1
2 STATE OF NEW YORK: DEPARTMENT OF HEALTH
3 STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT
4 --
5 In the Matter
6 of
7 MARY E. KELLY SUTTON, M.D.
8 --
9 October 25, 2023
10 11:06 A.M.
11
12 BEFORE: KATHLEEN DIX
13 ADMINISTRATIVE LAW JUDGE
14 ADMINISTRATIVE OFFICER
15
16 BOARD MEMBERS:
17 Andrew J. Merritt, M.D, Chair
18 Ramanathan Raju, M.D.
19 Kathleen Ksiazek, Lay member
20
21
22
23
24 Reported by
25 Stefanie Krut

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2 A P P E A R A N C E S:
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4 NEW YORK STATE DEPARTMENT OF STATE
5 BUREAU OF PROFESSIONAL MEDICAL CONDUCT
6 Corning Tower
7 Room 2512
8 Empire State Plaza
9 Albany, New York 12237
10 BY: DEBORAH BETH MEDOWS, ESQ.
11
12 JAMIL LEGAL CONSULTING, P.C.
13 Attorney for Respondent
14 87-63 148th Street
15 Jamaica, New York 11435
16 BY: MUZAMMIL JAMIL, ESQ.
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1 10-25-23
2 ALJ DIX: Good morning. Today is
3 October 25th, 2023 and we are convening
4 in the matter of Mary E. Kelly Sutton,
5 M.D. This is a Direct Referral
6 Proceeding, and I believe the Chair has
7 an opening statement to make.
8 Thank you.
9 DR. MERRITT: Good morning. My
10 name is Andrew Merritt. I am a member
11 of the State Board for Professional
12 Medical Conduct. I am the chairman of
13 today's hearing. The other members
14 here for this morning's hearing of the
15 State Board for Professional Medical
16 Conduct are Dr. Ram Raju and Dr. Susan
17 Ksiazek and Susan Ksiazek. Kathleen
18 Dix is the Administrative Officer for
19 this hearing and she will rule on all
20 motions, questions of legal procedure
21 and legal objections. The
22 Administrative Officer is not a voting
23 member of the panel.
24 The hearing is conducted pursuant
25 to Section 230 of the Public Health Law

1 10-25-23
2 and Section 6530 of the Education Law
3 of the State of New York. This hearing
4 is also known as a Referral Procedure
5 under Section 230 (10)(p) of the Public
6 Health Law.
7 A Referral Proceeding is a form
8 of disciplinary hearing in which a
9 physician or physician's assistant has
10 been found guilty of a crime or
11 administrative violation. Conviction
12 of a crime or administrative violation
13 constitutes professional misconduct. A
14 Referral Proceeding Committee is
15 convened solely to determine the
16 appropriate penalty to be imposed.
17 A transcript will be taken of
18 this proceeding. Should the Respondent
19 desire a copy, one may be ordered from
20 the reporting service.
21 All witnesses at this hearing
22 will testify under oath and will be
23 sworn in.
24 Before starting, I ask that all
25 persons in the hearing room identify

1 10-25-23

2 themselves for the record. Andrew

3 Merritt.

4 ALJ DIX: Thank you. Dr. Raju?

5 DR. RAJU: Dr. Ram Raju, member

6 of the Office of the Professional

7 Medical Conduct.

8 ALJ DIX: Thank you. And Ms.

9 Ksiazek?

10 DR. KSIAZEK: Susan Ksiazek,

11 public member of the Board.

12 ALJ DIX: Thank you. And Ms.

13 Meadows?

14 MS. MEDOWS: Good morning.

15 Deborah Beth Medows, New York State

16 Department of the Health Bureau of

17 Professional Medical Conduct.

18 ALJ DIX: Thank you. And

19 Dr. Sutton?

20 DR. SUTTON: Dr. Mary Kelly

21 Sutton.

22 ALJ DIX: Thank you. And Mr.

23 Jamil?

24 MR. JAMIL: Muzammil Jamil,

25 attorney for Respondent.

1 10-25-23
2 ALJ DIX: Thank you. We have
3 Ms. Krut as our court reporter. I am
4 Kathleen Dix, I am the Administrative
5 Officer, Administrative Law Judge
6 designated by the Commissioner to hear
7 this matter.
8 Ms. Medows, would you like to
9 start with an opening statement or your
10 presentation?
11 MS. MEDOWS: Thank you very much,
12 Judge. Good morning, Judge Dix and
13 Hearing Committee Chair Dr. Merritt and
14 Committee members Dr. Ksiazek and
15 Dr. Raju. Thank you for taking the
16 time out of your busy schedules to
17 attend this proceeding regarding the
18 New York State medical license of
19 Dr. Sutton, who was licensed to
20 practice as a physician in New York
21 State on May 28th, 1982.
22 This hearing regards the January
23 7th, 2022 Decision and Order of the
24 Medical Board of California and the
25 California Board's Proposed Decision.

1 10-25-23
2 Judge, do you want me to offer
3 the evidence now?
4 ALJ DIX: Mr. Jamil, have you
5 gotten copies of the Department's
6 exhibits?
7 MR. JAMIL: I did get copies, but
8 if you would allow, I just wanted to
9 explain our request that we had made
10 for time to gather evidence in this
11 case. I think there's --
12 MS. MEDOWS: Objection.
13 MR. JAMIL: I'm sorry? Say that
14 again.
15 MS. MEDOWS: Objection.
16 ALJ DIX: Just let him finish his
17 statement.
18 MS. MEDOWS: Okay.
19 MR. JAMIL: I know we are not re
20 litigating facts here.
21 ALJ DIX: Hold on, Mr. Jamil. So
22 Ms. Medows, are you done with your
23 opening statement? We can go into the
24 exhibits during your presentation.
25 MS. MEDOWS: Oh, yes, yes.

1 10-25-23
2 Sorry.
3 ALJ DIX: Mr. Jamil, go ahead,
4 you can make an opening statement and
5 explain.
6 MR. JAMIL: Just to begin, I want
7 to explain the request we had made for
8 time to get evidence. It's not to re
9 litigate facts, and it's our
10 understanding that if the legal
11 conclusions and the law in the
12 California case, if they are wrong,
13 then they can't be a basis to revoke
14 Dr. Sutton's license in New York, and
15 that's what we want to show with the
16 evidence that we're gathering. And
17 just as an example, in the California
18 decision, it stated that the standard
19 of care there or the AAP and ACIP
20 Guidelines, that's the standard of care
21 that's cited for writing medical
22 exemptions and that's just false.
23 That's just plain wrong. And so what
24 we wanted time for was to get that
25 evidence to show the material defects

