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

12 In the Matter of the Accusation Against:

Case No. 800-2016-023886

13 **Mary Kelly Sutton, M.D.**
14 **9801 Fair Oaks Blvd., Ste. 300**
Fair Oaks, CA 95628

A C C U S A T I O N

15 **Physician's and Surgeon's Certificate**
16 **No. G 76932,**

Respondent.

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19 **PARTIES**

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

23 2. On February 4, 2004, the Medical Board issued Physician's and Surgeon's Certificate
24 Number G 76932 to Mary Kelly Sutton, M.D. (Respondent). The Physician's and Surgeon's
25 Certificate was in full force and effect at all times relevant to the charges brought herein and will
26 expire on January 31, 2022, unless renewed.

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1 **JURISDICTION**

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.

25 (c) Investigating the nature and causes of injuries from cases which shall be reported
26 of a high number of judgments, settlements, or arbitration awards against a physician
27 and surgeon.
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1 5. Section 2234 of the Code states:

2 The board shall take action against any licensee who is charged with unprofessional
3 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not
4 limited to, the following:

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

7 (b) Gross negligence.

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

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

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

19 (d) Incompetence.

20 (e) The commission of any act involving dishonesty or corruption that is substantially
21 related to the qualifications, functions, or duties of a physician and surgeon.

22 (f) Any action or conduct that would have warranted the denial of a certificate.

23 (g) The failure by a certificate holder, in the absence of good cause, to attend and
24 participate in an interview by the board. This subdivision shall only apply to a
25 certificate holder who is the subject of an investigation by the board.

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OTHER STATUTES

6. Health and Safety Code section 120325 provides:

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

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

(1) Diphtheria.

(2) Hepatitis B.

(3) Haemophilus influenza type b.

(4) Measles.

(5) Mumps.

(6) Pertussis (whooping cough).

(7) Poliomyelitis.

(8) Rubella.

(9) Tetanus.

(10) Varicella (chickenpox).

(11) Any other disease deemed appropriate by the department, taking into consideration the recommendations of the Advisory Committee on Immunization Practices of the United States Department of Health and Human Services, the American Academy of Pediatrics, and the American Academy of Family Physicians.

(b) That the persons required to be immunized be allowed to obtain immunizations from whatever medical source they so desire, subject only to the condition that the immunization be performed in accordance with the regulations of the department and that a record of the immunization is made in accordance with the regulations.

(c) Exemptions from immunization for medical reasons.

(d) For the keeping of adequate records of immunization so that health departments, schools, and other institutions, parents or guardians, and the persons immunized will be able to ascertain that a child is fully or only partially immunized, and so that appropriate public agencies

1 will be able to ascertain the immunization needs of groups of children in schools or other
2 institutions.

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

5 7. Health and Safety Code section 120370 provides, in pertinent part:

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

14 **FACTUAL ALLEGATIONS**

15 8. At all relevant times, Respondent was a physician and surgeon with a specialization
16 in pediatrics at her office in Fair Oaks, California.

17 9. In 2015, the California Legislature amended Health and Safety Code section 120325
18 to eliminate personal beliefs as a basis for exemption from required immunizations for school-
19 aged children. As a consequence, school-aged children not subject to any other exception were
20 required to have immunizations for 10 vaccine-preventable childhood illnesses as a condition of
21 public school attendance.

22 **Patient 1**

23 10. Patient 1¹ was 10 years old at the time an exemption letter was drafted by Respondent
24 on August 9, 2016, and submitted stating that Patient 1 was “medically exempt from all vaccines
25 on a permanent basis due to personal history of allergy, and family history of suspected vaccine
26 reaction, allergy, neurologic and autoimmune disease.”

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28 ¹ Numbers are used to protect patient privacy. Respondent may learn the names of the patients through the discovery process.

1 11. Respondent's medical records for Patient 1 include a medical history form for
2 patients (parents) to complete. This includes a "Vaccine Reaction History." Within this,
3 Respondent lists multiple conditions for patients to circle, indicating that they apply. These
4 include "Brain and nervous system inflammation" and include conditions not associated with
5 vaccines (aggression, depression, visual disturbance, meningitis, ADHD etc.), as well as
6 "Immune system or organ inflammation," including (frozen shoulder, hepatitis, pneumonia, ITP,
7 allergies, thyroiditis, 'signs of vaccine illness'). Malignancies are also listed as possible outcomes
8 that may have resulted from vaccination. In fact, several of these conditions are vaccine
9 preventable.

10 12. Medical records for Patient 1 indicate meningitis² with subsequent hearing loss at age
11 11 months as well as eczema, the need for PE tubes,³ and frequent infections. The one-page
12 written documentation does not appear to include a physical exam and does not note whether the
13 meeting with the mother and patient was an in-person visit or a telephone consultation. The
14 assessment section of the medical record states: "seeks ME- medical exemption." A check list for
15 the patient medical history completed by the patient/parent is extensive, listing more common
16 conditions (Crohn's disease, thyroiditis) to very unusual ones (Tolosa-Hunt syndrome and
17 Takayasu's arteritis). A second cousin of Patient 1 is noted for a movement disorder, while
18 another was noted to have had a vaccine reaction.

