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

In the Matter of the First Amended Accusation Against: Jonathan D. Olenick, M.D. Physician's & Surgeon's Certificate No. G 15638 Respondent.	Case No. 800-2019-053949

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 August 24, 2022.

IT IS SO ORDERED: July 25, 2022.

MEDICAL BOARD OF CALIFORNIA

Richard E. Thorp, M.D., Chair
Panel B

ROB BONTA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
JOSEPH F. MCKENNA III
Deputy Attorney General
State Bar No. 231195
600 West Broadway, Suite 1800
San Diego, California 92101
P.O. Box 85266
San Diego, California 92186-5266
Telephone: (619) 738-9417
Facsimile: (619) 645-2061

Attorneys for Complainant

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

In the Matter of the First Amended Accusation Against: **JONATHAN D. OLENICK, M.D.** **2102 Jacaranda Court** **San Bernardino, California 92404** **Physician's and Surgeon's Certificate No. G 15638,** Respondent.	Case No. 800-2019-053949 OAH No. 2021100448 **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, and by Joseph F. McKenna III, Deputy Attorney General.

2. Respondent Jonathan D. Olenick, M.D. (Respondent) is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about October 18, 1968, the Medical Board issued Physician's and Surgeon's Certificate No. G 15638 to Jonathan D. Olenick, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges and allegations brought in First Amended Accusation No. 800-2019-053949, and will expire on April 30, 2023, unless renewed.

JURISDICTION

4. On July 30, 2021, Accusation No. 800-2019-053949 was filed before the Board. The Accusation and all other statutorily required documents were properly served on Respondent on July 30, 2021. Respondent timely filed his Notice of Defense contesting the Accusation.

5. On January 19, 2022, First Amended Accusation No. 800-2019-053949 was filed before the Board, and is currently pending against Respondent. The First Amended Accusation and all other statutorily required documents were properly served on Respondent on January 19, 2022. A true and correct copy of the First Amended Accusation is attached hereto as Exhibit A and hereby incorporated by reference as if fully set forth herein.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read and fully understands the charges and allegations in First Amended Accusation No. 800-2019-053949. Respondent has also carefully read and fully understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the First Amended Accusation; the right to be represented by counsel at his own expense; 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.

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

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CULPABILITY

9. Respondent fully understands and agrees that the charges and allegations contained in First Amended Accusation No. 800-2019-053949, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate No. G 15638.

10. Respondent stipulates that, at a hearing, Complainant could establish a *prima facie* case or factual basis for the charges and allegations contained in the First Amended Accusation; that he gives up his right to contest those charges and allegations contained in the First Amended Accusation; and that he has thereby subjected his Physician's and Surgeon's Certificate to disciplinary action.

CONTINGENCY

11. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. Respondent agrees that if an accusation is ever filed against him before the Board, all of the charges and allegations contained in First Amended Accusation No. 800-2019-053949 shall be deemed true, correct and fully admitted by Respondent for purposes of any such proceeding or any other licensing proceeding involving Respondent in the State of California.

ADDITIONAL PROVISIONS

13. 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.

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14. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Respondent Jonathan D. Olenick, M.D.'s Physician's and Surgeon's Certificate No. G 15638 shall be and is hereby Publicly Reprimanded pursuant to California Business and Professions Code section 2227, subdivision (a), subsection (4). This Public Reprimand, which is issued in connection with the charges and allegations contained in First Amended Accusation No. 800-2019-053949, is as follows:

1. PUBLIC REPRIMAND.

On or about August 9, 2018, Respondent issued a permanent exemption for all school-required immunizations to a single patient without performing an adequate physical examination of the patient.

2. PROFESSIONALISM PROGRAM (ETHICS COURSE).

Within sixty (60) calendar days of the effective date of this Decision, Respondent shall enroll in a professionalism program, that meets the requirements of Title 16, California Code of Regulations section 1358.1. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after Respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at Respondent's expense and shall be in addition to the Continuing Medical Education requirements for renewal of licensure.

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A professionalism program taken after the acts that gave rise to the charges in the First Amended Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the program would have been approved by the Board or its designee had the program been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than fifteen (15) calendar days after successfully completing the program or not later than fifteen (15) calendar days after the effective date of the Decision, whichever is later.

