

Alan G. Phillips, J.D.  
Attorney and Counselor at Law

VACCINE RIGHTS  
600 Merrimon Ave., Ste. 1-F  
Asheville, NC 28804  
828-575-2622  
attorney@vaccinerights.com

April 27, 2015

TO: The Honorable California Legislature  
Sacramento, California

Re: S.B. 792 Relating to daycare facilities (immunization requirement for employees)

Honorable Legislators:

I am a nationally recognized legal expert on vaccine exemption and waiver law. I have advised clients, attorneys, legislators, and legislative committees throughout the country on vaccine policy and law regarding vaccines required for birth, school and daycare enrollment, college, employment, military members, immigrants, international travel, and various subcategories of these vaccine contexts. The Federal Court of Claims lists 140 attorneys in the U.S. who accept vaccine injury and death cases, but I am the nation's only attorney whose practice is focused solely on vaccine exemptions and waivers and vaccine legislative activism.

I wish to call to your attention to problems with S.B. 792 as it pertains to the bill's language requiring daycare workers to be immunized:

11 *SECTION 1. Section 1596.7995 is added to the Health and line*  
12 *Safety Code, to read:*  
13 *1596.7995. (a) Commencing September 1, 2016, a person line*  
14 *shall not be employed at a day care center if he or she has not line*  
15 *been immunized according to the schedule for routine adult line*  
16 *immunizations, as recommended by the federal Centers for Disease line*  
17 *Control's Advisory Committee on Immunization Practices, with line*  
18 *the exception of immunization against human papillomavirus line*  
19 *(HPV).*

#### I. Exemptions

S.B. 792 includes no provision for non-medical exemptions to the immunization requirement. This is problematic, as Title VII of the Federal Civil Rights Act of 1964 requires qualifying employers to accommodate their employees' religious beliefs and practices, thereby creating, in effect, a religious exemption for employees whose employers have more than 15 employees. However, with no mention in state law of a religious exemption, employers are likely to be unaware of the right under federal law, and may exclude qualifying religious objections (I have seen this repeatedly in my work with healthcare professionals working in states that require influenza vaccines by state law that offers no non-medical exemptions, for example). In addition, as many daycares

likely have fewer than 15 employees, federal law will allow some, but not all, daycare providers to refuse the required vaccines on religious grounds, thereby creating a fundamental inequity with regard to religious freedom among daycare employees. Accordingly, if this bill should go forward, an exemption on religious grounds should be added, to address that disparity. Please note, however, that the State may not dictate what beliefs do and don't qualify for a religious exemption (that is determined by the courts' interpretation of the First Amendment "free exercise" or religion), nor may it require support from a member of the clergy or that the employee be a member of an organized religion (violates the First Amendment "free exercise" of religion).

## II. Scientifically Unsound

S.B. 792 is medically contraindicated. More people are killed by vaccines than by infectious disease. For example, the CDC reports no U.S. measles deaths in the past 12 years, while the Federal Vaccine Adverse Events Reporting System (VAERS) reports more than 100 measles vaccine deaths, and the Federal Vaccine Injury Compensation Program (NVICP) pays out over \$220 million/annually (5 year ave) for vaccine injuries and deaths. The VAERS reports and NVICP payouts do not reflect the fact that only 1% - 10% of serious vaccine adverse events ever get reported at all, as stated by official from the CDC, FDA, AAPS and NVIC among others (references on the attached Vaccine Fact Summary page). This bill would increase the total number of immunizations administered, thereby increasing the number of vaccine injuries and deaths despite the absence of any current daycare infectious disease crisis warranting an increase in immunization in the first place. Therefore, this bill should be withdrawn; but if not, it should include all three exemption types: medical, religious, and personal belief or philosophical, so that daycare employees may make informed decisions about what is best for them, on an individual level, with advice from the healthcare professional of their choice.

We need to begin drawing a distinction between true public health needs and the marketing needs of vaccine manufacturers. Please see the attached page of referenced facts about vaccines so that you can make an informed decision when considering this bill. In the meantime, thank you for your kind attention to this matter. Please do not hesitate to contact me if I may be of any further assistance.

