

1 XAVIER BECERRA
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 LAWRENCE MERCER
Deputy Attorney General
4 State Bar No. 111898
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 510-3488
6 Facsimile: (415) 703-5480
Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO July 29 20 19
BY COLA PASON ANALYST

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

11 In the Matter of the Accusation Against:

12 **Kenneth Paul Stoller, M.D.**
13 **2020 County Center Dr. Suite C**
Santa Rosa CA 95403

Case No. 800-2017-034218

A C C U S A T I O N

14 **Physician's and Surgeon's Certificate No. A 41183**

15 Respondent.

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18 **PARTIES**

19 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
20 capacity as the Executive Director of the Medical Board of California, Department of Consumer
21 Affairs (Board).

22 2. On or about September 10, 1984, the Medical Board issued Physician's and Surgeon's
23 Certificate Number A 41183 to Kenneth Paul Stoller, M.D. (Respondent). The Physician's and
24 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
25 herein and will expire on December 31, 2019, unless renewed.

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JURISDICTION

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

5 4. Section 2220 of the Code states:

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

12 (a) Investigating complaints from the public, from other licensees, from health care
13 facilities, or from the Board that a physician and surgeon may be guilty of
14 unprofessional conduct. The Board shall investigate the circumstances underlying a
15 report received pursuant to Section 805 or 805.01 within 30 days to determine if an
16 interim suspension order or temporary restraining order should be issued. The Board
17 shall otherwise provide timely disposition of the reports received pursuant to Section
18 805 and Section 805.01.

19 (b) Investigating the circumstances of practice of any physician and surgeon where
20 there have been any judgments, settlements, or arbitration awards requiring the
21 physician and surgeon or his or her professional liability insurer to pay an amount in
22 damages in excess of a cumulative total of thirty thousand dollars (\$30,000) with
23 respect to any claim that injury or damage was proximately caused by the physician's
24 and surgeon's error, negligence, or omission.
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1 (c) Investigating the nature and causes of injuries from cases which shall be reported
2 of a high number of judgments, settlements, or arbitration awards against a physician
3 and surgeon.

4 5. Section 2234 of the Code states, in pertinent part:

5 The Board shall take action against any licensee who is charged with unprofessional
6 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
7 limited to, the following:

8 (a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
9 violation of, or conspiring to violate any provision of this chapter.

10 (b) Gross negligence.

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

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

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

22 (d) Incompetence.

23 24 25 26 6. Section 2266 of the Code states:

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

2 **OTHER STATUTES**

3 7. Health and Safety Code section 120325 provides:

4 In enacting this chapter, but excluding Section 120380, and in enacting Sections 120400,
5 120405, 120410, and 120415, it is the intent of the Legislature to provide:
6

7 (a) A means for the eventual achievement of total immunization of appropriate age groups
8 against the following childhood diseases:

9 (1) Diphtheria.

10 (2) Hepatitis B.

11 (3) Haemophilus influenza type b.

12 (4) Measles.

13 (5) Mumps.

14 (6) Pertussis (whooping cough).

15 (7) Poliomyelitis.

16 (8) Rubella.

17 (9) Tetanus.

18 (10) Varicella (chickenpox).

19 (11) Any other disease deemed appropriate by the department, taking into consideration the
20 recommendations of the Advisory Committee on Immunization Practices of the United States
21 Department of Health and Human Services, the American Academy of Pediatrics, and the
22 American Academy of Family Physicians.
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25 (b) That the persons required to be immunized be allowed to obtain immunizations from
26 whatever medical source they so desire, subject only to the condition that the immunization be
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1 performed in accordance with the regulations of the department and that a record of the
2 immunization is made in accordance with the regulations.

3 (c) Exemptions from immunization for medical reasons.

4 (d) For the keeping of adequate records of immunization so that health departments,
5 schools, and other institutions, parents or guardians, and the persons immunized will be able to
6 ascertain that a child is fully or only partially immunized, and so that appropriate public agencies
7 will be able to ascertain the immunization needs of groups of children in schools or other
8 institutions.
9

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

12 8. Health and Safety Code section 120370 provides, in pertinent part:

13 (a) If the parent or guardian files with the governing authority a written statement by a
14 licensed physician to the effect that the physical condition of the child is such, or medical
15 circumstances relating to the child are such, that immunization is not considered safe, indicating
16 the specific nature and probable duration of the medical condition or circumstances, including,
17 but not limited to, family medical history, for which the physician does not recommend
18 immunization, that child shall be exempt from the requirements of Chapter 1 (commencing with
19 Section 120325, but excluding Section 120380) and Sections 120400, 120405, 120410, and
20 120415 to the extent indicated by the physician's statement.
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22 **FACTUAL ALLEGATIONS**

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24 9. At all relevant times, Respondent Kenneth P. Stoller, M.D., was a physician and
25 surgeon with a specialization in pediatrics at his office in San Francisco, California.

