

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 There are several critical and irrefutable related facts which justify the Court staying the  
4 Medical Board’s license revocation order pending the decision on this writ proceeding. First, all of  
5 the conduct which resulted in the Board’s disciplinary order relates to Dr. Stoller’s writing medical  
6 exemptions beyond ACIP guidelines for school children under the prior medical exemption law.  
7 However, the record demonstrates that he voluntarily stopped writing medical exemptions in April  
8 2019, before the Accusation in this case was even filed. Relatedly, his uncontroverted testimony is  
9 that he and other like-minded physicians believed that the discretion which allowed him (and others)  
10 to write these broader medical exemptions was removed when the law was changed effective  
11 January 1, 2020. Therefore, there is no risk to public harm (even assuming there ever was one), from  
12 him continuing to write medical exemptions because he will not.

13 Furthermore, Dr. Stoller’s primary medical services, now and for the past ten years has been  
14 treating traumatic brain injured patients, both children and adults, with a medical therapeutic with  
15 which he is a recognized (and published) authority, namely hyperbaric oxygen. Dr. Stoller has never  
16 had any disciplinary action or malpractice actions relating to these activities.

17 Perhaps most critically, based on the accompanying declarations of his current patients  
18 Bradford Pipal, Lisa Lynn McDonald, and Denise Jevne, Dr. Stoller has a unique medical skill set  
19 which is absolutely needed by his patients.

20 **II. STATEMENT OF FACTS**

21 The facts of this case present intersecting trajectories of the evolution of Dr. Stoller’s medical  
22 practice and beliefs and the changes in the California school immunization requirements.

23 **Dr. Stoller’s Evolving Thinking on Childhood Vaccinations**

24 Dr. Stoller was a board-certified pediatrician for 20 years. (Hearing Transcript Exhibit D 2  
25 page 26 lns. 20-24). Early on in this practice, he routinely administered vaccines. However, the  
26 more he found out about vaccines the longer his informed consent process was before he could  
27 administer them. At some point, he decided not to personally administer vaccines, and had a  
28

1 physician extender handle vaccination, while he continued to educate himself about the potential  
2 risks of the vaccines, especially from adjuvants. (*Id* at page 51 ln 21 to page 57 ln 12) In 2008, he  
3 resigned from the American Association of Pediatrics then published his resignation based on what  
4 he perceived was the AAP’s cover-up of the thimerosal problem in vaccines. (*Id.*)

5 Dr. Stoller evolved his pediatric practice into treating traumatic brain injured patients, both  
6 children and adults, through the use of hyperbaric oxygen plus various nutritional supplements. (*Id* at  
7 page 26 ln 16, to page 27 ln 22). He also sees many patients with Lyme disease and autoimmune  
8 conditions who have not been helped by conventional medicine. (*Id.* page 39 ln 9, to page 40 ln. 12).

9 An important diagnostic part of his TBI practice is reviewing genetic testing information  
10 which information he uses to guide his treatment recommendations. The two genes he specifically  
11 looks at are the MTHFR and COMT genes. (*Id.* page 30 ln 15 to page to page 35 ln.18, page 37 lns  
12 2.) (which are the same genes he focused on in his medical exemption patients). Over time, he  
13 found that people who had the specific alleles/variations from the normal MTHFR and COMT genes  
14 were more receptive to TBI hyperbaric oxygen treatment if they received several supplements (*Id.*)  
15 All three of the patients whose declarations are attached to this *ex parte* application had genetic  
16 testing and as a result received Dr. Stoller’s combined treatment. All three have achieved substantial  
17 benefit from his combined hyperbaric oxygen and supplement protocol as demonstrated from their  
18 Declarations.

### 19 **The Evolution of School Vaccination Law**

20 Up until 2016, California, allowed parents the choice to avoid vaccinating their school-age  
21 children via a personal belief exemption (“PBE”). There was significant opposition to SB 277’s  
22 elimination of the PBE in the 2015 legislative session and primarily focused on the difficulties of  
23 obtaining medical exemptions because of the restrictive conditions contained in the national vaccine  
24 guidelines, the main one being the CDC’s Advisory Committee on Immunization Practices  
25 (“ACIP”). (Reflected in the relevant portions of the June 9, 2015 Assembly Transcript admitted into  
26 evidence at the hearing as R 9).

