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

In the Matter of the First Amended Accusation Against: Robin Alvin Bernhoft, M.D. Physician's and Surgeon's Certificate No. G 34278 Respondent.	Case No.: 800-2018-044589

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 September 30, 2022.

IT IS SO ORDERED: August 31, 2022.

MEDICAL BOARD OF CALIFORNIA

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

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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: **ROBIN ALVIN BERNHOFT, M.D.** **1200 Maricopa Highway, Suite A** **Ojai, CA 93023** **Physician's and Surgeon's Certificate No. G 34278** Respondent.	Case No. 800-2018-044589 OAH No. 2021070448 **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 Ryan J. McEwan, Deputy Attorney General.

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2. Respondent Robin Alvin Bernhoft, M.D. (Respondent) is represented in this proceeding by attorney Raymond J. McMahon, Esq., whose address is: 5440 Trabuco Road Irvine, CA 92620.

3. On or about June 14, 1993, the Board issued Physician's and Surgeon's Certificate No. G 34278 to Robin Alvin Bernhoft, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in the First Amended Accusation No. 800-2018-044589, and will expire on March 31, 2023, unless renewed.

JURISDICTION

4. Accusation No. 800-2018-044589 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on May 26, 2021. Respondent timely filed his Notice of Defense contesting the Accusation. The First Amended Accusation was filed and served on Respondent on March 10, 2022.

5. A copy of the First Amended Accusation No. 800-2018-044589 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in the First Amended Accusation No. 800-2018-044589. Respondent has also carefully read, fully discussed with his counsel, and 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 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.

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

CULPABILITY

9. Respondent understands and agrees that the charges and allegations in the First Amended Accusation No. 800-2018-044589, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and Surgeon's Certificate.

10. Respondent does not contest that, at an administrative hearing, Complainant could establish a prima facie case with respect to the charges and allegations in Accusation No. 800-2018-044589, a true and correct copy of which is attached hereto as Exhibit A, and that he has thereby subjected his Physician's and Surgeon's Certificate, No. G 34278 to disciplinary action.

11. Respondent agrees that his Physician's and Surgeon's Certificate 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

12. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California 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.

13. Respondent agrees that if he ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against him before the Board, all of the charges and allegations contained in the First Amended Accusation No. 800-2018-044589 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.

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 Physician's and Surgeon's Certificate No. G 34278 issued to Respondent Robin Alvin Bernhoft, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions:

1. EDUCATION COURSE. 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. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in medical record keeping approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully

complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A medical record keeping course 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 course would have been approved by the Board or its designee had the course 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 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

3. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 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 (CCR) 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 (CME) requirements for renewal of licensure.

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 15 calendar days after successfully completing the program or not later

than 15 calendar days after the effective date of the Decision, whichever is later.

4. MONITORING - PRACTICE. Within 30 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a practice monitor(s), the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective date of this Decision, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a monitor is approved to provide monitoring responsibility.

The monitor(s) shall submit a quarterly written report to the Board or its designee which includes an evaluation of Respondent's performance, indicating whether Respondent's practices

are within the standards of practice of medicine, and whether Respondent is practicing medicine safely, billing appropriately or both. It shall be the sole responsibility of Respondent to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

In lieu of a monitor, Respondent may participate in a professional enhancement program approved in advance by the Board or its designee that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at Respondent's expense during the term of probation.

5. PROHIBITED PRACTICE. During probation, Respondent is prohibited from issuing, renewing, or extending any medical vaccine exemptions.

After the effective date of this Decision, any patient who requests a medical vaccine exemption or requests a consultation for a medical vaccine exemption shall be notified that Respondent is prohibited from issuing, renewing, or extending any medical vaccine exemptions. 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 the entire term of probation.

6. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the Respondent shall provide a true copy of this Decision and 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.

7. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE NURSES. During probation, Respondent is prohibited from supervising physician assistants and advanced practice nurses.

8. 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.