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

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

3 11. Beginning in 2016, Respondent began issuing medical exemptions to school-aged
4 children.

5 12. Patient 1, a 4-month old male, was seen by Respondent on or about August 9, 2016.
6 Patient 1¹ had a medical history significant for a congenital heart defect, and reports of vomiting,
7 shortness of breath and difficulty gaining weight. Respondent's records state a history of present
8 illness (HPI) as the parents' concern about an adverse event from immunization (AEFI).
9 Respondent did not document an examination or record vital signs. His plan was to test for HLA
10 DRB1/DQB1 genes. Based on subsequent testing, Respondent concluded that the HLA-
11 DRB1*13 allele was absent and that the child had an HLA DRB1 03 allele, which genetic
12 polymorphisms Respondent concluded would likely make him a vaccine non-responder to the
13 vaccines for measles and hepatitis B. Albeit he had not identified any vaccine contraindication or
14 precaution, as defined by the Centers for Disease Control and Prevention and/or the American
15 Academy of Pediatrics, Respondent issued a medical exemption for Patient 1 that was global, i.e.
16 applying to all vaccines, and permanent in duration.

17 13. Patient 2, a 2.5-year old female, was seen by Respondent on September 27, 2018.
18 The examination documented for Patient 2 was within normal limits and her medical history was
19 unremarkable for any contraindications or precautions for any vaccines. Nevertheless,
20 Respondent issued a temporary medical exemption based upon the history of a sibling who
21 reportedly had an AEFI after his 6-month immunizations and had thereafter developed a learning
22 disability. Although the temporary exemption stated that the child would be undergoing an
23 "Adverse Event Risk Assessment," no further testing or evaluation was performed and/or
24 documented.

25 14. Patient 3, the 4.5 year old male sibling of Patient 2, was also seen by Respondent on
26 September 27, 2018. The parents reported that they believed Patient 3 had developed
27 dyspraxia/apraxia after receiving a set of six immunizations at age 6 months. They reported that

28 ¹ Patients' names are redacted to protect privacy.

1 the morning after he received the vaccines, Patient 3 was found lying in “a puddle of blood and
2 vomitus.” Respondent described the reported event variously as “near SIDS,” “near
3 exsanguitoy” and an “acute encephalitic response” or AEFI. Respondent did not obtain the
4 child’s pediatric records, nor did he investigate further. Respondent’s plan was to perform
5 genetic testing, however, such testing is not documented and apparently was not done.
6 Respondent issued a temporary exemption from all required vaccinations.

7 15. Patient 4, a 4-year old female, was seen by Respondent on December 14, 2015. At
8 that time, the child’s mother reported that the child had not had any immunizations and that the
9 mother was concerned that the child might have a genetic predisposition to adverse reactions to
10 vaccinations, based upon a family history of autoimmune illnesses and relatives with
11 neurodevelopmental issues and autism. Respondent did not obtain or review any past medical
12 records. On or about April 29, 2016, Respondent issued a medical exemption letter for Patient 4.
13 In that document, Respondent stated that Patient 4 “has genetic issues” and as a result, “she is at
14 high risk of adverse events to vaccination so that vaccinations are not considered safe.” As with
15 Patient 1, discussed above, the exemption is permanent and barred administration of any and all
16 vaccines. In his “Adverse Event Risk Assessment Report,” Respondent stated that the basis for
17 his conclusion that vaccines were unsafe for the child was that “the patient has the
18 IRF1/MTHFR/IL-4 polymorphism.” In a subsequent interview, Respondent acknowledged that
19 genetic polymorphisms are not recognized by the CDC as medical contraindications to
20 vaccination.

21 16. Patient 5, a 6-year old female, was seen by Respondent on December 18, 2017. Prior
22 to that visit, as was his custom and practice, Respondent conducted a telephone interview with the
23 child’s father. In that interview, the HPI was stated as the parent’s concern that the child would
24 be at risk of an adverse vaccine reaction based upon a sibling with “post vaccine auto-immune
25 issues including but not limited to chronic joint pain and allergies to various foods, gluten and
26 metals.” Respondent’s plan was to perform genetic testing, for which the parents were instructed
27 to purchase “23 and Me” a direct-to-consumer ancestry and genetic testing product. Respondent
28 then interpreted the raw data to conclude that the child had multiple polymorphisms on multiple

1 genes which he stated were related to adverse risks from vaccinations. Respondent issued a
2 permanent exemption from all vaccinations for the child, which stated that “vaccination is not
3 considered safe due to [Patient 5’s] specific genetics.”