1           Some legislators expressed those concerns to the bill’s principal author, Sen. Richard Pan,  
2 (who himself is a practicing physician) during the June 9, 2015 Assembly Health Committee  
3 hearing. (*Id.*) One of the most important pieces of evidence admitted at Dr. Stoller’s hearing was an  
4 exchange between Senator Pan and an assembly person in which Senator Pan specifically said that  
5 physicians had complete discretion to write medical exemptions and could even write them based on  
6 a family history medical problem of even a cousin. (*Id.* at page 129).

7           Dr Stoller testified that he heard Senator Pan’s testimony and understood it to give him and  
8 other physicians the green light to go beyond ACIP guidelines because there is no such thing under  
9 these national guidelines as a contraindication or precaution (which is the terminology used) for a  
10 cousin. There are no circumstances in which the family history of a first degree relative would  
11 constitute a contraindication or even a precaution to the administration of a vaccine. (Exhibit D 2  
12 page 63 ln. 9 to page 65 ln. 19).

13           Dr. Stoller testified that he followed the legislative history and its emphasis on family history  
14 and genetic conditions. Since he was already using genetic testing as tools for making diagnostic and  
15 treatment decisions for his TBI patients, he felt that perhaps more than anybody else in the state, he  
16 understood how to implement medical exemption determinations based on these factors, which  
17 again, are not relevant to a contraindication or precaution determination under guidelines such as  
18 ACIP. (*Id.*)

19           Dr. Stoller also testified that he contacted the Medical Board after SB 277 went into effect to  
20 see what guidance it could offer him. However, he was rebuffed. (*Id.* page 66 lns. 12-17). It is  
21 incontrovertible that during the entire time SB 277 was in effect, the Medical Board issued no  
22 meaningful guidance on SB 277 and never stated that notwithstanding the changes made by SB 277,  
23 all physicians were required to follow ACIP guidelines.

24           Once SB 277 came into effect, Dr. Stoller attempted to create a systematic approach for  
25 families who sought medical exemptions from school vaccination and created his practice and  
26 procedures which he posted on his website (See hearing exhibits R 2 and 32).

27  
28

1           There is no evidence in the record of this case that any of the children who received medical  
2 exemptions were harmed or contracted any of the diseases for which they had been excused from  
3 vaccination.

4           **III. ARGUMENT**

5           **5. DR. STOLLER HAS SATISFIED THE STAY REQUIREMENTS UNDER CCP**  
6           **SECTION 1094.5(h).**

7           There are two requirements to obtain a stay of a final administrative decision pending the  
8 Court's consideration of the writ of administrative mandate per CCP §1094.5(h): "... the stay shall  
9 not be imposed or continued unless the court is satisfied that the public interest will not suffer and  
10 that the . . . Agency is unlikely to prevail ultimately on the merits."

11           Dr. Stoller can satisfy both requirements.

12           **6. THE PUBLIC INTEREST WILL BE SERVED AND NOT BE HARMED BY**  
13           **GRANTING THE STAY.**

14           Based on the facts and circumstances of this case, staying the Board's disciplinary order will  
15 not result in public harm for many reasons. First as indicated, Dr. Stoller does not engage in the  
16 conduct upon which the Board disciplined; he stopped writing all medical exemptions almost two  
17 years ago. Second, this case is already three years old, and a few more months wait, until the Court  
18 rules on the writ will not harm anyone or prejudice the Board. If the Board thinks a physician  
19 presents an imminent threat, there is a summary suspension process, which was not used in this case.  
20 Third, as demonstrated by the accompanying declarations of Bradford Pipal, Lisa Lynne McDonald  
21 and Denise Jevne, his patients need him to continue to practice medicine for their continued health  
22 and functioning. Accordingly, we request that the Court conclude that the public will not be injured,  
23 harmed or put at risk if a stay is granted.