9. INVESTIGATION/ENFORCEMENT COST RECOVERY. Respondent is hereby ordered to reimburse the Board its costs of investigation and enforcement, in the amount of $2,247.50. Costs shall be payable to the Medical Board of California. Failure to pay such costs shall be considered a violation of probation.

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.

10. 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.

11. 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, subdivision (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.

12. 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.

13. 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 Boards'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; Quarterly Declarations.

14. 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.

15. 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.

16. 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 or her 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.

17. 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.

18. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing action agency in the State of California, all of the charges and allegations contained in the First Amended Accusation No. 800-2018-044589 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict license.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Raymond J. McMahon, Esq.. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 3/24/2022

ROBIN ALVIN BERNHOFT, M.D.
Respondent

I have read and fully discussed with Respondent Robin Alvin Bernhoft, 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: 3/24/2022

RAYMOND J. MCMAHON, ESQ.
Attorney for Respondent

ENDORSEMENT

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

DATED: 3/25/2022

Respectfully submitted.

ROB BONTA
Attorney General of California
STEVEN D. MUNI
Supervising Deputy Attorney General

RYAN J. MCEWAN
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

First Amended Accusation No. 800-2018-044589

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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: **Robin Alvin Bernhoft, M.D.** **1200 Maricopa Highway, Suite A** **Ojai, CA 93023** **Physician's and Surgeon's Certificate No. G 34278,** Respondent.	Case No. 800-2018-044589 OAH No. 2021070448 **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, Department of Consumer Affairs (Board).

2. On or about June 14, 1993, the Medical Board issued Physician's and Surgeon's Certificate No. G 34278 to Robin Alvin Bernhoft, 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 March 31, 2023, unless renewed.

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JURISDICTION

3. This First Amended 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 provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

5. Section 2234 of the Code, states, in pertinent 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. 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 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."

OTHER STATUTES

7. Health and Safety Code section 120335 states:

"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 influenzae 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 Department of Health and Human Services, the American Academy of Pediatrics, and the American Academy of Family Physicians.

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

regulations.

"(c) Exemptions from immunization for medical reasons.

"(d) For the keeping of adequate records of immunization so that health departments, schools, and other institutions, parents or guardians, and the persons immunized will be able to ascertain that a child is fully or only partially immunized, and so that appropriate public agencies will be able to ascertain the immunization needs of groups of children in schools or other institutions.

"(e) Incentives to public health authorities to design innovative and creative programs that will promote and achieve full and timely immunization of children."

8. Section 120370 of the Health and Safety Code states:[1]

"(a) (1) Prior to January 1, 2021, if the parent or guardian files with the governing authority a written statement by a licensed physician and surgeon to the effect that the physical condition of the child is such, or medical circumstances relating to the child are such, that immunization is not considered safe, indicating the specific nature and probable duration of the medical condition or circumstances, including, but not limited to, family medical history, for which the physician and surgeon does not recommend immunization, that child shall be exempt from the requirements of this chapter, except for Section 120380, and exempt from Sections 120400, 120405, 120410, and 120415 to the extent indicated by the physician and surgeon's statement.

"(2) Commencing January 1, 2020, a child who has a medical exemption issued before January 1, 2020, shall be allowed continued enrollment to any public or private elementary or secondary school, child care center, day nursery, nursery

[1] Effective January 1, 2016, through December 31, 2019, Health and Safety Code section 120370, subdivision (a), stated: "If the parent or guardian files with the governing authority a written statement by a licensed physician to the effect that the physical condition of the child is such, or medical circumstances relating to the child are such, that immunization is not considered safe, indicating the specific nature and probable duration of the medical condition or circumstances, including, but not limited to, family medical history, for which the physician does not recommend immunization, that child shall be exempt from the requirements of Chapter 1 (commencing with Section 120325, but excluding Section 120380) and Sections 120400, 120405, 120410, and 120415 to the extent indicated by the physician's statement."

school, family day care home, or developmental center within the state until the child enrolls in the next grade span.