1 10-25-23
2 in the California decision. And again,
3 I think it's warranted because really
4 what this is about, you know, it's
5 about Dr. Sutton having exercised
6 professional judgment to write medical
7 exemptions. So it's really, it's
8 speaking to the heart of physician
9 autonomy. And I think because of those
10 consequences, serious consequences for
11 all physicians, so I think we need time
12 to be able to show what happened in the
13 California case, a legal conclusion
14 that are there and why they're wrong.
15 And I think another very normal thing
16 is in the California case and it's
17 reflected -- well, the absence of it is
18 there, it's bearing in the decision
19 that no patient came forward, no
20 patient was brought into that
21 proceeding. And in fact, no patient
22 made any complaint against Dr. Sutton,
23 so, you know, again, potentially, we
24 don't even know how the patients
25 records were acquired by the Board

1 10-25-23
2 there to be held against Dr. Sutton.
3 And again, there's no patient, there is
4 no nothing reflected in the decision
5 and, in fact, it can't be because, you
6 know, no patient came forward. The
7 Board didn't approach any of the
8 patients to discuss with them what
9 problems they had with the exemption.
10 If they had actually, you know, if they
11 actually needed those exemptions, none
12 of that was examined, so I think we
13 need time to really gather the evidence
14 we're looking for to show that the
15 decision in California on its face on
16 the law is wrong and you cannot revoke
17 Dr. Sutton's New York license based on
18 that decision.
19 ALJ DIX: Ms. Medows, any response
20 to that?
21 MS. MEDOWS: Well, Judge, the
22 Department objects to this because,
23 first of all, this request should have
24 been made just in front of the judge,
25 not in front of the Hearing Committee.

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2 I think to request that was
3 inappropriate on the part of her
4 attorney, but the Department would
5 state that this should have been asked
6 beforehand. The case has already been
7 adjourned once.
8 Yesterday, I was asked by
9 Dr. Sutton's attorney for an
10 adjournment for today. He should have
11 asked that previously other than the
12 day before, and the Department states
13 that in a Direct Referral, what the
14 issue here is not re litigating the
15 underlying facts, but trying to see if
16 what -- it's limited to the penalty
17 itself, so if the Hearing Committee
18 determines that there should be a
19 penalty, then the question is what the
20 penalty would be rather than trying to
21 re litigate California, so it's an
22 objection as to relevance.
23 ALJ DIX: Thank you.
24 MR. JAMIL: If I can just add?
25 ALJ DIX: Go ahead.

1 10-25-23
2 MR. JAMIL: Sorry. If I can
3 respond to one thing. I know the
4 request came in late, but in all
5 fairness, and I have been in touch with
6 Ms. Medows because we really thought we
7 would be able to settle this matter on
8 consent or on, you know, executing the
9 surrender, but when we went back and
10 forth, it became clear that's not
11 possible, and so that brought us to
12 now.
13 The first adjournment, you know,
14 Dr. Sutton was unrepresented, I don't
15 think she was even served timely for
16 that first court date.
17 ALJ DIX: The first adjournment
18 is not in issue so.
19 MR. JAMIL: So again, we were in
20 earnest trying to resolve this and we
21 weren't able to do so that came down to
22 be late.
23 ALJ DIX: Understood. I believe
24 the adjournment that you are seeking is
25 to relitigate the underlying facts. I

1 10-25-23
2 think if there is a question of the
3 validity of what happened in
4 California, that would be taken up with
5 the California Courts. All we are here
6 for today is to determine based on what
7 happened in California, which was there
8 a consent order -- no, it wasn't a
9 consent order, but based on the
10 decision that happened in California,
11 New York was going to determine a
12 penalty within New York State, so any
13 issues of the underlying facts and
14 circumstances that happened in
15 California are not part of this
16 proceeding, so I am going to deny the
17 adjournment and we can proceed with the
18 hearing today.
19 And getting back to the exhibits,
20 Mr. Jamil, you did receive copies of
21 the exhibits?
22 MR. JAMIL: Yes, I did.
23 ALJ DIX: Do you have any
24 objection to those exhibits?
25 MR. JAMIL: Well, I mean, I

1 10-25-23

2 object only insofar as we haven't had a
3 chance to present our evidence opposing
4 those exhibits or opposing the --
5 ALJ DIX: But you are not
6 objecting to the Department's exhibits
7 being entered into the record?
8 MR. JAMIL: Yeah, I mean, I am
9 going to object.
10 ALJ DIX: Okay. Thank you. So
11 Ms. Medows, you can proceed.
12 MS. MEDOWS: Do you want me to
13 introduce each exhibit?
14 ALJ DIX: Yes, please.
15 MS. MEDOWS: And just for the
16 record, Judge, I want to state that I
17 have always had service deadlines in
18 every case I ever had. I just want to
19 state that. In fact, if somebody had
20 wanted, a Respondent is always welcome
21 to submit anything, any exhibit if
22 they're appropriate, you know, by that
23 date, so Respondents do have that
24 opportunity.
25 So Exhibit number 1,

1 10-25-23

2 respectfully, is the Certified Mailing

3 Receipt.

4 ALJ DIX: Excuse me, can you

5 bring those up on the record for the

6 Board members. Would the Board members

7 like to see them presented on the

8 screen?

9 MS. MEDOWS: I will try. Let me

10 just figure out how to do this

11 technologically.

12 ALJ DIX: If you can't, I can.

13 MS. MEDOWS: Would you mind,

14 Judge, I'm sorry. I am not sure how to

15 do that.

16 ALJ DIX: This should work.

17 MS. MEDOWS: Thank you very much.

18 ALJ DIX: There we go. Can you

19 see that Department Exhibit-1?

20 DR. RAJU: Yes.

21 ALJ DIX: Okay.

22 MS. MEDOWS: Department Exhibit-1

23 is a Certified Mailing Receipt.

24 ALJ DIX: And there are several

25 of these. Can you explain why there

1 10-25-23
2 are different addresses?
3 DR. MERRITT: Excuse me, Your
4 Honor. Just mentioning what we are
5 seeing at the present time is a list of
6 the exhibits, but we cannot see the
7 actual exhibit.
8 ALJ DIX: Let me try that again.
9 MS. MEDOWS: There's more than
10 one because I always want to make sure
11 that we are being fair to each
12 Respondent, so I always send to every
13 address that we can conceivably have.
14 I don't want to have a situation where
15 somebody has their license disciplined
16 because we can't get in touch with them
17 properly.
18 ALJ DIX: Can you see the exhibit
19 now?
20 DR. MERRITT: Yes, we can.
21 ALJ DIX: Sorry about that. I
22 guess I am not good at technology as I
23 would like to be.
24 MS. MEDOWS: You are better than
25 I am.

