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Attorney for Respondent,
Dr. SIMONE MELISSA GOLD

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

SIMONE MELISSA GOLD, M.D. J.D.
8805 Tamiami Tri N #139
Naples, FL 34108-2525

Physician's and Surgeon's Certificate
No. G 70224

Respondent.

CASE NO.: 800-2021-074424

OAH NO.: 2023030252

**RESPONDENT'S PRE-HEARING
BRIEF**

DATE: November 13, 2023

TIME: 9 a.m.

PLACE: OAH – ZOOM VIDEO

I. INTRODUCTION

Dr. Simone Gold has been an anomaly since a very young age. She graduated from medical school at the age of 23, and from Stanford University Law School thereafter. Boasting credentials matching those of genius fictional television characters such as “Doogie Howser, M.D.” she could have been hired by any prestigious hospital, or select the law firm where *she* wanted to begin her legal career. Instead, Dr. Gold chose the path less traveled and decided to follow in her father's footsteps, (a Holocaust survivor and physician), by using her gifts to serve her fellow citizens as a practicing doctor. Dr. Gold's desire to heal people led her to work in some of the most underserved communities and underprivileged hospitals in our state. She has worked

1 as an ER physician in Inglewood (home to the rival gangs the Crips & the Bloods where the
2 scourge of urban gang-violence was honestly depicted in the movie “Boyz n the Hood”) and in
3 underserved Bakersfield, California. She routinely accepted scheduling of long shifts and treating
4 the most difficult cases. Notwithstanding working under such demanding professional
5 circumstances for over twenty years, she has never had a *single patient complaint*. Her talent and
6 hard work were (naturally) recognized within the medical community and this led to her being
7 recruited to serve on several prestigious hospital committees, including appointment as Chairman
8 of the Risk Management Committee at St. John’s Medical Center between 2003 and 2005. Earlier
9 in her career she enjoyed the honor of acting as a Congressional Fellow for Senator Jeffords of the
10 Senate Labor and Human Resources Committee and worked as an Instructor of Bioethics at
11 Stanford Medical School for several years.

13 In the emergency room, Dr. Gold had a reputation not only her providing efficient and
14 incredible care for each patient, but also for taking on more responsibilities than were required of
15 her whenever she saw that there was a need to be filled. In addition, Dr. Gold has been, and
16 continues to be, deeply committed to serving her community in non-clinical roles. For example, in
17 2016, she began volunteering her time with the citizen oversight committee of the Beverly Hills
18 Unified School District, and she is also a well- known Community Leader for the Jewish
19 Republican Alliance. Dr. Gold’s professional and public life is the epitome of what a California
20 physician should aspire to be.

22 In 2020, during Covid-19, Dr. Gold left her position as an ER physician to create the non-
23 profit entity America’s Frontline Doctors. In that role her job largely consisted of traveling
24 around the country giving speeches involving treating Covid-19. As in nearly all cases of speech-
25 giving on sensitive topics, there were those who disagreed with the point of view she presented
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1 just as there were those who supported her. It was in this capacity of giving a speech (for which
2 she had previously obtained a permit) that led to her being inside the
3 U.S. Capitol Building on January 6, 2021.

4 Americans still believe our country is a place where individual rights are to be the
5 cornerstone of an open and free society. A key to that reality is a legal system that is apolitical,
6 color blind and focused, not exclusively, but principally, on the rights of the people rather than on
7 the power of government, and government agencies.

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9 The instant proceeding reflects the tension between this concept as envisioned by our
10 nation's founders and as set forth in the United States' Constitution, and the opposing view
11 advocating for the government's far-reaching ability to regulate how American medical
12 professionals make a living today.

13 Over decades, it was largely agreed that certain government agencies were necessary to
14 protect public and individual interests that may not rise to the level wherein application of criminal
15 statutes' related punishments were appropriate. Thus, agencies like the California Medical Board
16 (hereafter, the "CMB") were created to license certain individuals who wished to act as physicians
17 and surgeons.

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19 Although financial and personnel power was extended to the CMB for implementation and
20 promulgation of rules it would enforce, this grant of authority was circumscribed. In general, the
21 expectation for the CMB, acting within the authority granted under the Medical Practice Act
22 ("MPA"), was to protect the interest of the public from physicians and surgeons who were not
23 capable of properly performing their designated functions. In this regard, there was a benefit to our
24 society from the uniform and even-handed administration of such protections. However, over
25 time, it became apparent that by essentially providing the CMB with the powers of the
26 government, it would be prudent to limit those powers in order to prevent it from devolving into
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1 an entity that used its agency powers as a political weapon or an enforcement arm for objectives
2 beyond its mandate.

3 To this end, the CMB provided a definition of *who* was to be overseen:

4 “A Physician or Surgeon (M.D.) is an individual issued a license allowing them to practice
5 medicine. A physician may diagnose, prescribe, and administer treatment to individuals suffering
6 from injury or disease.” (See [https://www.mbc.ca.gov/Licensing/Physicians-and-](https://www.mbc.ca.gov/Licensing/Physicians-and-Surgeons/Apply/Physicians-and-Surgeons-License/)
7 [Surgeons/Apply/Physicians-and Surgeons-License/](https://www.mbc.ca.gov/Licensing/Physicians-and-Surgeons/Apply/Physicians-and-Surgeons-License/))
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9 In addition, the Government enacted the Medical Practice Act which included several
10 statutes delineating the contemplated scope of the CMB’s portfolio. For example, see Business
11 and Professions Codes §§ 2227, 2234, 2236, and California Code of Regulations § 1360 of title
12 16. These statutes became the law to define, control and effectively limit the power of the CMB.
13 Virtually all of the relevant statutes direct that the rules to be enforced *must be substantially*
14 *related to the qualifications, functions, or duties of a physician and surgeon.* (Emphasis added).
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16 In the instant matter, the CMB has cast off its legislative moorings and now seeks to
17 arrogate unto itself the power to *redefine* its administrative discretion to attack licensees over any
18 conduct resulting in a criminal conviction (even a misdemeanor trespass) which the CMB
19 arbitrarily characterizes as “substantially related to the qualifications, functions, or duties of a
20 physician and surgeon” irrespective of the CMB definition of a physician and surgeon. Thus, the
21 CMB is now essentially taking the position that any doctor who publicly criticizes the Board and
22 says they are wrong on the medical science will face charges against their license for ANY
23 criminal charge, no matter how unrelated to the qualifications, functions or duties of a physician
24 and surgeon.
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26 This raises the question, when a physician and surgeon jaywalks, or is issued an infraction
27 for text messaging while driving, for example, are these infractions “substantially related to the
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