"For purposes of this subdivision, 'grade span' means each of the following:

"(A) Birth to preschool, inclusive.

"(B) Kindergarten and grades 1 to 6, inclusive, including transitional kindergarten.

"(C) Grades 7 to 12, inclusive.

"..."

COST RECOVERY

9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to 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, with failure of the licensee to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

FACTUAL ALLEGATIONS

10. At all relevant times, Respondent was a physician and surgeon providing medical care at his clinic, Bernhoft Center for Advanced Medicine, in Ojai, California. Respondent is not a pediatrician and at all relevant times was not the primary care physician for Patient A, Patient B, or Patient C.[2]

11. During an interview with Board investigators (the "Board Interview"), Respondent stated that he mostly treats adults and "very rarely see[s] children." He also stated that his office does not have a scale or a blood pressure cuff that could accommodate an infant.

12. In 2015, the California Legislature amended Health and Safety Code section 120325 to eliminate personal beliefs as a basis for exemption from required immunizations for school-aged children. As a consequence, school-aged children not subject to any other exception were

[2] Patient names are omitted to protect patient privacy. They will be provided in discovery.

required to have immunizations for 10 vaccine-preventable childhood illnesses as a condition of public school attendance.

Patient A

13. Patient A is a male minor child, born in March 2018.

14. Respondent saw Patient A on one occasion only, namely, on or about May 2, 2018, when Patient A was approximately five weeks old. The purpose for the visit is documented as "[v]accine exemption request." A family history includes cancer in second-degree relatives, diabetes in Patient A's father, celiac disease, asthma, food allergies and depression. The history of present illness in the visit summary states, "Sister had anaphylactoid reaction to immunizations, several cousins suffered encephalitis after shot with prolonged obtundation." Respondent further notes a family history of "Type 1 DM, several others with DMI, one case of Crohn's." Respondent documents an impression of "Adverse F Hx" and a plan for a "Letter." There is documentation of a physical examination consisting of a series of check marks.

15. On or about May 2, 2018, Respondent wrote a medical vaccine exemption letter for Patient A stating only: "[Patient A] has a family history of adverse vaccine reactions and autoimmunity (several diagnoses). Please exempt him permanently from all mandated vaccines." The medical exemption form attached to the letter exempts Patient A from all vaccines on a permanent basis.

16. Medical records show that Patient A received pediatric care from other providers in Newport Beach, California. The documentation shows that anticipatory guidance and vaccination counseling is provided at each visit, but that the family refuses vaccination. Patient A was also seen for viral syndrome at age 7 months, cervical lymphadenopathy at 15 months, a heart murmur documented at 17 months, and a febrile illness with rash at 18 months.

17. Respondent's medical records for Patient A do not contain any records or documentation from other providers related to Patient A.

18. Respondent's medical exemption letter is based on a medical history that reveals no contraindication or caution with regards to vaccination (family history and described history of an unverified vaccine reaction in the patient's sister). Respondent's explanation and/or rationale for

providing Patient A with a permanent exemption from all vaccinations, current and future, was not consistent with, and was in direct opposition to, the recommendations of the Centers for Disease Control and Prevention (CDC), American Academy of Pediatrics (AAP), and/or other guiding bodies.

Patient B

19. Patient B is a female minor child born in August 2013.

20. Respondent saw Patient B on one occasion only, namely, on or about May 14, 2018, when Patient B was four years old. The reason for the visit is documented as a word-of-mouth referral for "[v]accine exemption request." Patient B's parent completed a medical history checklist, checking allergies and chemical sensitivities as positive. A family history (second degree relative) includes Parkinson's Disease. The history of present illness documented by Respondent states that Patient B had MMR three years ago and "had severe reaction including encephalitis, obtundation which lasted a day or so." Respondent also notes that Patient B had local swelling with previous shots and a "[p]ersonality change after the MMR which lasted a few days, skin rash over entire body, listlessness all of which lasted about three days." There is documentation of a physical examination consisting of a series of check marks. The assessment is that Patient B had "adverse reaction to immunization," "allergy," and "Adverse F Hx (autoimmunity)."