1 10-25-23
2 ALJ DIX: Go ahead, Ms. Medows.
3 MS. MEDOWS: So this is Exhibit
4 number 1, and you know, I know you
5 asked why it was more than one. I
6 wanted to make sure that we were being
7 fair and somebody wouldn't get
8 disciplined for not getting it. We
9 just wanted to make sure we crossed
10 every base there.
11 ALJ DIX: Can you explain where
12 the addresses came from, if you
13 wouldn't mind?
14 MS. MEDOWS: You know, I think
15 that those were the last known
16 addresses. I usually ask our
17 investigators to find the most valid
18 addresses. I think I had also
19 contacted Dr. Sutton's previous
20 attorney who is no longer representing
21 her, I believe said that she moved, so
22 I looked up what I thought would be the
23 latest address. We just needed a way
24 to get in touch, really, to make sure
25 it was going to the most known address.

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2 ALJ DIX: Okay, thank you.

3 MS. MEDOWS: Do you want me to

4 proceed?

5 ALJ DIX: Yes.

6 MS. MEDOWS: Next we have

7 Department Exhibit number 2, which is

8 the Affidavit of Attempted Service, and

9 because service was not able to be

10 successfully completed, that's why we

11 sent out the letters in number one

12 which was certified mail and receipt.

13 ALJ DIX: Okay.

14 MS. MEDOWS: Do you want me to

15 proceed with number 3?

16 ALJ DIX: Yes, please.

17 MS. MEDOWS: Okay, next we have

18 Exhibit number 3. Exhibit number 3 is

19 a Statement of Charges, the Hearing

20 Rules and the Notice of Referral

21 Proceeding.

22 MS. MEDOWS: Do you want me to

23 proceed to number 4?

24 ALJ DIX: Just give the Hearing

25 Committee a few minutes to look through

1 10-25-23
2 this document. I know I am going fast,
3 I don't think you can read that fast
4 just so you can see the document that
5 we are referring to.
6 MS. MEDOWS: Okay.
7 ALJ DIX: Now we can go to 4.
8 MS. MEDOWS: Okay. Thank you,
9 Judge. Exhibit number 4 is the
10 California Decision, which is dated on
11 December 8th, 2021.
12 Do you want me to proceed with
13 Exhibit-5?
14 ALJ DIX: Yes, go ahead.
15 MS. MEDOWS: Exhibit-5 is
16 California's Proposed Decision dated on
17 December 28th, 2021.
18 ALJ DIX: Thank you. Does the
19 Hearing Committee wish to see any of
20 those particular exhibits again? I am
21 going to accept Department's Exhibit-1
22 through 5 into evidence.
23 MS. MEDOWS: Thank you, Judge.
24 (Department's Exhibits 1-5 were
25 admitted into evidence; 10/25/23.)

1 10-25-23
2 ALJ DIX: You may proceed, Ms.
3 Medows.
4 MS. MEDOWS: On or about January
5 27th, 2022 a decision and order of the
6 Medical Board of California became
7 effective. The California Board
8 adopted California's proposed decision
9 and it revoked Dr. Sutton's license.
10 The proposed decision was based
11 on Dr. Sutton's gross negligence and
12 repeated negligent acts in that
13 Dr. Sutton issued permanent vaccines
14 exemptions for eight pediatric patients
15 from 2016 to 2018.
16 California found that these
17 vaccine exemptions did not comply with
18 the standard of care and vaccine
19 guidelines at that time.
20 Thank you. Oh, I just want to
21 state that in New York, this
22 constitutes misconduct under 6534,
23 which is, "Practicing the profession
24 with gross negligence on a particular
25 occasion" and 6533, which is

1 10-25-23

2 "Practicing the profession with

3 negligence on more than one occasion."

4 And rather, sorry, 6533, which is

5 "Practicing the profession with

6 negligence on more than one occasion."

7 In this case the Board seeks

8 revocation of the medical licensure.

9 As we noted earlier, in the

10 California decision, if the Board

11 believes that, you know, it should

12 enforce the penalty, the question of a

13 Direct Referral is only what, if any,

14 penalty, what that penalty would be,

15 and the Department here asks the Board

16 to consider revocation.

17 Thank you.

18 ALJ DIX: Okay. Thank you.

19 Board members, did you have any

20 questions for Ms. Medows?

21 DR. MERRITT: No, thank you.

22 ALJ DIX: Dr. Raju?

23 DR. RAJU: I have no questions.

24 Thank you.

25 ALJ DIX: Thank you. Ms.

1 10-25-23
2 Ksiazek?
3 DR. KSIAZEK: No questions.
4 Thank you.
5 ALJ DIX: Mr. Jamil?
6 MR. JAMIL: No questions for Ms.
7 Medows.
8 ALJ DIX: Okay. Thank you. And
9 Ms. Medows, do you have any witnesses
10 or anything further you wish to
11 present?
12 MS. MEDOWS: No, Judge. Thank
13 you.
14 ALJ DIX: Thank you. Mr. Jamil,
15 so it's your turn. You may begin your
16 presentation.
17 MR. JAMIL: Sure. Well, I am
18 just going to have Dr. Sutton come on
19 to answer a few questions.
20 ALJ DIX: Okay. Dr. Sutton, can
21 you raise your right hand? Do you
22 swear or affirm the testimony you are
23 about to give is the truth, the whole
24 truth and nothing but the truth under
25 the penalty of perjury?

1 Direct-M. Sutton, M.D.
2 DR. SUTTON: Yes.
3 ALJ DIX: Thank you. You may
4 proceed, Mr. Jamil. You may put your
5 hand down, Dr. Sutton.
6 DIRECT EXAMINATION BY
7 MR. JAMIL:
8 Q. Good morning, Dr. Sutton.
9 A. Good morning.
10 Q. So I just wanted to put a few
11 questions to you, so let's just jump right
12 into it. How long have you been practicing
13 as a physician?
14 A. Since 1971.
15 Q. 1971. And how many patients did
16 you have in the course of your practice?
17 A. Many. I have not kept track. I
18 think my California practice had about 3,000
19 patients, but I was in California for 15
20 years at that time and the rest of the time
21 I was in other locations, and I had
22 different patients in different locations.
23 Q. And in all that time, did you
24 ever have any kind of disciplinary action
25 other than the California, prior to the

1 Direct-M. Sutton, M.D.
2 California?
3 A. I never had a Board complaint, I
4 never had a hospital complaint until the
5 California action.
6 Q. And in the California action, did
7 any patient complain about you?
8 A. There was no patient complaint
9 against me. In fact, 2,000 letters were
10 sent to the Medical Board of California
11 requesting that my license be continued.
12 Q. And can you tell us a little bit
13 about the process or what you did when you
14 issued the exemptions, the steps you took to
15 make those determinations?
16 A. I studied the law. SB277 was the
17 statutory standard of care at the time I
18 wrote exemptions and it stated that
19 physician concern about risks to the patient
20 was the final determining factor. There was
21 lots of legislative discussion which
22 supported this and gave specific examples of
23 family history, autoimmune disease and that
24 these could be used for the foundation for
25 the exemption from vaccines, that the doctor

