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 and Surgeon's Certificate No. C 51231** **Respondent.**	**Case No.: 800-2019-053990**

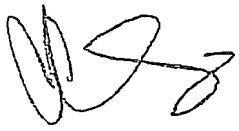
DECISION

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 March 6, 2023.

IT IS SO ORDERED: February 2, 2023.

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 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 No. 800-2019-053990 OAH No. 2022040468 **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.

2. Respondent Dan Orville Harper, M.D. (Respondent) is represented in this proceeding by attorney David M. Balfour Esq., whose address is: 655 W. Broadway, Suite 1600, San Diego, CA 92101.

3. On or about July 1, 2003, the Board issued Physician's and Surgeon's Certificate No. C 51231 to Dan Orville Harper, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2019-053990, and will expire on July 31, 2023, unless renewed.

JURISDICTION

4. On March 3, 2022, Accusation No. 800-2019-053990 was filed before the Board and is currently pending against Respondent. A true and correct copy of the Accusation and all other statutorily required documents were properly served on Respondent on March 3, 2022. Respondent timely filed his Notice of Defense contesting the Accusation. A true and correct copy of Accusation No. 800-2019-053990 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and fully understands the charges and allegations in Accusation No. 800-2019-053990. Respondent has also carefully read, fully discussed with his counsel, and fully understands the effects of this Stipulated Settlement and Disciplinary Order.

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

7. Having the benefit of counsel, Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

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

9. Respondent does not contest that, at an administrative hearing, Complainant could establish a *prima facie* case with respect to the charges and allegations contained in Accusation No. 800-2019-053990 and that his Physician's and Surgeon's Certificate No. C 51231 is therefore subject to discipline.

10. 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 Accusation No. 800-2019-053990 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 or elsewhere.

CONTINGENCY

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

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

hereto. Respondent further agrees that should this Stipulated Settlement and Disciplinary Order be rejected for any reason by the Board, Respondent will assert no claim that the Board, or any member thereof, was prejudiced by its/his/her review, discussion and/or consideration of this Stipulated Settlement and Disciplinary Order or of any matter or matters related hereto.

ADDITIONAL PROVISIONS

13. 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.

14. 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.

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. C 51231 issued to Respondent Dan Orville Harper, M.D., is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years from the effective date of the Decision and Order on the terms and conditions, below. This Order supersedes the Board's Decision and Order in Case No. 800-2017-038648:

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 60 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, with particular emphasis on the risks and benefits of vaccinations and contraindications to vaccinations, 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 85 hours of CME of which 60 hours were in satisfaction of this condition.

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

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

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

3. 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.

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

5. 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.

6. ENFORCEMENT COST RECOVERY. Respondent is hereby ordered to reimburse the Board its costs of investigation and enforcement, including, but not limited to, expert review, legal reviews, investigation and subpoena enforcement, as applicable, in the amount of $9,500 (nine thousand five hundred dollars). Costs shall be payable to the Medical Board of California in thirty-three equal monthly installments of $279.41 and a final thirty-fourth installment of $279.47, with the first such installment being due and payable no more than 30 calendar days from the effective date of the Decision and Order and the amount of $9,500 (nine thousand five hundred dollars) to be paid in full at least sixty (60) days before the termination of probation. Failure to pay the ordered reimbursement or comply with the aforesaid payment plan shall be considered a violation of probation.

If Respondent has not paid the full amount of $9,500 (nine thousand five hundred dollars) at least 60 (sixty) days prior to completion of probation, probation shall remain in effect until cost recovery is paid in full.

The entire sum of $9,500 (nine thousand five hundred dollars) or the unpaid balance, shall become immediately due and payable to the Board upon the filing of a Petition to Revoke Probation, an Accusation and Petition to Revoke Probation, a Petition for Interim Suspension Order, or a Cease Practice Order alleging violation of any law(s) or condition(s) of probation against Respondent.

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).

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7. 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.

8. 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.

9. 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.

10. 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' 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;

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General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or Controlled Substances; and Biological Fluid Testing.

11. COMPLETION OF PROBATION. Respondent shall comply with all financial obligations (e.g., restitution, probation costs, enforcement cost recovery) not later than sixty (60) calendar days prior to the completion of probation. Upon successful completion of probation, Respondent's Certificate No. C 51231 shall be fully restored.