3. INVESTIGATION/ENFORCEMENT COST RECOVERY.

Respondent is hereby ordered to reimburse the Board its costs of enforcement, including legal review and expert review, as applicable, in the amount of two thousand five hundred eleven dollars and twenty-five cents ($2,511.25). Costs shall be payable to the Board. Failure to pay such costs shall be considered a violation of this agreement and shall be deemed an act of unprofessional conduct and a separate and distinct basis for discipline.

Any and all requests for a payment plan shall be submitted in writing by Respondent to the Board.

The filing of bankruptcy by Respondent shall not relieve Respondent of the responsibility to repay investigation and enforcement costs, including expert review costs (if applicable).

4. FAILURE TO COMPLY.

Any failure by Respondent to comply with the terms and conditions of the Disciplinary Order set forth above shall constitute unprofessional conduct and grounds for further disciplinary action.

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ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I fully understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. G 15638. I am representing myself in this proceeding and have chosen not to exercise my right to be represented by counsel. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Disciplinary Order of the Medical Board of California.

DATED: 05/24/2022

JONATHAN D. OLENICK, M.D.
Respondent

ENDORSEMENT

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

DATED: May 25, 2022

Respectfully submitted,

ROB BONTA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General

JOSEPH F. MCKENNA III
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

First Amended Accusation No. 800-2019-053949

ROB BONTA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
JOSEPH F. MCKENNA III
Deputy Attorney General
State Bar No. 231195
600 West Broadway, Suite 1800
San Diego, California 92101
P.O. Box 85266
San Diego, California 92186-5266
Telephone: (619) 738-9417
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BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the First Amended Accusation Against: **JONATHAN D. OLENICK, M.D.** **2102 Jacaranda Court** **San Bernardino, California 92404** **Physician's and Surgeon's Certificate No. G 15638,** Respondent.	Case No. 800-2019-053949 OAH No. 2021100448 **FIRST AMENDED ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about October 18, 1968, the Board issued Physician's and Surgeon's Certificate No. G 15638 to Jonathan D. Olenick, 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 April 30, 2023, unless renewed.

JURISDICTION

3. This First Amended Accusation, which supersedes Accusation No. 800-2019-053949, filed on July 30, 2021, in the above-entitled matter, 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.

STATUTORY PROVISIONS

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, in relevant part:

> The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:
>
> (a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.
>
> (b) Gross negligence.
>
> (c) Repeated negligent acts
>
> ...

COST RECOVERY

6. Section 125.3 of the Code states:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board upon request of the entity bringing the proceeding, the administrative law judge may direct a licensee 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.

(b) In the case of a disciplined licentiate that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

(c) 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. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge if the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

(e) If an order for recovery of costs is made and timely payment is not made as directed in the board's decision, the board may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licensee to pay costs.

(f) In any action for recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(g)(1) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any licensee who has failed to pay all of the costs ordered under this section.

(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licensee who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one-year period for the unpaid costs.

(h) All costs recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the fund of the board recovering the costs to be available upon appropriation by the Legislature.

(i) Nothing in this section shall preclude a board from including the recovery of the costs of investigation and enforcement of a case in any stipulated settlement.

(j) This section does not apply to any board if a specific statutory provision in that board's licensing act provides for recovery of costs in an administrative disciplinary proceeding.

7. Unprofessional conduct under section 2234 of the Code 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. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

8. Section 2266 of the Code states:

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

PERTINENT CASE INFORMATION

9. On March 24, 2021, Respondent was interviewed by a special investigator and a district medical consultant working on behalf of the Board. During the interview, Respondent answered a number of general background questions. Respondent stated that he was a board-certified ophthalmologist, but that he had been retired from the practice of medicine for more than twenty (20) years. Since his retirement, Respondent has continued to maintain in good standing both his medical license in California and his registration with the Drug Enforcement Administration (DEA). Respondent stated that he had prescribed hydroxychloroquine for COVID treatment to "five or six" different people.