1 Direct-M. Sutton, M.D.
2 need not be the primary care doctor, that
3 the doctor could, in the words of Senator
4 Pan, write a note and that would be
5 sufficient. So I studied the literature. I
6 had listened to my patients and learned that
7 there is risk from childhood vaccines. I
8 had heard many stories of ADD, allergies,
9 developmental delay, including autism,
10 autoimmune disease. I knew that there was a
11 correlation between aluminum and neuro
12 degenerative diseases, such as Parkinson's,
13 Alzheimer, Lou Gehrig Syndrome, and that the
14 aluminum content in vaccines is above the
15 toxicity level for an infant's body weight
16 for the first 18 months of life if the
17 ordinary vaccine schedule is followed.
18 Based on these things, I made a
19 judgment regarding what is the risk of this
20 person as an individual with their personal
21 health history and their family health
22 history and their current medical condition
23 to have the standard number of vaccines that
24 was mandated in California at the time.
25 If I was concerned, I wrote

1 Direct-M. Sutton, M.D.
2 vaccine exemptions. If the child was in a
3 state of chronic inflammation, it did not
4 make sense to give more inflammatory
5 substances, because every vaccine is, by
6 design, inflammatory in order to get an
7 immune response to create antibodies. That
8 child could be more harmed by the
9 inflammation aggravating their existing
10 inflammation than helped by the new immunity
11 brought by the vaccine.
12 These kind of thoughts were the
13 foundation of my consideration for each
14 child that I worked with, and there were
15 eight cases in the hearing.
16 Q. Thank you. And so you're aware
17 of AAP and ACIP Guidelines?
18 A. Yes. I have always had vaccines
19 in my practice. I've always known of and
20 referred to AP and ACIP Guidelines. They
21 are guidelines.
22 One of my colleagues who also
23 provided exemptions called ACIP at the time
24 of SB277 and said, specifically, are the
25 guidelines mandatory? Are they the only

1 Direct-M. Sutton, M.D.
2 conditions under which a doctor may provide
3 a vaccine exemption?
4 ALJ DIX: Excuse me, for one
5 second, Dr. Sutton. Can you just
6 explain what ACIP and AAP are just for
7 the record? Thank you.
8 THE WITNESS: Of course. AAP is
9 American Academy of Pediatrics. ACIP
10 is the Advisory Committee on
11 Immunization Practices. The two sets
12 are, essentially, identical. And the
13 physician who called ACIP, A-C-I-P, was
14 told they were simple guidelines. That
15 was what we grew up with and expected
16 always, that these were guidelines.
17 They were not mandates.
18 Nowhere in the ACIP Guidelines or
19 the AAP Red Book is it mentioned that
20 the word "exemption" so the ACIP
21 Guidelines existed long before medical
22 exemptions became necessary. There was
23 no need for medical exemptions to a
24 great extent because parents had the
25 right to make the decisions about their

1 Direct-M. Sutton, M.D.
2 own children's vaccines. Parents had
3 experienced a vaccine reaction, they
4 had seen the effects in their family,
5 they had learned about aluminum in
6 autoimmune disease and had spaced
7 vaccines out, but with the passage of
8 SB277, there was one avenue only for a
9 child to be on an altered vaccine
10 schedule or to not receive vaccines,
11 and that was through the medical
12 exemption. So that became a new task
13 for doctors beyond what was ordinarily
14 needed.
15 There have always been a small
16 number of doctors who wrote medical
17 exemptions, such as an oncologist who
18 had a child on chemotherapy and did not
19 want a have a child to have a live
20 virus vaccine at the time moment, but
21 now that was expanded because parental
22 rights were removed by California
23 SB277.
24 I want to mention also that one
25 of the witnesses in my hearing is

1 Direct-M. Sutton, M.D.
2 Dr. Andrew Zimmerman, who is a world
3 expert in pediatric neurology. His
4 research has shown that 30 percent of
5 regressive autism can be explained by
6 mitochondrial disfunction. Two of my
7 eight cases were tested for
8 mitochondrial disfunction and found to
9 be positive. But even those two cases
10 were not accepted by the judge as
11 needing vaccine exemptions.
12 MS. MEDOWS: Objection. Trying
13 to re litigate the underlying case.
14 MR. JAMIL: I think she is just
15 putting that on the record because it
16 shows her thought process, and that's
17 going to effect, you know, the kind of
18 penalty that she receives here.
19 We can't hear you, Your Honor.
20 ALJ DIX: I'm sorry, I keep
21 muting so that I don't make noise and
22 disrupt the testimony. I apologize. I
23 am going to overrule the objection.
24 Dr. Sutton's already made the statement
25 but the Board members will understand

1 Direct-M. Sutton, M.D.
2 it for how it was made.
3 MS. MEDOWS: Thank you.
4 Q. So you can go ahead, Dr. Sutton.
5 A. So the ACIP and AAP Guidelines
6 have not been updated to include things like
7 the mitochondrial disfunction. This is
8 characteristic of medical literature. There
9 is a study that shows it takes about 17
10 years for something new from the research to
11 actually reach the desks of doctors for
12 clinical practice. In addition, there is an
13 influencing factor of the impact of
14 pharmaceutical funds in FDA and CDC
15 approvals, both of those government
16 organizations receive a significant portion
17 of funding from Pharma and this tends to
18 favor the widespread use of vaccines and the
19 rapid approval of them and of other drugs.
20 So we have to rely on the individual doctor
21 as the advocate for the patient in making
22 the decision and sifting through what is the
23 literature, what is the policy, how
24 influenced was it by pharmaceuticals and
25 what is the patient in front of me so that I

1 Direct-M. Sutton, M.D.
2 can provide, as a physician, the very best
3 care for the patient in front of me. That's
4 my task as an individual. It employs
5 physician judgment and SB277 specifically
6 supported physician judgment in the writing
7 of medical exemptions. And that's what I
8 followed.
9 It is to be noted that several
10 years later in California, this standard of
11 care was significantly narrowed to only be
12 ACIP and AAP Guidelines, and the guidelines
13 themselves became the new vaccine exemption,
14 so essentially, I was judged by the
15 standards of a later law that was not in
16 existence when I wrote the exemptions.
17 Q. Thank you. And just another
18 thing on those guidelines, you know, it was
19 mentioned that the ACIP AAP Guidelines, from
20 time to time they are updated and, to your
21 knowledge, those updates, they include newly
22 discovered side effects that are
23 contraindicated or?
24 A. Reasonably, yes. But in fact,
25 the numbers of side effects in the table of