Sincerely Yours,



Alan G. Phillips  
NC State Bar No. 30436

---

## Vaccine Fact Summary

1. In 2011, the U.S. Supreme Court confirmed that vaccines are “unavoidably unsafe.” *Bruesewitz v. Wyeth LLC*, 131 S. Ct. 1068, 179 L.Ed.2d 1 (2011).<sup>1</sup>

2. National Vaccine Injury Compensation Program (NVICP) vaccine injury and death payouts<sup>2</sup>:

- a. Total to date (1989-2015): \$ 3.1 Billion
- b. Average annual payout 2005-2009: \$ 75,630,051 per year
- c. Average annual payout 2010-2014: \$221,822,386 per year
- d. Cases pending: 1,943

3. There is vast underreporting of vaccine adverse events. FDA: As few as 1% of serious adverse reactions are reported.<sup>3</sup> CDC: Only about 10% are reported.<sup>4</sup> Congress: Has heard testimony that medical students are told not to report suspected adverse events,<sup>5</sup> yet, federal law requires doctors to do so.<sup>6</sup> National Vaccine Information Center (NVIC) survey: 1 out of 40 doctor's offices (2.5%) in New York report a death or injury following vaccination.<sup>7</sup> Association of American Physicians and Surgeons (AAPS): Only 10% of serious vaccine adverse events are reported.<sup>8</sup>

4. The Federal Court of Claims lists about 140 attorneys that accept vaccine injury and death cases.<sup>9</sup> This number has been steadily increasing in recent years.

5. The National Childhood Vaccine Injury Act of 1986 (NCVIA) shields vaccine manufacturers from liability for the death and disability caused by their vaccines. There is no financial incentive for manufacturers to produce safer vaccines.<sup>10</sup>

6. 90-95% of 1900's infectious disease decline preceded the vaccines.<sup>11</sup> Vaccines did not cause infectious disease deaths to decline. Therefore, absence of vaccination will not bring back infectious disease rates of pre-vaccine days.

7. According to the CDC:

- a. Vaccines are 85 – 95% effective (5 - 15% of children do not develop immunity from their vaccines), and most outbreaks start in vaccinated children.<sup>12</sup>
- b. The median vaccine exemption rate in the U.S. is 1.8%.<sup>13</sup> There are more than 5+ times more non-immune \*vaccinated\* children than exempt children.
- c. Exempt children can get natural immunity, without even developing symptoms.<sup>14</sup> You can't tell a child's immune status based on their immunization status.

8. The American Medical Association Code of Medical Ethics recommends “medical, religious, or philosophic” exemptions to immunizations for medical doctors.<sup>15</sup>

9. The pharmaceutical industry is the biggest defrauder of the federal government under the False Claims Act.<sup>16</sup> In the last 5 years, \$19.2 billion were returned from attempts to defraud federal health programs, more than double that of the previous 5 years (as of February 2014).<sup>17</sup>

10. In 8 years (2004-2012), there were twenty pharmaceutical company settlements in the \$345 million to \$3 billion range.<sup>18</sup> Criminal fines in the \$100's of millions are common, and have been as high as \$1 billion (Pfizer 2009, GlaxoSmithKline 2012). This is routine business practice.

11. Merck, manufacturer of the mumps vaccine, is going to trial in two separate lawsuits for allegedly falsifying the efficacy rate of its mumps vaccine. One suit was filed by former employee-whistleblowers, the other by pharmaceutical competitors.<sup>19</sup>

Conclusions:

1. Childhood infectious diseases have extremely low mortality rates in developed nations. Vaccines kill and permanently disable far more children than the diseases, and the mortality decline from the diseases preceded the introduction of vaccines.

2. There is insufficient data available to determine whether or not vaccines provide a net benefit, and no way to determine the risk of vaccine injury or death for any given child or adult.

3. Individual freedom of choice provides a necessary “check and balance” to the pharmaceutical industry’s overreaching, no-liability, marketing influence over vaccine policy and law.
4. Young adults are not required to risk their lives with mandatory military service, but newborn infants are required to risk their lives with a Hep B vaccine, for a disease they are not at risk of acquiring or spreading unless the mother is a carrier. This is unconscionable!
5. Parents for their children, and adults for themselves, must be allowed to make vaccine decisions, in consultation with the healthcare professional of their choice. No one should ever be required, absolutely, to take a product from an industry that routinely engages in large-scale criminal behavior.