12. 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.

13. 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.

14. 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.

15. 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 Accusation No. 800-2019-053990 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, David M. Balfour, Esq. I fully understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate No. C 51231. Having the benefit of counsel, I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: _____ _____

DAN ORVILLE HARPER, M.D.
Respondent

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

DATED: _____ _____

DAVID M. BALFOUR ESQ.
Attorney for Respondent

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15. 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 Accusation No. 800-2019-053990 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

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DATED: 11-5-22

DAN ORVILLE HARPER, M.D.
Respondent

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

DATED: 11/7/2022

DAVID M. BALFOUR ESQ.
Attorney for Respondent

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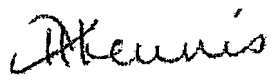
ENDORSEMENT

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

DATED: 11/7/2022

Respectfully submitted,

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



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Attorneys for Complainant

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

In the Matter of the Accusation Against: **DAN ORVILLE HARPER, M.D.** **509 South Cedros Avenue, Suite B** **Solana Beach, CA 92075-2900** **Physician's and Surgeon's Certificate No. C 51231,** Respondent.	Case No. 800-2019-053990 OAH No. **A C C U S A T I O N**

PARTIES

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

2. On or about July 1, 2003, the Board issued Physician's and Surgeon's Certificate Number C 51231 to Dan Orville Harper, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2023, unless renewed.

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JURISDICTION

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

4. Section 2220 of the Code states:

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

5. Section 2227 of the Code states:

> (a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:
>
> (1) Have his or her license revoked upon order of the board.
>
> (2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.
>
> (3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.
>
> (4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.
>
> (5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.
>
> ...

STATUTORY PROVISIONS

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.

(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.

...

7. Section 120335 of the Health and Safety Code states:

(a) As used in this chapter, "governing authority" means the governing board of each school district or the authority of each other private or public institution responsible for the operation and control of the institution or the principal or administrator of each school or institution.

(b) The governing authority shall not unconditionally admit any person as a pupil of any private or public elementary or secondary school, child care center, day nursery, nursery school, family day care home, or development center, unless, prior to his or her first admission to that institution, he or she has been fully immunized. The following are the diseases for which immunizations shall be documented:

(1) Diphtheria.

(2) *Haemophilus influenzae* type b.

(3) Measles.

(4) Mumps.

(5) Pertussis (whooping cough).

(6) Poliomyelitis.

(7) Rubella.

(8) Tetanus.

(9) Hepatitis B.

(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.

(c) Notwithstanding subdivision (b), full immunization against hepatitis B shall not be a condition by which the governing authority shall admit or advance any pupil to the 7th grade level of any private or public elementary or secondary school.

(d) The governing authority shall not unconditionally admit or advance any pupil to the 7th grade level of any private or public elementary or secondary school unless the pupil has been fully immunized against pertussis, including all pertussis boosters appropriate for the pupil's age.

(e) The department may specify the immunizing agents that may be utilized and the manner in which immunizations are administered.

...

(g) (1) A pupil who, prior to January 1, 2016, submitted a letter or affidavit on file at a private or public elementary or secondary school, child day care center, day nursery, nursery school, family day care home, or development center stating beliefs opposed to immunization shall be allowed enrollment to any private or public elementary or secondary school, child day care center, day nursery, nursery school, family day care home, or development center within the state until the pupil enrolls in the next grade span.

(2) For purposes of this subdivision, "grade span" means each of the following:
(A) Birth to preschool.
(B) Kindergarten and grades 1 to 6, inclusive, including transitional kindergarten.
(C) Grades 7 to 12, inclusive.

(3) Except as provided in this subdivision, on and after July 1, 2016, the governing authority shall not unconditionally admit to any of those institutions specified in this subdivision for the first time, or admit or advance any pupil to 7th grade level, unless the pupil has been immunized for his or her age as required by this section.

...

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

[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."

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 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.

(3) Except as provided in this subdivision, on and after July 1, 2021, the governing authority shall not unconditionally admit or readmit to any of those institutions specified in this subdivision, or admit or advance any pupil to 7th grade level, unless the pupil has been immunized pursuant to Section 120335 or the parent or guardian files a medical exemption form that complies with Section 120372.