24           **7. THE PETITIONER IS LIKELY TO PREVAIL ON THE MERITS.**

25           **1. The Standards of Review in An Administrative Writ Proceeding**

26           In this administrative writ proceeding, the judicial inquiry extends to whether the Medical  
27 Board "has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and  
28

1 whether there was any prejudicial abuse of discretion." (Code Civ. Proc., § 1094.5, sub. (b).) "An  
2 abuse of discretion is established if the public agency "has not proceeded in the manner required by  
3 law, the order or decision is not supported by the findings, or the findings are not supported by the  
4 evidence.'" *Ibid.* When it is claimed that the findings are not supported by the evidence, in cases in  
5 which the court is authorized by law to exercise its independent judgment on the evidence, (as is the  
6 case here) abuse of discretion is established if the court determines that the findings are not  
7 supported by the weight of the evidence. *Id.* para. (c).

8 Beyond the words of the statute, the independent judgment rule, requires the trial court to  
9 reweigh the evidence in a limited trial de novo and examines the record for errors of law. *Bixby v.*  
10 *Piero* (1974) 4 Cal. 3d 130, 143. The re-weighing of evidence requires that a preponderance of the  
11 evidence support the administrative decision. However, in exercising its independent judgment, the  
12 superior court must accord a strong presumption of correctness to the agency's findings and the  
13 complaining party has the burden of showing the agency's decision was contrary to the  
14 weight of the evidence. *Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 816-817.

15 As to issues of law, "[a] person aggrieved by agency determination has a right to independent  
16 judicial review of questions of law such as those dealing with the interpretation or application of  
17 statutes or judicial precedents." *Donaldson v. Department of Real Estate* (2005) 134 Cal. App. 4<sup>th</sup>  
18 948, 954. *citing* Witkin *Cal. Procedure* (4<sup>th</sup> ed. 1997) Section 111, p. 1156; *see also* *Medical Board*  
19 *v. Superior Court* (Lee Roy Liskey, Real Party in Interest) (2003) 111 Cal. App. 4th 163, 171.

20 This Court reviews the Board's Order revoking Dr. Stoller's medical license under an abuse  
21 of discretion standard. In practice, that means determining whether the penalty was clearly  
22 excessive, as stated and found in *Pirouzian v. Superior Court of L.A. Cnty.*, (Medical Board of  
23 California, Real Party in Interest) (2016) 1 Cal.App.5th 438. While the Medical Board has  
24 discretion in determining the discipline to impose for unprofessional conduct, such discretion "is not  
25 a whimsical, uncontrolled power, but a legal discretion, which is subject to the limitations of legal  
26 principles governing the subject of its action." *Pirouzian v. Superior Court of L.A. Cnty.*, *supra*, 1  
27 Cal.App.5th at 448, *citing* *City of Sacramento v. Drew* (1989) 207 Cal.App.3d 1287, 1297.

1 The primary purpose of the sanction should be the protection of the public. *Id* at. page 446  
2 citing "*Landau v. Superior Court* (1998) 81 Cal.App.4th 191, 218, and the secondary function  
3 should be to rehabilitate the physician, but revocation of course does not service that purpose. *Id* at  
4 page 448.

5 **2. The Revocation of Dr. Stoller's License Was Excessive, Irrational and an Abuse**  
6 **of Discretion.**

7 In *Prirouzian*, the Second District ordered the Los Angeles Superior Court to vacate the  
8 Board's revocation order even though Dr. Pirouzian committed disability insurance fraud, was  
9 charged two felony counts, pled guilty to one misdemeanor count, then failed to report his  
10 conviction to the medical board (upon the advice of counsel). The appellate court considered license  
11 revocation excessive.