1 Direct-M. Sutton, M.D.
2 concerns is less over time. This in many
3 people's view, including my colleagues and
4 myself other exempting doctors who have
5 studied the vaccine literature ourselves is
6 reflective of pharmaceutical influence, not
7 of reality.
8 I have been a doctor a long time
9 so I've seen continuing medical education
10 that stated by a gastro neurologist
11 Hepatitis B is a mild disease, we don't need
12 a Hepatitis B vaccine for everybody except
13 for Oriental people who are more prone to
14 liver cancer or Hepatitis B than other
15 ethnic groups. And yet today, Hepatitis B
16 vaccine is given to every baby within the
17 first 24 hours of birth, and pediatricians
18 struggle to have that changed and
19 individualize the treatment for their
20 patients if the mother is not Hepatitis B
21 positive.
22 There is a strong influence of
23 pharmaceutical financial interests in the
24 policy making of FDA CDC and hospitals in
25 how vaccines are administered and the side

1 Direct-M. Sutton, M.D.
2 effects are not considered as thoroughly as
3 they should be.
4 Q. And do you think it was a fair
5 characterization to say that you ignored AAP
6 or ACIP Guidelines in your evaluations?
7 A. I had no need to ignore them. I
8 was quite familiar with them. They simply
9 didn't apply. They were insufficient in the
10 care of my patients needed more information
11 than ACIP and AAP offered. I had that
12 information and I brought it to the benefit
13 of my patient and made the medical exemption
14 that I wrote.
15 Q. And is there anything else you
16 want to mention about the California
17 decision or pertaining to the California
18 case?
19 A. Well, the dates are wrong and
20 what was presented just now in the evidence
21 because my license was not revoked until
22 March 25th, 2022, because I brought a
23 petition to reconsider the revocation,
24 immediately I submitted that February 4th,
25 2022. That was a Friday. The Board -- it

1 Direct-M. Sutton, M.D.
2 was over 300 pages and the Board of --
3 California Medical Board rejected it
4 February 7th, Monday morning. So they
5 obviously hadn't read it.
6 I went to the Superior Court,
7 requested an ex-parte review of this and the
8 judge commanded the Medical Board to review
9 its action and the Medical Board decided to
10 give an additional 10 days and to review the
11 petition to reconsider.
12 The Medical Board at that point
13 then again revoked my license and refused
14 the petition without any signature or any
15 discussion of why it refused my petition.
16 Q. Thank you. Is there anything
17 else you would like to add, Dr. Sutton?
18 A. Thank you. The records were
19 obtained illegally from schools that
20 reviewed children's medical conditions and
21 exemptions in order to obtain my name and
22 other doctors names in what is called the
23 "Pilot project" conducted by Dr. Charity
24 Dean in the California Department of Health.
25 She was later removed from that position

1 Direct-M. Sutton, M.D.
2 when there was complaints made of this
3 activity.
4 ALJ DIX: I am going to stop you
5 here, Doctor. I think you are getting
6 into the underlying merits of the
7 California case and we are just not
8 going to do that, so I am going to ask
9 you to not continue that statement
10 further.
11 THE WITNESS: I was pointing out
12 how the records were obtained as was
13 mentioned --
14 ALJ DIX: But that's not relevant
15 to this proceeding, but thank you.
16 THE WITNESS: Thank you.
17 Q. Anything apart from that,
18 Dr. Sutton?
19 A. Lets see. So I'm not clear on
20 what you consider relevant and not because
21 I'm not an attorney, so I don't know when
22 I'm re litigating or when I'm saying
23 something that is relevant to how we got
24 where we are. What more information would
25 fit the category that's allowable?

1 Direct-M. Sutton, M.D.
2 Q. So --
3 ALJ DIX: That would be up your
4 to your attorney to ask the questions
5 and then I would rule on that.
6 Q. So you know, as far as you're
7 concerned, you were following standards of
8 care at all times?
9 A. It was written, it was very plain
10 language in SB277 and after the passage of
11 the law, a group of physicians formed named
12 "Physicians for Informed Consent" and
13 together we studied the law and the science,
14 so there was concern at that time that we
15 were accurately working with what were the
16 new grounds rules in California.
17 Q. And to your knowledge, has any
18 patient been harmed or did any patient
19 suffer harm in your case?
20 A. There have been no patient harms
21 brought to my attention or to the Board's
22 attention.
23 MR. JAMIL: That's all the
24 questions I have.
25 ALJ DIX: Thank you. Ms. Medows,

1 Cross-M. Sutton, M.D.
2 do you have any cross-examination for
3 Dr. Sutton? I believe you are muted.
4 Ms. Medows, I believe you are muted.
5 MS. MEDOWS: I am trying to un
6 mute. Can you hear me?
7 ALJ DIX: Yes. Thank you.
8 CROSS-EXAMINATION BY
9 MS. MEDOWS:
10 Q. Dr. Sutton, do you believe that,
11 you know, normally I wouldn't bring this up
12 but since we already said that it wasn't re
13 litigating the underlying facts, as to
14 vaccines do you see a need for certain
15 vaccines for your patients, for instance,
16 eradicating polio, that there may be, you
17 know, a need for vaccines so that way
18 patients do not have polio and other
19 eradicated diseases like measles, mumps and
20 polio?
21 A. So I have already said that I
22 always carried vaccines in my practice from
23 the beginning for the entire five decades,
24 and I have seen the handling of vaccine
25 safety sheets shrink from the initially four

1 Cross-M. Sutton, M.D.
2 pages to now one page, so the
3 acknowledgement of this how they worked and
4 the description of things to look for has
5 been minimized over time.
6 I think there is room for
7 vaccines but I also know that the more I
8 have learned about vaccines, the greater my
9 cautions have become. That the main, the
10 most important thing in a situation where
11 there is the risk of adverse effect is that
12 there is freedom to choose both for the
13 doctor and the patient because we have to
14 balance what is the need. If a family has
15 horses and there is a lot of tetanus spores
16 in horse dung, then that family should
17 strongly consider tetanus for their toddler,
18 maybe not at birth because a baby in arms
19 doesn't fall and get cut, but a two year-old
20 climbs and falls and that's a good time for
21 tetanus. That's the individualized vaccine
22 care that I would provide my patients.
23 Polio, yes, if you are traveling
24 to Syria, Pakistan, some countries where
25 there is war, and we also see that effects

1 Cross-M. Sutton, M.D.
2 in India of the over vaccination of polio
3 bringing about new paralytic disease that is
4 not called polio but is increased in the
5 excessive use of the polio vaccine. It's a
6 complex field.
7 Q. Do you think that there is any
8 merit to following vaccine guidelines?
9 A. Yes, of course. Guidelines is
10 collected experience, so but they need to be
11 guidelines. They are the experience I
12 haven't had from experts and many other
13 doctors. With that, I combine my experience
14 and the new immediate information obtained
15 from the patient in front of me, and that
16 together allows me to make the correct
17 judgment that complies with the hypocratic
18 oath of first doing no harm, as well as the
19 immediate needs of the moment and the
20 knowledge of the moment.
21 MS. MEDOWS: Thank you. No
22 further questions.
23 MR. JAMIL: I just had a last
24 question for Dr. Sutton.
25 ALJ DIX: Sure. Go ahead.