(b) If there is good cause to believe that a child has been exposed to a disease listed in subdivision (b) of Section 120335 and the child's documentary proof of immunization status does not show proof of immunization against that disease, that child may be temporarily excluded from the school or institution until the local health officer is satisfied that the child is no longer at risk of developing or transmitting the disease.

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.

DEFINITIONS

10. Unprofessional conduct under section 2234 is conduct which breaches the rules or ethical code of the medical profession, or conduct which is unbecoming of a member of good

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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.)

11. Contraindications are conditions in a recipient that increase the risk for a serious adverse reaction.

12. Contraindications and precautions (which may be relative) are conditions under which medical exemptions are appropriate.

13. Polio, or poliomyelitis, is a disabling and life-threatening disease caused by the poliovirus. The virus spreads from person to person and can infect a person's spinal cord, causing paralysis. Paralysis, in turn, can lead to permanent disability and death.

14. The MMR vaccine protects against measles, mumps, and rubella. Measles is highly contagious and especially dangerous for babies and young children. It can lead to pneumonia, lifelong brain damage, deafness, and death.

15. The DTaP vaccine protects against diphtheria, tetanus, and pertussis (whooping cough). Diphtheria is a serious infection of the throat that can block the airway and cause severe breathing problems. Pertussis is a respiratory illness with cold-like symptoms that lead to severe coughing (the "whooping" sound happens when a child breathes in deeply after a severe coughing fit). Serious complications can affect children under 1 year old, and those younger than 6 months old are especially at risk. Teens and adults with a lasting cough might have pertussis and not realize it, and could pass it to vulnerable infants.

16. The Tdap vaccine is a booster immunization given at age 11 that offers continued protection from diphtheria, tetanus, and pertussis for adolescents and adults.

17. Meningitis is an inflammation (swelling) of the protective membranes covering the brain and spinal cord. Bacterial meningitis can be deadly and requires immediate medical attention.

18. Varicella, also known as chickenpox, is a very contagious disease caused by the varicella-zoster virus (VZV). It causes a blister-like rash, itching, tiredness, and fever. Chickenpox used to be very common in the United States. Serious complications of chickenpox can lead to hospitalization and death.

19. Hepatitis A is a serious liver disease. In rare cases, hepatitis A can cause liver failure and death. Hepatitis B is a liver disease that can cause mild illness lasting a few weeks, or it can lead to a serious, lifelong illness.

20. The Hib vaccine protects against *haemophilus influenzae* type b, a disease that can cause serious illness and death in babies and children younger than 5 years old. Hib can cause severe infections of both the lining of the brain and spinal cord (meningitis) and the bloodstream.

21. Influenza (flu) is a contagious respiratory illness caused by influenza viruses that can cause mild to severe illness. Serious outcomes of flu infection can result in hospitalization or death, particularly in older people, young children, and people with certain health conditions.

22. The pneumococcal vaccine ("PCV") helps prevent pneumococcal disease, which is any type of illness caused by *Streptococcus pneumoniae* bacteria. Pneumococcal disease is contagious and can lead to various health problems, including serious infections in the lungs, lining of the brain and spinal cord, and blood. Pneumococcal disease is especially dangerous for babies, older adults, and people with certain health conditions.

23. The HPV vaccine protects against the human papillomavirus, a very common virus that can lead to cancer.

FACTUAL ALLEGATIONS

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

Patient A:[2]

25. Patient A, a female born in 2013, presented to Respondent at a single visit, on or about October 19, 2017, when she was brought to Respondent by her mother for a "possible vax exemption due to reaction after Dtap."

26. Respondent's chart for Patient A includes a note that she is allergic to "egg based injections per mother." Patient A's other allergies include "eczema – TH22 AI," and "food allergies." A family history of eczema and rheumatoid arthritis is noted.

[2] Patient names are not disclosed to protect their privacy. All parties are aware of their identity.