19 13. Respondent did not identify any vaccine contraindication or precaution, as defined by
20 the Centers for Disease Control and Prevention and/or the American Academy of Pediatrics.
21 Respondent issued a medical exemption for Patient 1 that was global, i.e. applying to all vaccines,
22 and permanent in duration.

23 Patient 2

24 14. Patient 2 was 4 years old at the time an exemption letter was drafted by Respondent
25 on September 5, 2017, and submitted stating that Patient 2 was "medically exempt from all
26 vaccines on a permanent basis due to personal history of allergy and neurologic vulnerability, and

27 ² Bacterial meningitis is a vaccine-preventable disease.

28 ³ Tiny hollow tubes made of soft material that decrease the frequency of ear infections by
allowing air in and helping fluid to drain into the throat.

1 family history of genetic defect, neurologic disease and allergy.” Respondent lists vaccination
2 against, “diphtheria, hepatitis B, Hemophilus influenza type B, measles, mumps, pertussis,
3 poliomyelitis, rubella, tetanus, varicella, pneumococcus, meningococcus, flu, and human
4 papilloma virus.” Respondent noted that the exemption is for all vaccines including those not
5 specifically mentioned in the exemption.

6 15. The medical records provide an extensive check list and medical history reported by
7 Patient 2’s parent that reveals no significant underlying chronic diseases. The records include
8 genetic testing for various mutations (polymorphisms) for which there is no evidence-based
9 correlations or clinical relevance. Respondent makes assumptions about Patient 2’s genetic make-
10 up based on this testing and then extrapolates it to the child’s ability to tolerate vaccinations:
11 Respondent lists neurologic vulnerability and family history of genetic defect for Patient 2.⁴
12 There is also a FoodStats Antibody Assessment, but this is without relevance to any vaccine
13 exemption indication. Respondent also refers to the patient’s sensory processing disorder as a
14 reason to not vaccinate. While this is a recognized neurologic disorder, it has no relation to
15 vaccinations.

16 16. Respondent raises concerns about aluminum in vaccines, perpetuating a common
17 misconception about vaccine additives, and reports that exposure to aluminum in the vaccines,
18 along with autoimmune disease in the family, is a valid reason for not vaccinating Patient 2.
19 These concerns are not in line with the CDC,⁵ AAP⁶ or other medical bodies.

20 Patient 3

21 17. Patient 3 was 10 years old at the time an exemption letter was drafted by Respondent
22 on March 4, 2016, and submitted stating that Patient 3 was “medically exempt from all vaccines
23 on a permanent basis due to family history of autoimmune disease, allergy, neurologic disease
24 and vaccine reactions.”

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26 ⁴ Neurologic vulnerability is not a real medical term and if a family member has a genetic
27 disease, another family member may indeed carry that trait, but this would not be a legitimate
28 reason for vaccine or all vaccines exemption.

⁵ Centers for Disease Control and Prevention.

⁶ American Academy of Pediatrics.

1 18. In the medical records, Respondent lists a family history of suspected vaccine
2 reaction, allergy, neurologic and autoimmune disease. The records contain no physical
3 examination or personal history noting how Patient 3 was currently doing, her development or her
4 current state of health. Respondent's recommendations included some dietary interventions, one
5 of which was raw milk.⁷ Family history is not a legitimate reason for vaccine exemption, and in
6 Patient 3's letter, Respondent claims medical exemption from all vaccines due to family history
7 of allergy, among other conditions. None of these are vaccine contraindications. There are no
8 identified family medical conditions that contradict all vaccines.

9 Patient 4

10 19. Patient 4 was 10 years old at the time an exemption letter was drafted by Respondent
11 on June 16, 2016, and submitted stating that Patient 4 was medically exempt from all vaccines on
12 a permanent basis due to a personal history of vaccine reaction and neurologic disease, and family
13 history of neurologic disease, vaccine reaction, allergy and autoimmune disease. Respondent lists
14 all vaccines for which Patient 4 should be exempt and then says that this exemption is for "all
15 vaccines including those not mentioned here." There is also an additional more detailed
16 exemption letter that recommends medical exemption from all vaccines on a permanent basis
17 describing in more detail Patient 4's personal history of reaction to "cumulative vaccination
18 schedule resulting in neurologic disease which is the basis of his IEP" and attributes his ADHD⁸
19 and ASD⁹ to cumulative vaccinations. Respondent also reports, "genetic mutations indicating
20 vulnerability to autoimmune and allergic disease." Respondent details Patient 4's family history
21 as a reason to exempt Patient 4 from vaccines that includes a paternal uncle and paternal cousins
22 with ADD and other relatives with learning difficulties and autism, which Respondent attributes
23 to vaccination but does qualify this as her personal opinion. Respondent notes other autoimmune
24 diseases in Patient 4's family members, including celiac disease, psoriasis and Bechet's disease.¹⁰

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26 ⁷ A product advised against by CDC, AAP etc., as it has been associated with many
27 foodborne outbreaks – E. coli 0157:H7 and Salmonella among other bacterial infections.

28 ⁸ Attention-Deficit/Hyperactivity Disorder.