---

<sup>1</sup> *Bruesewitz v. Wyeth LLC*, <http://www.supremecourt.gov/opinions/10pdf/09-152.pdf>

<sup>2</sup> NVICP Statistics Report, February 2015, <http://www.hrsa.gov/vaccinecompensation/statisticsreport.pdf>

<sup>3</sup> Less than 1%, according to Barbara Fisher, citing former FDA Commissioner David Kessler, 1993, JAMA, Statement of the National Vaccine Information Center (NVIC), Hearing of the House Subcommittee on Criminal Justice, Drug Policy and Human Resources, “Compensating Vaccine Injuries: Are Reforms Needed?” September 28, 1999.

<sup>4</sup> American Association of Physicians and Surgeons, Fact Sheet on Mandatory Vaccines at <http://www.aapsonline.org/>.

<sup>5</sup> Jane Orient, M.D., Director of the American Association of Physicians and Surgeons, “Mandating Vaccines: Government Practicing Medicine Without a License?” 1999.

<sup>6</sup> 42 U.S.C. § 300aa-25.

<sup>7</sup> National Vaccine Information Center (NVIC), 512 Maple Ave. W. #206, Vienna, VA 22180, 703-938-0342; “Investigative Report on the Vaccine Adverse Event Reporting System.”

<sup>8</sup> Statement of the AAPS to the Subcommittee on Criminal Justice, Drug Policy and Human Resources of the Committee on Government Reform U.S. House of Representatives, Re: Hepatis B Vaccine, Jane Orient, MD, June 14, 1999, <http://www.aapsonline.org/testimony/hepbcom.htm>

<sup>9</sup> <http://www.uscfc.uscourts.gov/sites/default/files/20141208%20Vaccine%20Attorneys.pdf>

<sup>10</sup> See the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. § 300aa-1 *et seq.*, and *Bruesewitz v. Wyeth, LLC*, *supra*.

<sup>11</sup> See, e.g., graphs here: <http://www.theoneclickgroup.co.uk/documents/vaccines/Immunization%20Graphs%20PPT%20-%20RO%202009.pdf>, <https://childhealthsafety.wordpress.com/graphs/>

<sup>12</sup> Centers for Disease Control and Prevention, Vaccines and Immunizations, Misconception #2. The majority of people who get disease have been vaccinated. The original link, <http://www.cdc.gov/vaccines/vac-gen/6mishome.htm>, is now directed to a new CDC page that does not state these facts (but does not state contrary facts). The original CDC page can be viewed here: <http://web.archive.org/web/20150120055820/http://www.cdc.gov/vaccines/vac-gen/6mishome.htm>

<sup>13</sup> Vaccination Coverage Among Children in Kindergarten – United States 2012-2013 School Year, Morbidity and Mortality Weekly Report (MMWR), CDC, [http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6230a3.htm?s\\_cid=mm6230a3\\_eThe](http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6230a3.htm?s_cid=mm6230a3_eThe)

<sup>14</sup> Centers for Disease Control and Prevention, Vaccines and Immunizations, Glossary, “Asymptomatic infection: The presence of an infection without symptoms. Also known as inapparent or subclinical infection.” <http://www.cdc.gov/vaccines/about/terms/glossary.htm>

<sup>15</sup> American Medical Association, Opinion 9.133 Routine Universal Immunization of Physicians, <http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion9133.page>

<sup>16</sup> “Public Citizen Study: Pharmaceutical Industry Is Biggest Defrauder of the Federal Government Under the False Claims Act,” Dec. 20, 2010, <http://www.pharmpro.com/news/2010/12/public-citizen-study-pharmaceutical-industry-biggest-defrauder-federal-government-under-false-claims-act>

<sup>17</sup> False Claims Act Whistleblowing Blog, February 2014 archive, <http://www.fraudwhistleblowersblog.com/2014/02/>

<sup>18</sup> List of largest pharmaceutical settlements (2004 – 2012), Wikipedia, [http://en.wikipedia.org/wiki/List\\_of\\_largest\\_pharmaceutical\\_settlements](http://en.wikipedia.org/wiki/List_of_largest_pharmaceutical_settlements)

<sup>19</sup> Lawsuits claiming Merck lied about mumps vaccine efficacy headed to trial, Fierce Vaccines, September 9, 2014, <http://www.fiercevaccines.com/story/lawsuits-claiming-merck-lied-about-mumps-vaccine-efficacy-headed-trial/2014-09-09>