21. On or about May 14, 2018, Respondent wrote a medical vaccine exemption letter stating only: "[Patient B] had an adverse neurological reaction to the MMR three years ago [illegible] (encephalitis and anaphylactoid rash which lasted several days) and has a family history of autoimmunity involving multiple relatives and diagnoses. Please exempt her permanently from all mandated immunizations." The medical exemption form attached to the letter exempts Patient B from all vaccines on a permanent basis.

22. Medical records show that Patient B received pediatric care from other providers. These records show that, at age 5 months, Patient B received emergency room treatment for croup and pneumonia; at 18 months, she was diagnosed with a *S. aureus* infection. She also had multiple well child visits with her pediatrician (not Respondent). At 13 months, Patient B was

found to be anemic and treated with iron drops. She was examined one month after her VZV vaccine with a chief complaint of "bumps" and diagnosed with folliculitis. She was also seen at 15 months, after receiving vaccines, with a temperature of 102° (F) and emesis. By the time she was evaluated, her fever had resolved. Multiple other visits were for common pediatric conditions including stye, diarrhea, emesis, wheezing, fevers, infected finger (*S. aureus* culture positive), otitis media, headaches, allergy symptoms, and multiple visits for rashes. Her diagnoses included folliculitis, molloscum contagiosum, viral exanthems, and group A strep.

23. Respondent's medical records for Patient B do not contain any records or documentation from other providers related to Patient B. At the Board Interview, Respondent stated that the information concerning Patient B was provided verbally from the family during the visit, and that he did not recall reviewing outside records. He further stated that he did not receive records to confirm Patient B's reported reaction to the MMR vaccine.

24. Respondent's letter for Patient B granting permanent exemption from vaccination is based on a medical history provided by the child's parent that is not verified with other medical records. The child is reported to have had "encephalitis" but there is no documentation that there was an emergency visit for her symptoms or even a physician's visit to verify. Respondent also uses the parent's statement of an "anaphylactoid rash" after MMR but again no medical documentation supports it. There is no documentation of anaphylaxis. The patient's own personal or family history does not reveal any contraindication or caution with regards to vaccination, yet the permanent medical exemption to vaccination is provided. Respondent's explanation and/or rationale for providing Patient B with a permanent exemption from all vaccinations, current and future, was not consistent with, and was in direct opposition to, the recommendations of the CDC, AAP, and/or other guiding bodies.

Patient C

25. Patient C is a male minor child, born in April 2012.

26. Respondent saw Patient C on one occasion only, namely, on or about August 29, 2018, when Patient C was approximately six years old. The reason for the visit is documented as a word-of-mouth referral for "[v]accine exemption request." Respondent notes that Patient C's

brother "had vaccine related issues including persistent neurological damage (tics, sleep apnea) immediately subsequent to vaccination." A family history includes a cousin with autism, mother's family members with Alzheimer's and other family members with diabetes, Hashimoto's, inflammatory bowel disease, and psoriasis. Respondent notes that "details [are] not clear." There is no documentation of an attempt to obtain confirmatory records. Respondent makes a diagnosis of eczema but does not note any abnormalities on the physical examination included in his documentation. Respondent's plan is "Letter."

27. On or about August 29, 2018, Respondent wrote a medical vaccine exemption letter for Patient C stating only: "[Patient C] has a significant family history of adverse vaccine reaction and autoimmunity. Please exempt him permanently from all mandated vaccinations." The medical exemption form attached to the letter exempts Patient C from all vaccines on a permanent basis.