⁹ Autism Spectrum Disorder.

¹⁰ A rare disorder that causes blood vessel inflammation throughout the body. The disease

1 There is no documentation that Respondent had a conversation with the patient or the parents
2 regarding the risks of not receiving the vaccines.

3 Patient 5

4 20. Patient 5 was 5 years old at the time an exemption letter was drafted by Respondent
5 on December 20, 2018, and submitted stating that Patient 5 was medically exempt from all
6 vaccines on a permanent basis due to a personal history of genetic defect, allergy, suspected
7 vaccine reaction, and neurologic vulnerability, and family history of autoimmune disease, allergy,
8 neurologic vulnerability, and suspected vaccine reaction. Respondent lists all vaccines for which
9 Patient 5 should be exempt and then says that this exemption is for “all vaccines including those
10 not mentioned here.”

11 21. The medical records reveal a conversation between Respondent and Patient 5’s
12 mother on April 17, 2018, noting that Patient 5 was vaccinated up until age 18 months. Patient 5
13 is reported by her mom to have poor focus and to be moody. There is a question of ADHD and
14 from this Respondent’s assessment is “suspect vaccine reaction.” The reason for the appointment
15 is to receive a medical evaluation to consider medical exemption. There is a long check list
16 included in the intake materials that lists an extensive number of rare and common medical
17 conditions – some exceptionally rare.¹¹ Patient 5’s parent does not endorse any of these. There is
18 also inclusion in the medical records of a genetic testing report (Single-Nucleotide
19 Polymorphism’s (SNPs) for Vaccine Medical Exemption Evaluation).¹² There is no
20 documentation that Respondent had a conversation with the patient or the parents regarding the
21 risks of not receiving the vaccines.

22 Patient 6

23 22. Patient 6 was 14 years old at the time an exemption letter was drafted by Respondent
24 on August 19, 2016, and submitted stating that Patient 6 was medically exempt from all vaccines
25 on a permanent basis due to personal history of genetic defect and allergy and family history of

26 _____
27 can lead to numerous signs and symptoms that can seem unrelated at first. They can include
28 mouth sores, eye inflammation, skin rashes and lesions.

¹¹ Essential mixed cryoglobulimena, autoimmune oophoritis.

¹² A non-evidence-based test that has no medical relevance in this arena.

1 autoimmune disease and allergy. Respondent listed all the vaccines Patient 6 should not receive
2 and then stated that all other vaccines not mentioned in her letter should also be included in the
3 exemption.

4 23. Medical records reveal communication, but no in-person clinic visit, between
5 Respondent and Patient 6's father on August 19, 2016. Respondent documented allergies to
6 shellfish, loud breathing and headaches. According to the father, he had a 'bad reaction' to a
7 vaccine and "does not want his daughters to go through the same." There is an exhaustive check
8 list for the family history and genetic testing for polymorphisms. There is no documentation of
9 any vaccine reactions or an underlying condition that would qualify for an exemption.¹³

10 Patient 7

11 24. Patient 7 was 12 years old at the time an exemption letter was drafted by Respondent
12 on July 29, 2016, and submitted stating that Patient 7 was medically exempt from all vaccines on
13 a permanent basis due to personal history of allergy, neurologic disease, and suspected vaccine
14 reactions, and family history of autoimmune disease, allergy, neurologic disease, and vaccine
15 reactions. Respondent lists all the vaccines Patient 7 should not receive and then states that all
16 other vaccines not mentioned in her letter should also be included in the exemption.

17 25. Medical records show that Respondent spoke with Patient 7's mother on July 29,
18 2016, and documented his allergies and asthma. There is no record of an in-person visit.
19 Respondent also noted ADD. The reason for the visit is for "medical exemption" as recorded by
20 the parent. The medical intake sheet is adult focused. The mother's medical history includes
21 asthma, intolerance of "buildings" while on a school trip, and recurrent episodes of allergies and
22 difficulty breathing with fatigue. Mother blames her difficulties, including Patient 7's infancy
23 problems (GI issues, fevers), on vaccinations. An exhaustive list of "vaccine reactions" was
24 included in the records for Patient 7's mother to circle, identifying the problems she thinks are
25 due to vaccines, despite none of these conditions being associated with vaccinations. Based on
26 this, Respondent provided exemptions from all vaccinations.

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¹³ Patient 6 had apparently not received any vaccinations.


1 diagnosis; and issuing vaccine exemptions without providing and/or documenting a discussion
2 with the parents regarding the risks and benefits of vaccines and of foregoing vaccination.

3 **PRAYER**

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

- 6 1. Revoking or suspending Physician's and Surgeon's Certificate Number G 76932,
7 issued to Mary Kelly Sutton, M.D.;
- 8 2. Revoking, suspending or denying approval of Mary Kelly Sutton, M.D.'s authority to
9 supervise physician assistants and advanced practice nurses;
- 10 3. Ordering Mary Kelly Sutton, M.D., if placed on probation, to pay the Board the costs
11 of probation monitoring; and
- 12 4. Taking such other and further action as deemed necessary and proper.

13
14 DATED: SEP 15 2020



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