12 Dr. Stoller has no prior disciplinary history, no criminal convictions, does not engage in the  
13 conduct which is the subject of this proceeding and has not since before the Accusation was filed.  
14 And let us not forget that the conduct which is the basis of the sanction, writing ME's beyond ACIP  
15 guidelines, was perfectly proper according to SB 277's lead co-author's statement to the legislature.  
16 Furthermore Dr. Stoller also acted upon the advice of counsel (albeit his ability to present this  
17 information was severely restricted by the ALJ's refusal to allow the attorney who provided that  
18 advice to testify at the hearing). Although there was talk about future risk and lack of future  
19 protection based on the medical exemptions he issued, there was no evidence introduced into the  
20 record of actual harm or that any of the children or anyone who came into contact with them got any  
21 disease for which they were not vaccinated. And two of the patients only received temporary  
22 exemptions and were referred back to their HMO for follow-up.

23 The ALJ's stated basis for license revocation was Dr. Stoller's supposed lack of respect for  
24 scientific authority. However, California has protected physicians from such conclusory aspersions  
25 via Bus. & Prof. Code Section 2234.1. Further, at the hearing Dr. Stoller explained the scientific  
26 evidentiary basis of his different and more cautious views of vaccines and cited many government  
27 admissions and top peer-reviewed articles in his testimony, and provided the Medical Board with a  
28 full power point analysis and recitation of his views on vaccine safety. That is not anti-science. It is

1 just a minority opinion about a scientific issue of great public concern, where the conventional view  
2 does not accept the clinical implications of the literature cited by Petitioner at the hearing. The  
3 ALJ's basis for imposing revocation was irrational and not consistent with California law which  
4 supports and encourages divergent and even minority opinions for licensees who provide medical  
5 services to California residents.

6 *Pirouzian* also discusses a case which has a direct application to this case in an extremely  
7 specific and highly relevant way. In *Magit v. Board of Medical Examiners* (1961) 57 Cal.2d 74, the  
8 appellate court reversed a medical board revocation order in part because the physician's action dealt  
9 with an ambiguous technical issue not previously addressed by any case law, and on which the  
10 physician had sought and followed the advice of his counsel. Whatever else can be fairly said about  
11 Dr. Stoller's action, SB 277 certainly appeared to grant physicians the right to depart from the  
12 conventional community standard of care which is adhering to ACIP guidelines. As Dr. Magit did,  
13 Petitioner sought and followed the advice of counsel as to the interpretation of the new law (yet  
14 through both pre-hearing and hearing rulings, the ALJ all but prohibited Petitioner from presenting  
15 the advice of counsel defense, as set forth in detail in the Verified Petition (Page 9 para. 30 and page  
16 17 para. 61 to page 18 para 62).

17 Finally, three other physicians who wrote medical exemptions beyond ACIP guidelines,  
18 received either probation or a censure for the same conduct. The combination of these facts amply  
19 demonstrate that license revocation was excessive, irrational and unrelated to the protection of the  
20 public. These facts establish that Petitioner is likely to succeed in overturning the Board's revocation  
21 order.

22 **3. The ALJ's failure to conclude that under Dr. Stoller had a Right to Issue**  
23 **Medical Exemptions beyond ACIP Guidelines Under SB 277 was Erroneous and**  
24 **an Abuse of Discretion.**

25 Here is the language of SB 277:

26 § 120370. (A) If the parent or guardian files with the governing authority a written  
27 statement by a licensed physician to the effect that the physical condition of the child is such,  
28 or medical circumstances relating to the child are such, that immunization is not considered  
safe, indicating the specific nature and probable duration of the medical condition or  
circumstances that contraindicate, INCLUDING, BUT NOT LIMITED TO, FAMILY

1 MEDICAL HISTORY, FOR WHICH THE PHYSICIAN DOES NOT RECOMMEND  
2 immunization, that ~~person~~ CHILD shall be exempt from the requirements of Chapter 1. . . .”

3 The language of the statute and the evidence at the hearing established certain irrefutable  
4 facts and inescapable conclusions. First, the Medical Board itself recognizes that some standards of  
5 care are based on statute as opposed to community standards. (Medical Board Expert Guidelines,  
6 listed as R 30 at page 24 offered into evidence in the written closing under a Request for Judicial  
7 Notice and as an admission.)