4 17. Patient 6, a 12-year old male child and sibling of Patient 5, underwent the same
5 evaluation as his sister and received a permanent and global exemption from all vaccinations
6 based upon genetic polymorphisms.

7 18. Patient 7, a 5-year old female, was seen by Respondent on January 3, 2018. Prior to
8 that visit, in a telephone consultation, the child’s parents had attributed the child’s dyspraxia and
9 speech delay to previous vaccinations and requested a genomic assessment. Respondent
10 concluded that the child had polymorphisms on 8 of 12 genes associated with adverse event
11 following immunization (AEFI), specifically IRF1 and SCN1A and “a cousin with documented
12 AEFI (VAERS).” No medical documentation relating to the cousin is contained in Respondent’s
13 chart. The exemption is permanent and applies to all required vaccines.

14 19. Patient 8, a 12-year old female, was seen by Respondent on December 7, 2017. That
15 was preceded by an August telephone consultation with the child’s parents. which Respondent
16 summarized as a discussion of her prolonged encephalitic reaction and “stroke” related to a
17 Hepatitis B vaccine. Patient 8 was given a permanent exemption from all vaccinations based
18 upon her “unusual history” and on polymorphisms on HLA DRB1 AND SCN1A genes.

19 20. Patient 9, a 12-year old female, was evaluated by Respondent on January 3, 2018.
20 The visit was preceded by a September 13, 2017 telephone call from the child’s mother in which
21 the mother stated that the child needed an exemption within ten days or “she can’t go to school.”
22 In a telephone consultation that took place on the following day, Respondent made note that the
23 child has “immediate family members with multiple autoimmune diseases and who seems to have
24 gone thru a multiple year period of having very compromised health post vaccination including
25 but not limited to multiple URI/LRI, asthma, atopia and otitis infections.” A temporary exemption
26 was issued as to all vaccines and, after testing, a permanent and global exemption was issued
27 based on double mutation on the HLA DQB1 and double mutation on the IRF1 gene, which
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1 Respondent stated “play such a strong roll [sic] in having untoward immune reactions to foreign
2 substances and biotoxins.”

3 21. Patient 10, a 5-year old female, was seen on March 8, 2018. During an earlier
4 telephone consultation, Patient 10’s mother had requested that the child be screened for genetic
5 risk from vaccines and she related a family history of “auto-immune issues” and an older sibling
6 who developed “overt neuro-behavioral delays” after receiving vaccines. The mother complained
7 that the school nurse “sees it as her job to protect the community from unvaccinated children.”
8 The same at-home genetic test resulted in findings of multiple polymorphisms and Respondent
9 opined that the child was at increased risk of an AEFI and should be permanently exempted from
10 all required vaccinations.

11 **FIRST CAUSE FOR DISCIPLINARY ACTION**
12 (Gross Negligence/Repeated Negligent Acts/Incompetence)

13 22. Respondent Kenneth Paul Stoller, M.D. is subject to disciplinary action pursuant to
14 section 2234 and/or 2234(b) and/or 2234(c) and/or 2234(d) in that Respondent engaged in
15 unprofessional conduct and was grossly negligent and/or repeatedly negligent and/or incompetent
16 in his care and treatment of the patients described in paragraphs 12 and 15 through 21 above,
17 which are incorporated herein.

18 23. Respondent routinely performed genetic testing for the purpose of determining
19 whether a child should be exempted from required vaccinations. Genetic testing in order to
20 determine vaccine response or risk for adverse events following immunization is not
21 recommended by the Centers for Disease Control and Prevention (CDC) or the American
22 Academy of Pediatrics (AAP). The standard of care for a primary care provider and specialist is
23 to follow national standards for pediatric vaccination practices and immunization
24 recommendations from the CDC, issued through the Advisory Committee on Immunization
25 Practices, and the American Academy of Pediatrics, as summarized in The Red Book. Genetic
26 variations in the population are normal and to be expected. While some differences exist, at the
27 present time, no allele serves as a marker that accurately predicts vaccine response. A permanent
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1 exemption for all vaccines based on the polymorphisms described by Respondent is not supported
2 by medical and scientific evidence and constitutes grounds for disciplinary action pursuant to the
3 statutes set forth in paragraph 22.