27. Also in Patient A's chart are handwritten notes of the following family medical history:

- A grandfather reportedly died at age 52 from rheumatoid arthritis and a first cousin "developed rapid onset of rheumatoid arthritis" at age 23;
- Patient A's great-great-grandmother reportedly suffered from leukemia, neuralgia and neuritis;
- A great-great-aunt suffered from rheumatoid arthritis, sjogrens, asthma, hives, neuralgia and neuritis, and suffered from allergies (including to sulfa) which gave her hives;
- A great-great uncle suffered from "severe" asthma and bronchitis;
- A brother of Patient A's great-grandfather, and Patient A's great-great-grandmother, both suffered from "severe" asthma, while her great-great grandfather suffered from asthma;

28. Respondent's chart for Patient A also includes a "Health Record" for Patient A, prepared by her mother. It contains a summarized list of events, starting on September 11, when Patient A received a DTap vaccine at school, and continues through October 8.[3]

29. The "Health Record" indicates that Patient A suffered a series of reactions after receiving the DTap vaccine. These range from the injection site being hot; Patient A having a fever; arm redness; swelling and bumps along both arms; "brain fog and irritable;" "lack of focus; irritability;" eczema on her neck, with pus and excessive itching; and spots appearing on Patient A's legs, torso and arms, among others.

30. The Health Record states, further, that a "sensitivity test" indicated "allergies to dairy in the high range," and a dermatologist diagnosed Patient A with atopic dermatitis, keratosis pilaris and xerosis, and possible psoriasis.

31. An immunization card shows that Patient A received Pentacel on October 8, 2014, and September 11, 2014, and MMR on May 18, 2015.

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[3] The year is not stated, but it appears to be 2017.

32. Respondent's progress note for October 19, 2017, includes the assessment that Patient A had a vaccination with cutaneous manifestations. He prescribes Vitamin D and Omega 3, and suggests "DPT Detox" and "EMF precautions," among others. Respondent also recommends that Patient A (or her mother, on her behalf) "consider 23 and Me" testing and send the report to a genetic testing company for "methylation and detox panels."

33. Respondent provided Patient A's parents with two references regarding vaccines and autoimmunity.

34. On or about October 19, 2017, Respondent provided Patient A, then aged four (4), with the following vaccine exemption, declaring her permanently exempt from all vaccines:

> [Patient A] should not receive further vaccinations due to severe reaction, plus strong family history of autoimmune disorders, due to risk of developing autoimmune syndrome induced by adjuvants in vaccines (ASIA).

35. A billing note in the chart states that the appointment lasted half an hour, for which Respondent was paid $240.

Patient B:

36. Patient B, a female born in 2003, presented to Respondent at a single visit, on or about August 26, 2017, then aged thirteen (13). According to the Health Appraisal Questionnaire completed by Patient B or on her behalf, the purpose of the consultation with Respondent was to ask that Patient B be "medically-exempted from mandatory vaccines," due to "[Patient B's] family's auto-immune history and because of [Patient B's] negative reaction to previous vaccinations..."

37. Vaccine records show that Patient B received MMR and VZV vaccines at 12 months of age.

38. Respondent's progress note for Patient B's visit confirms the reason for the visit as, "[Patient B's parents] feel that [Patient B] would benefit from a medical exemption from vaccinations." The same note states that Patient B has no drug allergies or food intolerances.

39. Respondent notes the following three vaccine concerns:

> 1) Post-vaccine learning delay
> 2) Born C-section
> 3) Strong family history of AI disorders"

Respondent's assessment is "vaccine contraindication."

40. Respondent recommends Vitamins K and D3 as well as Omega 3s, L-thianine ("to calm") and magnesium ("to calm"), and EMF precautions. Respondent also recommends that Patient B complete "23 and Me" testing and send the report to a genetic testing company for methylation analysis and detox profile, and that Patient B avoid gluten and pasteurized dairy.

41. Respondent provides Patient B's parents with two references regarding vaccines and autoimmunity, and an article from a self-published journal by Dr. Russell Blaylock that purports to link "excessive vaccination during brain development" to autism spectrum disorders. Respondent makes notes on this article, summarizing, "1) no vaccines before three years old; 2) space apart at least 6 months; 3) single vaccines – no MMR or DPT; 4) preservative free;" and recording his suggestion that Patient B's family view the video, "The Truth About Vaccines."