8 Second, family history plays essentially no role in the conventional ACIP guidelines  
9 establishing contraindications and precautions to vaccination for school children. Third, there are  
10 words which the California legislature could have used if it wanted to limit statutory based medical  
11 exemptions to the ACIP guidelines, like what the New Jersey legislature did which expressly limited  
12 school exemptions to vaccination to the circumstances listed in the ACIP guidelines (discussed  
13 several times at the hearing and which this Court can take judicial notice of, per the accompanying  
14 Request for Judicial Notice and listed in the hearing as R 19). Fourth, the Medical Board’s expert  
15 admitted that the ACIP guidelines do not recognize a contraindication or precaution to vaccination  
16 based on the condition of a cousin, which Senator Pan told the Assembly Health Committee  
17 members on June 9, 2015 was permitted under SB 277. (See discussion in the Verified Petition at  
18 page 6 para. 17).

19 The inescapable conclusion from the irrefutable facts is that SB 277 created a statutory  
20 standard of care for complying with the statutorily created medical exemption letter, which standard  
21 of care is different from the conventional community standard of following the ACIP guidelines  
22 which was the basis of Board expert Dr. Dean Blumberg’s testimony. It is also irrefutable that the  
23 Board’s expert did not provide any testimony about this statutory standard of care or any required  
24 elements or requirements for an integrative physician exercising his/her judgment in issuing the  
25 statutory standard of care medical exemption letter. His entire testimony was about the factors  
26 establishing the conventional standard of care which was to only write medical exemptions for a  
27 vaccine if there was a contraindication or precaution which the patient had for that vaccine. The  
28 ALJ simply ignored these irrefutable facts and inescapable conclusions. Since the Board’s expert did



1 not even recognize that SB 277 created a different standard of care accommodating integrative  
2 physicians, and he provided no testimony on anything but the conventional standard of care based on  
3 the ACIP guidelines, it was an abuse of discretion for the ALJ to fail to make the legal conclusion  
4 that SB 277 created a statutory standard of care accommodating integrative physicians, that the  
5 Board offered no evidence whatsoever that the Respondent violated this statutorily based standard of  
6 care, and it was an abuse of discretion to find an extreme departure from this standard of care based  
7 solely on the conventional standards advocated by the Board's expert. <sup>1</sup>

8 **4. The ALJ's findings that Dr. Stoller failed to prove that Bus. & Prof. Code**  
9 **Section 2234.1 had been satisfied was an error of law and an abuse of discretion.**

10 Bus. & Prof. Code Section 2234.1 is a manifestation of the California Legislature's  
11 acknowledgment that medical knowledge often changes slowly, and as a result, physicians who  
12 subscribe to a minority point of view should not be prosecuted by the medical board just because the  
13 minority view is not the standard of care recognized by the majority of practitioners.<sup>2</sup> The issue in  
14 this case is not whether the ten medical exemptions written by Dr. Stoller are in compliance with the  
15 national community-based standard which limits medical exemptions to the contraindications and  
16 precautions set out in the CDC's ACIP guidelines. Rather, the issue is whether Dr. Stoller is entitled  
17 to protection under the safe harbor CAM statute because he and many other integrative medicine  
18 physicians have a different judgment about the safety of vaccines and the risks, they pose to children  
19 who have a family history/genetic association of autoimmune problems or have had a prior adverse  
20 event which is not recognized as a contraindication or precaution.

21  
22  
23 <sup>1</sup> It must be stated that a similar argument in a different context was presented to the Law and Motion  
24 Judge in the San Francisco Superior Court in opposition to a motion to compel compliance with an  
25 investigative subpoena for another physician represented by Petitioner's counsel. The judge held that  
26 despite the change in language, the standard of care was not changed. We believe that the judge was  
27 incorrect. The judge also held stated that there is only one standard of care, which we also feel was  
28 incorrect, as will be explained in a Supplemental brief. *Kirchmeyer v. Allen*, December 20, 2019 Order  
Compelling Compliance with Investigative Subpoena, SF Superior Court, CPE 19-516924.

<sup>2</sup> Bus. & Prof. Code Section 2234.1 (c) states: "Since the National Institute of Medicine has reported  
that it can take up to 17 years for new best practice to reach the average physician and surgeon, is  
prudent to give attention to new developments not only in general medical care but in the actual  
treatment of specific diseases, particularly those that are not yet broadly recognized in California."