1 Re-Direct-M. Sutton, M.D.
2 RE DIRECT EXAMINATION BY
3 MR. JAMIL:
4 Q. Do you think the California
5 decision, you know, accurately captured your
6 decision-making and what you did with your
7 patient?
8 A. No, I think it misunderstood and
9 precluded the role of the physician. Sadly,
10 in the course of legislative discussion,
11 this was all made very clear, and sometime
12 after the law was passed, Senator Richard
13 Pan, the author, said that doctors were
14 agents of the state, so it indicates a shift
15 in the practice of medicine away from
16 physician judgment to physicians being
17 enforcers of a government determined plan
18 for what is right for which demographic.
19 That's a very big change in the profession
20 of medicine.
21 MR. JAMIL: Thank you.
22 ALJ DIX: Hearing Committee, do
23 you have any questions, Dr. Merritt?
24 DR. MERRITT: I do. Based upon a
25 couple of the comments, I feel I need a

1 M. Sutton, M.D.
2 little clarification.
3 EXAMINATION BY
4 DR. MERRITT:
5 Q. Doctor, you mentioned you weren't
6 functioning as the primary care doctor for
7 these patients; is that correct?
8 A. That's correct, not for all of
9 them. Some I was primary care, some I was
10 not. Some transferred care subsequent to
11 their receiving an exemption from me and I
12 became their primary care doctor.
13 Q. What percentage of the patients
14 who requested an exemption were granted one?
15 A. I don't have that information.
16 Q. More than half or --
17 MR. JAMIL: I will object because
18 those are new facts.
19 ALJ DIX: The Hearing Committee
20 is allowed to ask questions. I am
21 going to overrule that objection.
22 Q. I understand if you can't answer,
23 you can't answer. I was just curious was it
24 more than half less than half?
25 A. I would say it was more than half

1 M. Sutton, M.D.
2 because patients selected themselves from
3 having had prior personal belief exemptions
4 to seek a doctor who would help them. In
5 California, the entire system of Kaiser
6 physicians were told do not give medical
7 exemptions, so many primary care physicians
8 were limited by their larger group to
9 provide exemptions. And so a parent had to
10 decide what would they do in having a doctor
11 who refuses to give a medical exemption.
12 And that explains why some of my concerns
13 were written for patients who were not my
14 primary care patients.
15 DR. MERRITT: Thank you. No
16 other questions.
17 ALJ DIX: Thank you. Dr. Raju?
18 DR. RAJU: Yes, thank you.
19 EXAMINATION BY
20 DR. RAJU:
21 Q. Thank you, Dr. Sutton for being
22 here today. Just to follow up on
23 Dr. Merritt's question, the fact that you
24 were not the primary care physician for the
25 people and the people select you out to get

1 M. Sutton, M.D.
2 the exemption, does it indicate that we
3 overrule the primary care physician's
4 judgment that we somehow have more
5 judgmental imagine than the primary care and
6 be able to grant them these exemptions where
7 the primary care believed not to do that?
8 Basically, we assume they are not believed
9 to do that because they are being
10 pressurized by the government to do so. Is
11 it not an assumption that people should form
12 a judgment over a primary care physician who
13 refused to give the vaccination exemption,
14 then you go to a doctor who basically some
15 kind of advocacy and say okay, I believe in
16 that, I am going to give you an exemption.
17 How does it work in the medical system, do
18 you think?
19 MR. JAMIL: I wasn't clear
20 exactly what the question is.
21 DR. RAJU: Well, the question is
22 simple.
23 Q. If you are not a primary care
24 physician and you are granting an exemption
25 to the person, you basically do that because

1 M. Sutton, M.D.
2 the patients come to you, select you because
3 of your views on vaccination. How does a
4 primary care physician's knowledge being
5 kind of exempted and you are basically
6 putting your knowledge or your advocacy on
7 top of somebody else's advocacy, how does
8 the medical system work?
9 MR. JAMIL: I mean, I don't think
10 it's a question as much as --
11 DR. RAJU: No, it's a question.
12 Q. You are a primary care physician
13 so you are not supposed to grant these
14 things because you don't know these
15 patients. You basically decide to grant
16 them, right, and you basically said the
17 reason you grant them is because the primary
18 care physician don't understand the
19 vaccination as well as I do. That's why I
20 grant them. That's kind of very difficult
21 to understand because I am if a primary care
22 physician and I say no and somebody else
23 grants it, they are overriding my judgment.
24 MR. JAMIL: Well, I don't think
25 that's what Dr. Sutton is saying.

1 M. Sutton, M.D.
2 ALJ DIX: Well, we will let
3 Dr. Sutton answer that. I appreciate
4 that, Mr. Jamil.
5 DR. RAJU: That's what I want her
6 to answer. From her.
7 A. So Dr. Raju, many times I heard
8 from a patient my son with epilepsy, the
9 neurologist said I think he should have an
10 exemption but I can't write it or I will
11 lose my license. This was a common
12 statement. Physicians were not acting based
13 in the knowledge of the vaccines, but on the
14 fear for themselves.
15 It was also news to me as I
16 started to learn about vaccines that in the
17 2016 Blue CrossBlue Shield Incentive
18 Provider Manual, there was a 200 or 400
19 dollar bonus to the physician for every two
20 year-old who was on schedule for vaccines
21 according to CDC.
22 Now California had a law to be
23 considered to provide an exemption in the
24 under-privileged clinics. I testified
25 saying that should not be there because

1 M. Sutton, M.D.
2 money influence is judgment. The wording
3 should be changed by saying the physician
4 considers the vaccines, not the physician
5 gives the vaccines, because the physician's
6 role is to consider and you are being a
7 physician whether you give or don't give
8 because it's the judgment and consideration
9 that is the physician. And so we shouldn't
10 pre-amp the physician's decision and say you
11 only get the incentive if you give the shot,
12 but this is where we're at in medicine. So
13 it's a very difficult thing.
14 And the primary care doctor is
15 making a lot of money if he gives a lot of
16 vaccines. It's much more profitable to give
17 vaccines than to give exemptions.
18 Q. Thank you, Dr. Sutton. Another
19 question I have is in some of this
20 vaccination exemptions you have given, it is
21 stated that you never saw the patient, you
22 haven't examined them, you are not a primary
23 care physician. You basically took the
24 history, spoke to the parent and then you
25 issued the certificates, right? Is that the