42. On or about August 26, 2017, Respondent provided Patient B, then aged thirteen (13), with the following vaccine exemption, declaring her permanently exempt from all vaccines:

> [Patient B] should not continue vaccinations – personal history of food allergies, vaccination reaction in past, and inflammatory bowel, plus family history of autoimmune disorders contraindicate vaccines due to risk of autoimmune syndromes induced by adjuvants in vaccines.

The vaccine exemption also indicates that Patient B is at increased risk of autoimmune diseases due to being born by cesarean section.

43. A billing note in the chart states that the appointment lasted half an hour, for which Respondent was paid $240.

Patient C:

44. Patient C, a female born in 2005, presented to Respondent at a single visit, on or about May 20, 2017, then aged eleven (11).

45. The Health Appraisal Questionnaire provided by Patient C's parents to Respondent on or about May 20, 2017, indicates that she received the Polio and pneumococcal vaccines in 2005 and the MMR vaccine in 2006. The Hib and chickenpox/shingles vaccinations had also been received, at an undisclosed date. The questionnaire also notes that Patient C had

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hydronephrosis as well as self-resolving jaundice as a newborn, and "chronic bronchitis as a child." A parental report of fever following immunization is provided, without further details.

46. Respondent's progress note for May 20, 2017, indicates the reason for Patient C's visit as "immunization waiver." The note documents a brief physical exam with vital signs and the assessment was "vaccine exemption."

47. Respondent lists "vaccination concerns" as:

1. Vaccine induced autism in sister
2. Family history of A.I.[4]
3. Food intolerances
4. A.I. – asthma
5. Personal reaction to vaccines – high fever

Respondent's assessment is "vaccine exemption."

48. Respondent recommends treatment of allergies with "acute rescue." He also recommends taking Vitamin D3 and Omega 3s, and EMF protection. He suggests that Patient C complete "23 and Me" testing and that the report be sent to a genetic testing company.

49. Respondent provides Patient C's parents with two references regarding vaccines and autoimmunity.

50. On or about May 20, 2017, Respondent provided Patient C, then aged eleven (11), with the following vaccine exemption, declaring her permanently exempt from all vaccines:

> [Patient C] has adverse reactions to vaccinations/food allergies[.] Sister developed post-vaccination autism[.] Strong family history of autoimmune diseases[.] So, vaccinations contraindicated due to autoimmune syndrome induced by adjuvants (ASIA).

51. A billing note in the chart states that the appointment lasted half an hour, for which Respondent was paid $240.

Patient D:

52. Patient D, a male born in 2006, presented to Respondent at a single visit, on or about June 21, 2018, then aged eleven (11). Respondent's progress note for the visit indicates the reason for the visit as "vaccine exemption" and another document in Patient D's chart indicates this is because Patient D is entering middle school.

[4] Undefined but, presumably, autoimmunity or autoimmune disorders.

53. Patient D's "problem list" indicates eczema as a long-term problem.

54. Respondent lists "vaccination concerns" as:

> 1. Personal eczema Th22 A.I.
> 2. Strong fam[ily] [history] AI disorders

55. Respondent's progress note documents a physical exam and his assessment is vaccine exemption. He recommends some dietary supplements and food avoidances, as well as colloidal silver via a nebulizer.

56. Respondent provides Patient D's parents with references to two articles regarding vaccines and autoimmunity, and the first page of an article from a self-published journal by Dr. Russell Blaylock that purports to link "excessive vaccination during brain development" to autism spectrum disorders. Respondent has made notes on this article, summarizing, "1) no vaccines before three [years old]; 2) space apart at least 6 months; 3) single vaccines - no DTP/MMRs [noting that these are no longer available in the USA but are available in Canada and Europe];and 4) preservative free." A further note states that nasal or oral vaccines are safer and more effective.

57. Respondent recommends "colonoscopy beginning age 35 if colon CA in family" and to consider laboratory testing for Factor II.

58. On or about June 21, 2018, Respondent provided Patient D, then aged eleven (11), with the following vaccine exemption, declaring him permanently exempt from all vaccines:

> [Patient D] should receive no vaccinations in view of his autoimmune (Th 22) eczema and strong family history of autoimmune disorders due to risk of developing autoimmune syndromes induced by adjuvants in vaccines (Shoenfeld's Syndrome).