1 Both Petitioner and Dr. Kelly Sutton offered extensive testimony about this CAM/integrative  
2 medicine standard of care with respect to the statutorily created medical exemption. The Board did  
3 not produce an integrative medical expert. Instead, Board expert Dr. Dean Blumberg simply argued  
4 that there is only one standard of care for writing medical exemptions for school vaccinations, and  
5 that is essentially to follow the ACIP guidelines. Not only is Dr. Blumberg’s testimony inconsistent  
6 with the very language of SB 277 (which explicitly permits family history based medical  
7 exemptions, which the ACIP does not recognize), his view is also inconsistent with the CAM safe  
8 harbor law.

9 The Administrative Law Judge did not adopt Dr. Blumberg’s legally erroneous position. She  
10 chose a different path, finding that Dr. Stoller did not prove compliance with two (or possibly three)  
11 of the elements of the CAM safe harbor defense.<sup>3</sup> Specifically, she found that Dr. Stoller did not  
12 perform a “good faith prior examination” of the patients as required in the first element of the CAM  
13 defense. (See her proposed decision at Exhibit E page 31 para. 9) and cited multiple findings for the  
14 patients that Petitioner had not contacted the prior physicians and had not himself requested prior  
15 medical records from those physicians.

16 There is no evidentiary basis in the record for the ALJ to have concluded that obtaining or  
17 seeking prior medical records is required in a Section 2234.1 “good faith prior examination,” and  
18 there are two good reasons which strongly suggest that requesting prior records is not a required  
19 element of this defense.

20 First, Bus. & Prof. Code Section 2242 which deals with providing ‘dangerous drugs’  
21 discusses a similar term “appropriate prior examination” as not requiring a synchronous interaction  
22 between the patient and the licensee and can be achieved through the use of telehealth, including, but  
23 not limited to, a self-screening tool or a questionnaire, provided that the licensee complies with the

---

24 <sup>3</sup> There are four requirements to invoke the Bus. & Prof. Code Section 2234.1 safe harbor defense,  
25 three of which are or may be at issue in this case:

26 “(1) It is provided after informed consent and a good-faith prior examination of the patient, and  
27 medical indication exists for the treatment or advice, or it is provided for health or well-being....

(3) In the case of alternative or complementary medicine, it does not cause a delay in, or discourage  
28 traditional diagnosis of, a condition of the patient.

(4) It does not cause death or serious bodily injury to the patient.”

1 appropriate standard of care. There is no hint that obtaining a prior treating physician’s records is  
2 required for completing an “appropriate prior examination.”

3         Second, although the Accusation does allege that Dr. Stoller “... omit[ed] reference to prior  
4 medical records and/or primary care physicians.” (Exhibit ‘A’ page 11, para 28), it was part of the  
5 medical records violation (which was not sustained) and not part of the Section 2234 standard of  
6 care violations which were sustained. Therefore, the Accusation itself does not support the ALJ’s  
7 finding that obtaining prior medical records is part of a good faith examination which is a requisite  
8 element of the CAM safe harbor defense to the Section 2234 charges in the Accusation.

9         In short, there is no evidentiary or legal basis for the ALJ to have concluded that Petitioner’s  
10 failure to contact the PCPs or obtain their prior medical records was required as part of his good faith  
11 examination of the patient under the CAM statute, and in the absence of a textual or evidentiary  
12 basis for the finding, the ALJ’s determination of noncompliance with the first element of the CAM  
13 defense is factually and legally unsupported and was an abuse of discretion by virtue of inventing a  
14 requirement which is not contained in this first element.

15         The ALJ also appeared to have concluded that Petitioner did not comply with the third or  
16 possibly the fourth requirement or possibly both. Petitioner’s admitted imprecision is caused by the  
17 fact that the ALJ literally invented a new requirement based on the Board expert’s testimony,  
18 because there was literally no factual basis to find non-compliance with these two elements. To  
19 remind this Court, Section 2234.1 which provides “(3) In the case of alternative or complementary  
20 medicine, it does not cause a delay in, or discourage traditional diagnosis of, a condition of the  
21 patient. (4) It does not cause death or serious bodily injury to the patient.”