1 M. Sutton, M.D.
2 normal practice that we issue certifications
3 based on people we don't examine or we don't
4 see and depend on a third-party to tell us
5 that my son or daughter needs an exemption
6 and we want it?
7 A. Unfortunately, what you have read
8 is a cherry picking of the transcript of the
9 hearing. I examined about half of the
10 patients and about half of the patients I
11 function by phone. California is a very
12 large state. Many of the patients who have
13 had problems with vaccines are high-need,
14 they don't travel easily and both parents
15 would have to be off work and drive or fly
16 to get to me in order to get the exemption
17 request considered that was refused by their
18 local doctor and specialist for fear of
19 their own license being damaged.
20 I'm older and I can do this work,
21 so this was not without reason. The
22 questions that I asked were based on
23 history. The decision about whether a
24 vaccine is a risk or not is not by checking
25 the ears, the heart, the belly, the blood

1 M. Sutton, M.D.
2 pressure, nothing. It is not based on
3 physical exam, it's totally based on
4 history. My training in medical school is
5 the key of any illness is to take a good
6 history. I was also trained in an elegant
7 physical exam that we don't even use anymore
8 because we have so much imaging. And I was
9 told that people in India could percuss
10 tuberculosis in the upper atelectasis of the
11 lungs because they were so good at physical
12 exam, but that elegant physical exam would
13 not help me know if the patient needed a
14 medical exemption. I needed to know what
15 happened to this child, to the siblings, to
16 the parents, and their history of
17 vaccinations and to the other relatives.
18 This is a history-based diagnosis.
19 Q. I understand, Doctor, thank you,
20 but my question is some of these parents who
21 don't want these children vaccinated for
22 various reasons, whether it's medical
23 reasons, religious reasons or whatever the
24 reasons are so, basically, we have no way of
25 judging that these people are, the history

1 M. Sutton, M.D.
2 is absolutely true to some extent, is there
3 any verification to do that. The second
4 part of it is that, you know, issuing these
5 vaccination to the people because of public
6 safety, would you believe that your public
7 safety measure as a part of this vaccination
8 so that we believe that people need to get
9 vaccinated so we can have enough herd
10 immunity so we are able to protect people.
11 So what is your view on that because you
12 kind of moved on saying you took the
13 history, talk to the parents, the parent
14 told you they are having problems so based
15 on that you gave some vaccination
16 certificates.
17 To go back to Dr. Merritt's
18 question, how many times can you recall that
19 you took the history and said, you know
20 something, based on the history you are not
21 qualified for exemption, I am not going to
22 give you an exemption. Did that happen?
23 A. Yes.
24 Q. Okay.
25 DR. RAJU: Thank you, Dr. Sutton,

1 M. Sutton, M.D.
2 I appreciate it.
3 ALJ DIX: Thank you. Ms.
4 Ksiazek, do you have any questions?
5 DR. KSIAZEK: Yes, I do.
6 EXAMINATION BY
7 DR. KSIAZEK:
8 Q. Dr. Sutton, you had explained the
9 reason why you felt that physical
10 examination was not a necessary component
11 for making the assessment.
12 A. Yes.
13 Q. In determining an exemption.
14 A. Yes.
15 Q. But I do ask, why you did not
16 obtain medical records to substantiate what
17 the parents were relaying as being the
18 medical history of their child, the reason
19 being that where we know that childhood
20 vaccination is a very emotional issue for
21 parents. It has been controversial. Did
22 you not recognize that parents might be
23 coming to you with information that would
24 hopefully result in you giving an exemption,
25 and as part of that, wouldn't you want

1 M. Sutton, M.D.
2 medical records to verify what they were
3 telling you?
4 A. I have taken a lot of histories,
5 Ms. Ksiazek, and I have always accepted my
6 patient's statements, except if I felt they
7 were beyond what was reasonable or something
8 that they could not comprehend, like a cell
9 type in a cancer, and then we needed a
10 pathology report. I think that there is an
11 issue with parents feeling pressured by
12 mandates that influences how they can speak,
13 and I think there is also pressure from the
14 public health side that makes claims for
15 safety from vaccines beyond what is
16 accurate.
17 As we go through things, we finds
18 that the use of the nasal vaccine, for
19 instance, does not give the immunity that
20 it's claimed to, that the complications from
21 measles disease can be treated with Vitamin
22 A, and yet we never heard about Vitamin A
23 when we discuss the question of vaccinating
24 against measles or being ready to deal with
25 the disease.

1 M. Sutton, M.D.
2 We also see benefits from the
3 original disease in terms of longer term
4 health, so it's not a slam dunk that every
5 child should have every vaccine unless there
6 is a specific issue. This is a complex
7 field and there are many gray areas on both
8 sides. The side that promotes vaccines is
9 not 100 percent scientific, it's got a lot
10 of financial influence, and the parents are
11 fearful and they are influenced by emotion.
12 The two together have to be balanced in the
13 clinical setting of a professional dealing
14 with a parent and the situation itself.
15 Q. Doctor, may I ask, in the care of
16 patients over the course of your career that
17 did not involve assessment of vaccine
18 exemptions, did you routinely obtain medical
19 records from specialists to help develop
20 your plan of care for that patient?
21 A. Sometimes, but not for things for
22 like routine history. If someone said uncle
23 so-and-so had a gallbladder surgery, uncle
24 so-and-so got bad ear infections after his
25 vaccine, I would equally not ask for records

1 M. Sutton, M.D.
2 in those two settings because it's a thing
3 that a parent can grasp about a family
4 member and transmit. If it's about that
5 patient's biopsy of their uterine cancer and
6 I need to know if it's aggressive and how
7 far it's invaded, then I need records, so
8 it's a question of the level of specificity
9 and knowledge that's being conveyed by the
10 history.
11 Q. Okay. Thank you, Doctor. One
12 last question. Given the seriousness of
13 this issue and the controversy that has
14 surrounded childhood vaccinations, would you
15 not agree that extensive documentation in
16 your medical record of discussing the risks
17 and the benefits with the parents would be
18 documented?
19 A. I think extensive documentation
20 is what's driving doctor's away from the
21 practice of medicine. We are killing the
22 heart of medicine by going after more jots
23 and tittles, so to speak, so there needs to
24 be good discussion, but the question has to
25 be, am I treating a chart for my own

1 M. Sutton, M.D.
2 survival or am I treating the patient in
3 front of me. They are not equivalent.
4 Q. Doctor, would you not agree that
5 the adage, if it's not documented, it's not
6 done, is an accepted standard of care within
7 healthcare?
8 A. It's an adage, that's for sure.
9 It may be accepted, but then applying any
10 adage has to use wisdom and has to say how
11 much does this hold the whole truth or a
12 partial truth.
13 I try to put my general practices
14 of thorough discussion with patients about
15 risks and benefits in the consent papers and
16 the general intake papers so I am not
17 writing the same thing over and over and
18 over again. I think every doctor does that
19 just to be reasonable, then I can focus on
20 the patient and communicate in a way that
21 that patient can hear what is key for that
22 patient's case.
23 DR. KSIAZEK: Thank you, Doctor.
24 ALJ DIX: Thank you, Ms. Ksiazek.
25 Ms. Medows, do you have any