59. A billing note in the chart states that this was an "intermediate" appointment, for which Respondent was paid $250.

Patient E:

60. Patient E, a female born in 2012, presented to Respondent at a single visit, on or about July 29, 2017, then aged five (5).

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61. Respondent's progress note provides the reason for the visit as "evaluation for vaccination exemption" and indicates food intolerances as "possibly lactose." There is a brief physical exam and Respondent's notes include the following "vaccination concerns:"

> 1. Family [history] of vaccination reactions
> 2. Food allergies
> 3. Family [history] of A.I. disorders

62. Patient E is also described elsewhere in her chart as having "airborne allergies."

63. Respondent notes that Patient E's father and paternal grandmother had "vaccine reactions," and that Patient E is partially vaccinated. He recommends dairy and gluten "caution" and taking Vitamin D3, Omega 3s, and "gemstones."

64. Respondent provides Patient E's parents with references to two articles regarding vaccines and autoimmunity, and the first page of an article from a self-published journal by Dr. Russell Blaylock that purports to link "excessive vaccination during brain development" to autism spectrum disorders. Respondent has made notes on this article, summarizing, "1) no vaccines before three [years old]; 2) spread out at least 6 months; 3) single vaccines only [noting that these are no longer available in the USA but are available in Canada and Europe]; 4) preservative free;" and recording his suggestion that Patient E's family view the video, "The Truth About Vaccines." A further handwritten note by Respondent states that nasal and oral vaccines are safer and more effective.

65. On or about July 29, 2017, Respondent provided Patient E, then aged five (5), with the following vaccine exemption, declaring her permanently exempt from all vaccines:

> Further vaccinations contraindicated in view of severe vaccination reactions in family/family history of numerous autoimmune disorders/personal food allergies[.] Due to risk of autoimmune syndrome induced by adjuvants in vaccines (ASIA).

66. A billing note in the chart states that the appointment lasted half an hour, for which Respondent was paid $240.

Patient F:

67. Patient F, a male born in 2011, is the sibling of Patient E. He presented to Respondent on a single visit on or about May 5, 2016, then aged five (5).

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68. Respondent's progress note indicates the reason for the visit as "medical exemption for vaccinations." He lists his "vaccination concerns" as:

> 1. Father [with] severe vaccine reaction
> 2. Family [history] A.I. – both sides – some vaccine induced

69. Respondent recommends Vitamin D3, along with anesthesia detox and other therapies, and provides Patient F's parents with references to two articles regarding vaccines and autoimmunity.

70. On or about May 5, 2016, Respondent provided Patient F, then aged five (5), with a vaccine exemption that declared him permanently exempt from immunization against polio, DTaP, MMR, HIB, Hepatitis B, Varicella, and Tdap, and included the following additional information:

> Skin conditions personally; father [with] severe vaccination reactions; family history of autoimmunity on both sides of family – some vaccine induced.

71. A billing note in the chart states that Respondent was paid $120 for the appointment.

Patient G:

72. Patient G, a female born in 2012, presented to Respondent on a single visit on or about August 12, 2017, then aged five (5).

73. Respondent's progress note for the visit provides the reason as "vaccine exemption." His "vaccine concerns" include:

> 1) Family [history] of A.I. disorder
> 2) C-section [increased] risk of A.I.

74. Respondent recommends EMF precautions, taking Vitamins K2 and D3 and Omega 3's, and that Patient G start getting colonoscopies at age 30. He suggests that Patient G consider "23 and Me" testing and send the results to a genetic testing company.

75. Respondent provides Patient G's parents with references to two articles regarding vaccines and autoimmunity, and the first page of an article from a self-published journal by Dr. Russell Blaylock that purports to link "excessive vaccination during brain development" to autism spectrum disorders. Respondent has made notes on this article, summarizing, "1) no

vaccines before three [years old]; 2) space out 6 months apart ...; 3) single vaccines only (no DPT, MMR); and 4) preservative free" [noting that these are no longer available in the USA but are available in Canada and Europe]; and recording his suggestion that Patient G's family view the video, "The Truth About Vaccines." A further handwritten note by Respondent states that nasal and oral vaccines are safer and more effective.