22         There is no evidence in the record that the ME’s issued by Dr. Stoller delayed or discouraged  
23 a traditional diagnosis of any condition of the patient, nor was there any evidence that any of the ten  
24 children who received his medical exemptions died or suffered “serious bodily injury” as a result of  
25 the exemption. However, the Board expert did testify that he thought that the children were denied  
26 the benefits of vaccine protection against possible future conditions or illnesses which might be  
27 prevented by vaccination. Interesting and important as the expert’s opinion may be, it is not relevant  
28

1 to a Section 2234.1 analysis. However, the ALJ used that testimony to support her decision to  
2 change the requirements of the statute to fit the expert’s testimony and hence she concluded that Dr.  
3 Stoller failed to meet the requirements of subsection 3 because he “increase[d] their own and their  
4 communities’ susceptibility to infectious disease despite offering these patients no potential benefit.  
5 None of the medical vaccination exemptions at issue in this matter are professionally responsible  
6 under Business and Professional Code section 2234.1.” (Exhibit E page 31 para. 9).

7         Respectfully, it seems obvious that the ALJ does not believe that there can or should be a  
8 minority view for medical decisions which minority view is not shared by the majority of physicians,  
9 and that such minority views are entitled to legal protection under Section 2234.1, (at least with  
10 respect to medical exemptions from school mandatory vaccination). However, any CAM or minority  
11 view position could be attacked by arguing that it confers no proven benefit and puts the patient at  
12 risk for some future harm for which there is a conventional treatment. But the California legislature  
13 gave protection to CAM practitioners who have a different opinion from the opinions of the majority  
14 of practitioners.

15         The ALJ might be entitled to her opinion regarding Petitioner’s overall professional  
16 responsibility (whatever that vague term means). However, she had a duty to dispassionately and  
17 neutrally apply the terms of the Section 2234.1 defense and not change the statute to fit the Board  
18 expert’s testimony, which interpretation would make it impossible for any physician to provide  
19 CAM treatments or recommendations for anything because it confers no proven benefit in the eyes  
20 of conventional practitioners and puts patients at risk. The failure to dispassionately and neutrally  
21 apply Section 2234.1 to the facts presented at the hearing is a clear abuse of discretion and justifies  
22 the issuance of the requested stay.

23         The Verified Petition presents other grounds which suggest that Petitioner will likely prevail  
24 in this writ proceeding and incorporates the Third and Fourth Writ Grounds herein.

25 //

26 //

27 //

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IV. CONCLUSION**

For the reasons set forth herein, Petitioner respectfully requests that the Board's revocation order dated February 16, 2021 be stayed pending the disposition of this writ of administrative mandate proceeding.

DATED: March 4, 2020

RESPECTFULLY SUBMITTED



---

Richard Jaffe, Esq.  
State Bar No. 289362  
770 L Street, Suite 950  
Sacramento, California 95814  
Tel: 916-492-6038  
Fax: 713-626-9420  
Email: rickjaffeesquire@gmail.com

Attorney for the Petitioner

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DECLARATION OF SERVICE BY FAX, AND EMAIL**

I am a member of the California bar and I am counsel to the Respondent (and over 18 and not a party to this action).

On March 9, 2021, I served this Notice of *Ex Parte* Application for a Stay of the Medical Board’s Revocation Order, the Memorandum of Points of Authorities, the Declarations of Richard Jaffe, Bradford Pipal, Lisa Lynn McDonald, and Denise Jevne, the Proposed Order, the Request for Judicial Notice and the Verified Petition by email and FedEx on:

Deputy Attorney General Lawrence Mercer  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-3488  
415-703-5480 (fax)  
[Larry.Mercer@doj.ca.gov](mailto:Larry.Mercer@doj.ca.gov)

Mr. Mercer is known by me to be the Medical Board’s attorney on the Medical Board case.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on March 9, 2021 in Westport, Ct.



---

Richard Jaffe