28. Medical records show that Patient C received pediatric care from other providers. These records show that, on or about January 14, 2019, another provider evaluated Patient C for "evaluation of safety of vaccinations." This evaluation notes the following: Patient C received vaccinations in infancy and early childhood without incident; his last vaccinations were in January 2013 (approximately 10 months of age); his mother is opposed to further vaccinations due to fear of autism; he has not actually manifested any behavioral signs of autism; his brother has "persistent neurologic damage" following vaccination and his cousin has autism (a history not verified with medical records); he does not have eczema or any food allergies and is not at risk for sleep apnea. The evaluating provider concludes that Patient C has nothing in his medical history that would preclude administration of all childhood vaccinations, and he documents a "strong" recommendation for continuing vaccination.

29. The Board also obtained medical records from a different provider showing office visits and well child checks from 2017. On several occasions in early 2017, Patient C presents with chief complaints of a persistent cough. In another visit, Patient C is diagnosed with tics but there are no details, follow-ups visits or a diagnostic plan noted. A letter dated August 4, 2017, provides Patient C with a temporary (3-month) medical vaccine exemption. The letter states that

Patient C was "being evaluated for some concerns," and that he "should not receive any vaccines until we receive the results from our testing." The letter does not identify or explain the "concerns" or the "testing" to be completed.

30. Respondent's medical records for Patient C do not contain any records or documentation from other providers related to Patient C, except for the August 2017 temporary medical vaccine exemption letter noted in paragraph 28 above. Respondent's August 29, 2018 visit summary does not mention the temporary exemption letter or any related test results.

31. Respondent's letter for Patient C granting permanent exemption from vaccination is based on a medical history provided by the child's parent that is not verified with other medical records. The patient's own personal or family history does not reveal any contraindication or caution with regards to vaccination, yet the permanent medical exemption to vaccination is provided. Respondent's explanation and/or rationale for providing Patient C with a permanent exemption from all vaccinations, current and future, was not consistent with, and was in direct opposition to, the recommendations of the CDC, AAP, and/or other guiding bodies.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

32. Respondent's license is subject to disciplinary action under section 2234, subdivision (b), of the Code, in that he has committed gross negligence in his care and treatment of Patient A, Patient B, and Patient C, which includes, but is not limited to, granting permanent vaccine exemptions without a clinical basis or justification, as more particularly alleged in paragraphs 10 through 31 above, which are hereby realleged and incorporated by this reference as if fully set forth herein.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

33. Respondent's license is subject to disciplinary action under section 2234, subdivision (c), of the Code, in that he committed repeated negligent acts in his care and treatment of Patient A, Patient B, and Patient C, as more particularly alleged in paragraphs 10 through 32 above, which are hereby realleged and incorporated by this reference as if fully set forth herein.

Respondent committed an additional negligent act by practicing beyond the scope of his medical background and training when he treated Patient A, a five-week old infant.

THIRD CAUSE FOR DISCIPLINE

(Incompetence)

34. Respondent's license is subject to disciplinary action under section 2234, subdivision (d), of the Code, in that he demonstrated incompetence in his care and treatment of Patient A, Patient B, and Patient C, as more particularly alleged in paragraphs 10 through 33 above, which are hereby realleged and incorporated by this reference as if fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

35. Respondent's license is subject to disciplinary action under section 2266 of the Code in that he failed to maintain adequate and accurate medical records relating to the care and treatment of Patient A, Patient B, and Patient C, as more particularly alleged in paragraphs 10 through 34 above, which are hereby realleged and incorporated by this reference as if fully set forth herein.

FIFTH CAUSE FOR DISCIPLINE

(General Unprofessional Conduct)

36. Respondent's license is subject to disciplinary action under section 2234 of the Code in that he has engaged in conduct which breaches the rules or ethics of the medical profession, or conduct that is unbecoming to a member in good standing of the medical profession, and which demonstrates an unfitness to practice medicine, as more particularly alleged in paragraphs 10 through 35 above, which are hereby realleged and incorporated by this 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 No. G 34278, issued to Robin Alvin Bernhoft, M.D.;

2. Revoking, suspending or denying approval of Robin Alvin Bernhoft, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Robin Alvin Bernhoft, M.D., to pay the Board the costs of the investigation and enforcement of this case, and 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: MAR 10 2022

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

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