76. On or about July 29, 2017, Respondent provided Patient G, then aged five (5), with the following vaccine exemption, declaring her permanently exempt from all vaccines:

> Vaccines in [Patient G] are contraindicated due to family history of autoimmune disorder and personal history of c-section birth [*illegible*] AI risk. Due to risk of autoimmune syndrome induced by adjuvants in vacines (ASIA).

77. A billing note in the chart states that the appointment lasted half an hour, for which Respondent was paid $240.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

78. Respondent is subject to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (b), of the Code, in that he committed gross negligence in his care and treatment of Patient A, Patient B, Patient C, Patient D, Patient E, Patient F, and/or Patient G, which includes, but is not limited to, granting a permanent vaccine exemption based on irrelevant (family and/or personal) medical history, as more particularly described in paragraphs 24 through 77, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

79. Respondent is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (c), of the Code, in that he committed repeated negligent acts in his care and treatment of Patient A, Patient B, Patient C, Patient D, Patient E, Patient F, and/or Patient G, which includes, but is not limited to, granting a permanent vaccine exemption based on irrelevant (family and/or personal) medical history, as more particularly described in paragraphs 24 through 77, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

THIRD CAUSE FOR DISCIPLINE

(Incompetence)

80. Respondent is further subject to disciplinary action under sections 2227 and 2234, as defined by section 2234, subdivision (d), of the Code, in that he demonstrated incompetence in his care and treatment of Patient A, Patient B, Patient C, Patient D, Patient E, Patient F, and/or Patient G, as more particularly described in paragraphs 24 through 79, above, which are hereby incorporated by reference and realleged as if fully set forth herein, and as further described below:

(a) Respondent demonstrated incompetence in using a family history of autoimmune disorders towards justifying providing a permanent vaccine exemption to Patient A, Patient B, Patient C, Patient D, Patient E, Patient F, and/or Patient G.

(b) Respondent demonstrated incompetence in using birth by cesarean section as a justification towards providing a permanent vaccine exemption to Patient B and/or Patient G.

(c) Respondent demonstrated incompetence in using post-vaccine learning delays as a justification towards providing a permanent vaccine exemption to Patient B.

(d) Respondent demonstrated incompetence in using vaccine-induced autism as a justification towards providing a permanent vaccine exemption to Patient C.

(e) Respondent demonstrated incompetence in using asthma as a justification towards providing a permanent vaccine exemption to Patient C.

(f) Respondent demonstrated incompetence in using eczema as a justification towards providing a permanent vaccine exemption to Patient E, Patient F, and/or Patient G.

(g) Respondent demonstrated incompetence in using fever after vaccines as a justification towards providing a permanent vaccine exemption to Patient C.

(h) Respondent demonstrated incompetence in using food allergies (including to eggs) as a justification towards providing a permanent vaccine exemption to Patient A, Patient C, Patient E, and/or Patient F.

(i) Respondent demonstrated incompetence in using recent ear infections and strep as a justification towards providing a permanent vaccine exemption to Patient F.

(j) Respondent demonstrated incompetence in using a family history of vaccine reactions as a justification towards providing a permanent vaccine exemption to Patient E.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

81. Respondent is further subject to disciplinary action under section 2234 of the Code in that he has engaged in conduct which breaches the rules or ethical code 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 24 through 80, above, which are hereby realleged and incorporated by this reference as if fully set forth herein.

DISCIPLINARY CONSIDERATIONS

82. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that:

(a) On or about March 3, 2017, in a prior disciplinary action titled *In the Matter of the Accusation Against Dan Orville Harper, M.D.*, before the Medical Board of California, in Case Number 11-2012-223668, Respondent's license was placed on probation for gross negligence, repeated negligent acts, and failing to maintain adequate and accurate records. That Decision is now final and is incorporated by reference as if fully set forth herein.

(b) On or about October 1, 2021, in a prior disciplinary action titled *In the Matter of the Accusation Against Dan Orville Harper, M.D.*, before the Medical Board of California, in Case No. 800-2017-038648, Respondent's license was publicly reprimanded for gross negligence and repeated negligent acts. That Decision is now final and is incorporated by reference as if fully set forth herein.

PRAYER

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

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

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

3. Ordering Respondent Dan Orville Harper, 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

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

DATED: MAR 03 2022

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