4 **SECOND CAUSE FOR DISCIPLINARY ACTION**

5 (Gross Negligence/Repeated Negligent Acts/Incompetence)

6 24. Respondent Kenneth Paul Stoller, M.D. is subject to disciplinary action pursuant to
7 section 2234 and/or 2234(b) and/or 2234(c) and/or 2234(d) in that Respondent engaged in
8 unprofessional conduct and was grossly negligent and/or repeatedly negligent and/or incompetent
9 in his care and treatment of the patients described in paragraphs 12 through 21 above, which are
10 incorporated herein.

11 25. Respondent routinely obtained and relied upon unverified patient and family
12 histories, including but not limited to autoimmune disorders, asthma, gluten sensitivity,
13 inflammatory bowel disease, Hashimoto's disease and other conditions not generally accepted to
14 constitute precautions or contraindications to vaccines. The standard of care for a primary care
15 provider and specialist is to follow national standards for pediatric vaccination practices and
16 immunization recommendations from the CDC, issued through the Advisory Committee on
17 Immunization Practices, and the American Academy of Pediatrics, as summarized in The Red
18 Book. The conditions described in Respondent's records are not considered precautions or
19 contraindications for routine immunizations by the CDC or AAP. The histories obtained by
20 Respondent are typically scant and insufficiently documented as accepted diagnoses. To
21 document an existing or family history of a condition or reaction without specification of the
22 condition, the person who had the condition and their relation to the patient, and the specific
23 vaccine or vaccine component that the condition or reaction related to, is not standard medical
24 charting. In some cases, Respondent recorded a history of potentially very serious events, such as
25 near SIDS, near exsanguination or acute encephalitis, but he did not obtain the pertinent medical
26 records or otherwise investigate. Respondent's provision of medical exemptions based on
27 conditions not generally accepted as medical precautions or contraindications, his inadequate
28 documentation of patient and family histories and failure to obtain records and/or investigate

1 potentially very serious events fall below the standard of care and constitute grounds for
2 discipline pursuant to the statutes set forth in paragraph 24 above.

3 **THIRD CAUSE FOR DISCIPLINARY ACTION**

4 (Gross Negligence/Repeated Negligent Acts/Incompetence)

5 26. Respondent Kenneth Paul Stoller, M.D. is subject to disciplinary action pursuant to
6 section 2234 and/or 2234(b) and/or 2234(c) and/or 2234(d) in that Respondent engaged in
7 unprofessional conduct and was grossly negligent and/or repeatedly negligent and/or incompetent
8 in his care and treatment of the patients described in paragraphs 12 through 21 above, which are
9 incorporated herein.

10 27. Respondent routinely issued exemptions that applied to all vaccines. There is no
11 component that is common to all vaccines. A severe reaction to an earlier dose of a specific
12 vaccine may be a contraindication for another dose of that vaccine or to a dose of a related
13 vaccine that also contains the same constituents, but not to all vaccines. Similarly, a moderate or
14 severe acute illness might be a temporary precaution, resulting in deferral of immunization, but
15 not a permanent, global contraindication to all vaccines. Respondent's issuance of vaccine
16 exemptions which are not specific to a particular vaccine and are permanent and global falls
17 below the standard of care and constitutes grounds for discipline pursuant to the statutes set forth
18 in paragraph 26 above.

19 **FOURTH CAUSE FOR DISCIPLINARY ACTION**

20 (Inadequate Records)

21 28. Respondent Kenneth Paul Stoller, M.D. is subject to disciplinary action pursuant to
22 section 2266 in that Respondent failed to maintain adequate and accurate records. As stated
23 above, Respondent's records contain only scant and vague patient and family histories, lack
24 vaccine-specific evaluations, contain diagnoses not supported by the findings or by medical
25 science and omit reference to prior medical records and/or primary care physicians.

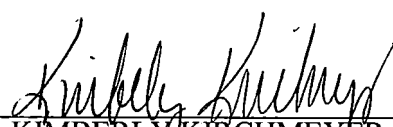
26 **PRAYER**

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

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1. Revoking or suspending Physician's and Surgeon's Certificate Number A 41183, issued to Respondent.;
2. Revoking, suspending or denying approval of Respondent's authority to supervise physician assistants and advanced practice nurses;
3. Ordering Respondent, 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: July 29, 2019


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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