

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

**In the Matter of the First Amended
Accusation Against:**

Jonathan D. Olenick, M.D.

**Physician's & Surgeon's
Certificate No. G 15638**

Respondent.

Case No. 800-2019-053949

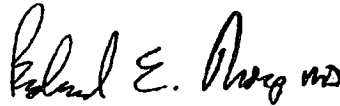
DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on August 24, 2022.

IT IS SO ORDERED: July 25, 2022.

MEDICAL BOARD OF CALIFORNIA



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

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

8 *Attorneys for Complainant*

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

13 In the Matter of the First Amended Accusation
14 Against:

15 **JONATHAN D. OLENICK, M.D.**
2102 Jacaranda Court
16 San Bernardino, California 92404

17 **Physician's and Surgeon's Certificate**
No. G 15638,

18 Respondent.

Case No. 800-2019-053949
OAH No. 2021100448

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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

22 **PARTIES**

23 1. William Prasifka (Complainant) is the Executive Director of the Medical Board of
24 California (Board). He brought this action solely in his official capacity and is represented in this
25 matter by Rob Bonta, Attorney General of the State of California, and by Joseph F. McKenna III,
26 Deputy Attorney General.

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

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

JURISDICTION

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

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

ADVISEMENT AND WAIVERS

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

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

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

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1 **CULPABILITY**

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

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

10 **CONTINGENCY**

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

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

24 **ADDITIONAL PROVISIONS**

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

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

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

7 **DISCIPLINARY ORDER**

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

13 1. **PUBLIC REPRIMAND.**

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

17 2. **PROFESSIONALISM PROGRAM (ETHICS COURSE).**

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

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

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

9 3. INVESTIGATION/ENFORCEMENT COST RECOVERY.

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

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

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

19 4. FAILURE TO COMPLY.

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

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Exhibit A

First Amended Accusation No. 800-2019-053949

1 ROB BONTA
Attorney General of California
2 ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
3 JOSEPH F. MCKENNA III
Deputy Attorney General
4 State Bar No. 231195
600 West Broadway, Suite 1800
5 San Diego, California 92101
P.O. Box 85266
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OAH No. 2021100448

15 **JONATHAN D. OLENICK, M.D.**
2102 Jacaranda Court
16 San Bernardino, California 92404

FIRST AMENDED ACCUSATION

17 **Physician's and Surgeon's Certificate**
No. G 15638,

18 Respondent.

19
20 Complainant alleges:

21 **PARTIES**

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

25 2. On or about October 18, 1968, the Board issued Physician's and Surgeon's
26 Certificate No. G 15638 to Jonathan D. Olenick, M.D. (Respondent). The Physician's and
27 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
28 herein and will expire on April 30, 2023, unless renewed.

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COST RECOVERY

6. Section 125.3 of the Code states:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board upon request of the entity bringing the proceeding, the administrative law judge may direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

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

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

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

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

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

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

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

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

1 7. Unprofessional conduct under section 2234 of the Code is conduct which breaches
2 the rules or ethical code of the medical profession, or conduct which is unbecoming to a member
3 in good standing of the medical profession, and which demonstrates an unfitness to practice
4 medicine. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

5 8. Section 2266 of the Code states:

6 “The failure of a physician and surgeon to maintain adequate and accurate
7 records relating to the provision of services to their patients constitutes unprofessional
8 conduct.”

8 **PERTINENT CASE INFORMATION**

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

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

1 FIRST CAUSE FOR DISCIPLINE

2 (Gross Negligence)

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

7 12. Patient A

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

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

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

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

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

- (a) Respondent failed to perform a physical examination of Patient A, failed to evaluate Patient A's immunization records and/or related medical records, and relied solely on an incomplete and inaccurate history provided by Patient A's father, before issuing a broad and permanent exemption for all school-required immunizations.
- (b) Respondent did not have the requisite medical knowledge to write a vaccine exemption for Patient A, since he did not issue vaccine exemptions in his medical practice as an ophthalmologist prior to his retirement.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

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

15. **Patient A**

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

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Medical Records)

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

17. Patient A

- (a) Paragraphs 11 through 15, above, are hereby incorporated by reference and realleged as if fully set forth herein.

1 PRAYER

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

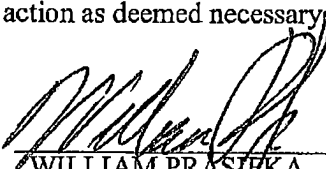
4 1. Revoking or suspending Physician's and Surgeon's Certificate No. G 15638, issued
5 to Respondent Jonathan D. Olenick, M.D.;

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

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

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

13
14 DATED: JAN 19 2022


15 WILLIAM PRASIFKA
16 Executive Director
17 Medical Board of California
18 Department of Consumer Affairs
19 State of California
20 Complainant

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26 SD2021801061
27 Doc.No.83208357
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