10. During the same interview, Respondent answered a number of specific questions about the allegations pertaining to the Board's investigation. Respondent admitted that he had written two (2) vaccine exemption letters for his relative (Patient A) in the past, "based upon the history ... given to me by [Patient A's father]." Respondent further explained that Patient A had received shots a few years earlier for Respiratory Syncytial Virus (RSV) and Measles, Mumps, and Rubella (MMR) and had developed chronic gastroenteritis, according to information given to him by Patient A's father. When asked whether he thought that chronic gastroenteritis was a contraindication to receiving all vaccines, Respondent replied, "I don't know." Respondent admitted that he was not familiar with the Centers for Disease Control (CDC) guidelines for what would constitute a reason to avoid a vaccine. At all times relevant to the charges and allegations contained in First Amended Accusation No. 800-2019-053949, Respondent never provided any medical care or treatment to Patient A.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

11. Respondent has subjected his Physician's and Surgeon's Certificate No. G 15638 to disciplinary action under sections 2227 and 2234, as defined in section 2234, subdivision (b), of the Code, in that Respondent committed gross negligence in his care and treatment of Patient A,[1] as more particularly alleged hereinafter:

12. **Patient A**

(a) On or about August 9, 2018, Respondent, a retired ophthalmologist, provided his relative, Patient A, with a permanent medical exemption for all school-required immunizations, that was recorded on the American Academy of Pediatrics/California Academy of Family Physicians standard vaccine exemption form. Respondent documented on the exemption form that "[Patient A] has a history of severe reaction to immunizations." Respondent signed the exemption form and included his medical license number and address information. Patient A's parents then submitted the exemption form to the San Diego Unified School District as an immunization waiver for Patient A for all school entry required vaccines.

(b) Respondent issued the vaccine exemption form to Patient A without conducting a physical examination of Patient A, and without evaluating Patient A's immunization records and/or related medical records from other medical providers. Respondent solely relied upon the history given to him from Patient A's father regarding Patient A's medical history.

(c) Respondent did not have any medical records documenting his evaluation and medical decision regarding issuance of the vaccine exemptions for Patient A. Respondent never treated Patient A as a patient. Prior to his retirement, Respondent did not issue vaccine exemptions in his medical practice as an ophthalmologist.

[1] To protect the privacy of the patient involved in this matter, the patient's name has not been included in this pleading. Respondent is aware of the identity of Patient A.

13. Respondent committed gross negligence in his care and treatment of Patient A including, but not limited to, the following:

(a) Respondent failed to perform a physical examination of Patient A, failed to evaluate Patient A's immunization records and/or related medical records, and relied solely on an incomplete and inaccurate history provided by Patient A's father, before issuing a broad and permanent exemption for all school-required immunizations.

(b) Respondent did not have the requisite medical knowledge to write a vaccine exemption for Patient A, since he did not issue vaccine exemptions in his medical practice as an ophthalmologist prior to his retirement.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

14. Respondent has further subjected his Physician's and Surgeon's Certificate No. G 15638 to disciplinary action under sections 2227 and 2234, as defined in section 2234, subdivision (c), of the Code, in that Respondent committed repeated negligent acts in his care and treatment of Patient A, as more particularly alleged hereinafter:

15. **Patient A**

(a) Paragraphs 12 and 13, above, are hereby incorporated by reference and realleged as if fully set forth herein.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Medical Records)

16. Respondent has further subjected his Physician's and Surgeon's Certificate No. G 15638 to disciplinary action under sections 2227 and 2234, as defined in section 2266, of the Code, in that Respondent failed to maintain adequate and accurate records in connection with his care and treatment of Patient A, as more particularly alleged hereinafter:

17. **Patient A**

(a) Paragraphs 11 through 15, above, are hereby incorporated by reference and realleged 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 No. G 15638, issued to Respondent Jonathan D. Olenick, M.D.;

2. Revoking, suspending or denying approval of Respondent Jonathan D. Olenick, M.D.'s authority to supervise physician assistants pursuant to section 3527 of the Code, and advanced practice nurses;

3. Ordering Respondent Jonathan D. Olenick, M.D., to pay the Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring; and

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

DATED: JAN 19 2022

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

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