINGENCY

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

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

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

3 **ADDITIONAL PROVISIONS**

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

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

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

13 **DISCIPLINARY ORDER**

14 A. **PUBLIC REPRIMAND**

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

20 On or about October 18, 2017, you failed to provide care and treatment for
21 Patient A, Patient B, Patient C, and Patient D, in accordance with the standard of
22 practice in the medical community, as more fully described in Accusation No. 800-
23 2017-038648.

24 A. **EDUCATION COURSE.** Within 60 calendar days of the effective date of this
25 Decision, Respondent shall submit to the Board or its designee for its prior approval educational
26 program(s) or course(s) which shall not be less than 60 hours. The educational program(s) or
27 course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be
28 Category I certified. The educational program(s) or course(s) shall be at Respondent's expense

1 and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of
2 licensure. Following the completion of each course, the Board or its designee may administer an
3 examination to test Respondent's knowledge of the course. Respondent shall provide proof of
4 attendance for 60 hours of CME in satisfaction of this condition within one (1) year of the
5 effective date of the Decision.

6 B. PROHIBITED PRACTICE. Respondent is prohibited from making or issuing any
7 written exemption from immunization, or any other written statements providing that any child is
8 exempt from the requirements of Chapter 1 (commencing with Section 120325, but excluding
9 Section 120380) and Sections 120400, 120405, 120410, and 120415 of the Health and Safety
10 Code. After the effective date of this Decision, all patients being treated by Respondent shall be
11 notified of this prohibition. Any new patients must be provided this notification at the time of
12 their initial appointment.

13 Respondent shall maintain a log of all patients to whom the required oral notification was
14 made. The log shall contain the: 1) patient's name, address and phone number; 2) patient's
15 medical record number, if available; 3) the full name of the person making the notification; 4) the
16 date the notification was made; and 5) a description of the notification given. Respondent shall
17 keep this log in a separate file or ledger, in chronological order, shall make the log available for
18 immediate inspection and copying on the premises at all times during business hours by the Board
19 or its designee, and shall retain the log for a period of three (3) years from the effective date of the
20 Decision.

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

23 ACCEPTANCE


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

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

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

12 DATED: 05-24-21


13 DAN ORVILLE HARPER, M.D.
14 Respondent

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

18 DATED: May 24, 2021


19 DAVID M. BALFOUR ESQ.
20 Attorney for Respondent

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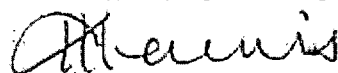
ENDORSEMENT

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

1 XAVIER BECERRA
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2 MATTHEW M. DAVIS
Supervising Deputy Attorney General
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8 *Attorneys for Complainant*

9
10 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA
12

13 In the Matter of the Accusation Against:

Case No. 800-2017-038648

14 **Dan Orville Harper, M.D.**
15 **509 South Cedros Avenue, Suite B**
Solana Beach, CA 92075-2900

A C C U S A T I O N

16 **Physician's and Surgeon's Certificate**
17 **No. C 51231,**

18 Respondent.

19
20 **PARTIES**

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

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

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board, under the authority of the following
3 laws. All section references are to the Business and Professions Code (Code) unless otherwise
4 indicated.

5 4. Section 2220 of the Code states:

6 Except as otherwise provided by law, the board may take action against all
7 persons guilty of violating this chapter. The board shall enforce and administer this
8 article as to physician and surgeon certificate holders, including those who hold
9 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...

10 **STATUTORY PROVISIONS**

11 5. Section 2227 of the Code states:

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

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

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

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

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

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

27 ...

28 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.

...

1 (c) Repeated negligent acts. To be repeated, there must be two or more
2 negligent acts or omissions. An initial negligent act or omission followed by a
3 separate and distinct departure from the applicable standard of care shall constitute
4 repeated negligent acts.

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

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

13 ...

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

18 FACTUAL ALLEGATIONS

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

21 9. Patient A² (born April 2007), Patient B (born November 2008), Patient C (born
22 August 2010), and Patient D (born September 2012), are the minor children of divorced parents,
23 Parent X and Parent Y.

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

28 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.

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.

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

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

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

9 16. Parent X was also reportedly concerned regarding Parent X's alleged homozygous
10 MTHFR gene SNP³ that "caused some of Parent X's health issues."

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

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

15 [Patient A] should not receive vaccinations in view of strong family history of
16 autoimmune disorders, family member with vaccination reaction, and personal
17 detoxification weakness, due to risk of developing autoimmune syndromes induced
18 by adjuvants in vaccine.

19 [Patient B] should not receive vaccinations in view of strong family history of
20 autoimmune disorders, family member with vaccination reaction, and personal
21 history of weak detoxification, due to risk of developing autoimmune syndromes
22 induced by adjuvants in vaccine.

23 [Patient C] should not receive vaccinations in view of strong family history of
24 autoimmune disorders, family member with vaccination reactions and personal weak
25 detoxification due to risk of developing autoimmune syndromes induced by adjuvants
26 in vaccine.

27 [Patient D] should not be vaccinated in view of strong family history of

28 ³ Methylene tetrahydrofolate 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).

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

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

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

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Repeated Negligent Acts)**

11 21. Respondent Dan Orville Harper, M.D., is subject to disciplinary action under sections
12 2227 and 2234, as defined by section 2234, subdivision (c), of the Code, in that he committed
13 repeated negligent acts in his care and treatment of Patient A, Patient B, Patient C, and Patient D,
14 as more particularly alleged hereafter:

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

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

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

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

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

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(General Unprofessional Conduct)**

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

12 **DISCIPLINARY CONSIDERATIONS**

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

21 **PRAYER**

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

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

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

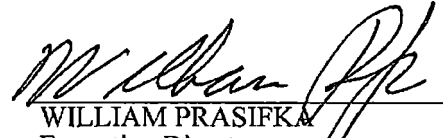
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3. Ordering Respondent Dan Orville Harper, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

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