1 Re-Direct-M.Sutton, M.D.
2 further questions for Dr. Sutton based
3 on the Board members questions?
4 MS. MEDOWS: No further
5 questions. Can you hear me now?
6 ALJ DIX: Yes, I can. Thank you.
7 MS. MEDOWS: Okay. No further
8 questions. Thank you, Judge.
9 ALJ DIX: Thank you. Mr. Jamil,
10 do you have any further questions based
11 on the Board members questions?
12 MR. JAMIL: Just a couple of
13 followups.
14 ALJ DIX: Okay.
15 CONTINUING RE DIRECT EXAMINATION BY
16 MR. JAMIL:
17 Q. Dr. Sutton, one question is, you
18 know, if physicians are made to, you know,
19 strictly adhere to certain guidelines, what,
20 if any, risk does that pose to professional
21 judgment and physician autonomy?
22 A. Well, it's a big risk because no
23 guideline can be complete. Medicine is
24 continually accumulating knowledge, and if a
25 person comes in and they fit the guideline

1 Re-Direct-M.Sutton, M.D.
2 in a certain way but a close blood relative
3 has had an adverse effect with what that
4 guidelines says should happen for this
5 demographic, because the only way guidelines
6 work is if we reduce everybody to a number,
7 what is my age, height, weight, blood
8 pressure, and severity of pain on a scale.
9 According to that, I should get this test
10 and this treatment period, but what if there
11 is an exceptional convincing piece of
12 history that comes from somebody who is
13 closely related to that person or there's
14 something local in the area that's going
15 around contagion-wise, that needs to be
16 considered that the guidelines couldn't
17 possibly reach.
18 Q. So let me ask another way, so,
19 you know, what would it do to a
20 physician's -- how would it effect a
21 physician in making a recommendation if he
22 knew that it wasn't reflected in a guideline
23 that he was strictly to adhere to, if he saw
24 something in this patient but it's not in
25 the guidelines and he has to follow those

1 Re-Direct-M.Sutton, M.D.
2 guidelines, how would that effect that
3 physician or how could it effect that
4 physician?
5 A. That's a very big world dilemma,
6 because first, as a physician, I am the
7 patient's advocate and I am not to harm the
8 patient. Now we're in a very crisis part of
9 medicine because we are being told by
10 formulators of systems that a doctor walks
11 within the system period. That's not the
12 way the profession of medicine is devised or
13 anybody who's been related to healing,
14 there's always the individual to individual
15 components. Am I hitting what you need?
16 Q. Yeah. I think that's it. And
17 then the next question I had was, you know,
18 in terms of primary care physicians, you
19 know, some of those primary care physicians
20 for those patients would, if the patient
21 then turns to you, is it fair to say that,
22 you know, it could be that you had a higher
23 level of knowledge or expertise about
24 vaccination than some of these primary care
25 physicians?

1 Re-Direct-M.Sutton, M.D.
2 A. Yes. I'm sure they have a higher
3 level of knowledge about something than me.
4 Maybe they're better at talking off warts,
5 but we don't yet have a specialty within
6 medicine that's vaccinology but we may soon,
7 and we will look back and say the parents
8 and the doctors who took this up and really,
9 really studied it actually were the
10 predecessors of that specialty we now have.
11 Q. And the last question I think I
12 had is, you know, there's been a lot of
13 focus on the fact that at least some of the
14 patients, there wasn't a physical exam done
15 but, obviously, you did do an evaluation
16 and --
17 A. Yes.
18 Q. Can you just speak a little bit
19 about tele health and tele medicine and how
20 that's sort of changed your practice or
21 other practices, it's been become more
22 commonplace, right?
23 A. Yes. And if the physical exam
24 was critical to medicine, we could never
25 have done what we need in COVID, namely, go

1 Re-Direct-M.Sutton, M.D.
2 to tele health very widely. The history is
3 the foundation for this particular issue is
4 the key piece.
5 Q. And I'm sorry, the last question
6 I had was, you know, when you evaluated
7 these patients, you know, were you
8 evaluating just to give a medical exemption
9 or were you evaluating to see whether
10 vaccine was warranted or whether an
11 exemption was warranted?
12 A. The primary question is exemption
13 yes or no in the evaluations that I did, and
14 the law in California that was later passed
15 did require physical exam, but it did not
16 require physical exam when it was enforced
17 and I was writing exemptions.
18 MR. JAMIL: Thank you. Thank
19 you. That's all the questions I have.
20 ALJ DIX: Thank you, Mr. Jamil.
21 Board members, do you have any
22 further questions?
23 DR. MERRITT: No further
24 questions.
25 ALJ DIX: Dr. Raju?

1
2 DR. RAJU: No further questions.
3 ALJ DIX: Ms. Ksiazek?
4 DR. KSIAZEK: No further
5 questions.
6 ALJ DIX: Thank you. Ms. Medows,
7 do you have any further questions?
8 MS. MEDOWS: No further
9 questions. Thank you, Judge.
10 ALJ DIX: Thank you. Well, I
11 believe that this concludes the
12 hearing. We can go off the record.
13 (A discussion was held off the
14 record.)
15 ALJ DIX: Go ahead, Ms. Medows.
16 MS. MEDOWS: Thank you, Judge.
17 The Department just wants to state
18 that, you know, at that time those
19 rules in California were applicable at
20 that time and in that the standard of
21 care should be followed and the
22 guidelines were there and that
23 physicians should be following the
24 guidelines in terms of seeing patients
25 or keeping records. Thank you.

1 10-25-23
2 ALJ DIX: Thank you. Mr. Jamil,
3 do you wish to make a closing
4 statement?
5 MR. JAMIL: Sure. I just would
6 like to see say that, you know, the
7 decision in California, it has legal
8 flaws the legal conclusions are flawed
9 and I think Dr. Sutton has her
10 testimony here today shows that, you
11 know, her thought process was
12 reasonable, it kept the standard of
13 care, and I don't think that was
14 adequately captured in the California
15 decision.
16 ALJ DIX: Thank you.
17 MR. JAMIL: That's it.
18 ALJ DIX: Okay. With nothing
19 further, then we can close the record.
20 (TIME NOTED: 12:13 p.m.)
21
22
23
24
25

1

2 INDEX TO TESTIMONY

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10 INDEX TO EXHIBITS EVIDENCE

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2 CERTIFICATION
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4
5 I, Stefanie Krut, a Notary
6 Public in and for the State of New
7 York, do hereby certify:
8 THAT the foregoing is a true and
9 accurate transcript of my stenographic
10 notes.
11 IN WITNESS WHEREOF, I have
12 hereunto set my hand this 9th day of
13 November, 2023.
14
15 Stefanie Krut
16 ---------------------------------
17 Stefanie Krut
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