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VIA FEDERAL EXPRESS

May 13, 2022

Governor Gavin Newsom
1021 O Street
Suite 9000
Sacramento, CA 95814
Fax: 916-558-3160

Re: *SB866 – Illegality of Vaccinating Minors Absent Parental Consent*

Dear Governor Newsom:

On behalf of Informed Consent Action Network (“**ICAN**”) and Protection of the Education Rights of Kids (“**PERK**”), we write regarding SB866¹ to advise you that permitting vaccination of minors without parental consent violates federal law. ICAN has directed us to challenge the bill in federal court should it become law. We recently challenged a similar law in Washington, D.C. and prevailed in federal court. Likewise, should SB866 become law, we would challenge it on the same grounds.

Federal law requires that parents of a child receive the federally created vaccine information statement (“**VIS**”) from the individual intending to administer a vaccine. This requirement applies before each administration of a vaccine. As provided in 42 U.S.C. § 300aa-26(d), part of the National Childhood Vaccine Injury Act (“**NCVIA**”):

each health care provider who administers a vaccine set forth in the Vaccine Injury Table shall provide to the legal representatives of any child or to any other individual to whom such provider intends to administer such vaccine a copy of the [VIS] ... supplemented with visual presentations or oral explanations, in appropriate cases. Such materials shall be provided prior to the administration of such vaccine.

For the purposes of this section: “The term ‘legal representative’ means a parent or an individual who qualifies as a legal guardian under State law.” 42 U.S.C. § 300aa-33. Thus, under federal law, a medical practitioner must provide the VIS with appropriate supplemental explanations to the legal guardian of a child prior to injecting the child with a vaccine.

This federal law is critical for assuring vaccine safety. This is because federal law provides pharmaceutical companies with immunity from liability for injuries caused by their childhood vaccine products. To fill the resulting safety gap, Congress wanted to make sure that parents were informed of, among other things, the reasons a vaccine should not be administered to their child,

¹ See <https://sd11.senate.ca.gov/sb866>.

what they should do if an injury occurs, and the fact that if the injury was serious, they could file a claim in the vaccine injury compensation program (“VICP”).

Even putting aside the reason adhering to this federal law is important, state law simply cannot conflict with federal law. And federal law is clear that the parent of a child must receive a VIS prior to administering a vaccine, each time, and from the person intending to administer the vaccine. It would therefore be a direct violation of federal law to permit the person administering the vaccine to vaccinate a minor without first providing a VIS to the parent giving them the opportunity to inform the healthcare provider of any contraindications as listed on the VIS, address any reactions that occur thereafter, and be in a position to file in the VICP for any injuries.

A federal court, in a decision that was not appealed, held precisely that when striking down a D.C. law that permitted vaccination without parental consent. The judge found:

Two crucial exchanges of information lie at the heart of the NCVIA. The first is the exchange of information from parent to doctor. Healthcare providers recommend against vaccinations if individuals reacted poorly to past immunizations. A VIS [Vaccine Information Statement] describes the risks of certain vaccines and explains when they are contraindicated...By removing the parent from the vaccine decision, the [D.C. law allowing children to be vaccinated without parental consent or knowledge] undercuts a key purpose of the VIS and a safety check before the vaccination

and

[T]he [D.C. law allowing children to be vaccinated without parental consent or knowledge] encourages children to deceive their parents. Once a child has gone behind her parents’ backs to get a vaccine, what is she supposed to do if she has a negative reaction? Some children might tell their parents; others very well might be afraid and try to hide their actions. Besides the obvious medical risk such a situation entails, this throws a wrench in the NCVIA’s goal of ‘[f]ast, informal adjudication’ of vaccine injuries.²

We hope that you will respect our system of governance in which federal law takes precedence over state law. If you do not like the federal law requirement, then you are, of course, free to lobby Congress to change the law. But until that happens, the California legislature should act in accordance with federal law and desist from passing SB866. Again, if it chooses to pass this bill, despite clear knowledge that it would violate federal law, we have been authorized to bring and will be bringing a lawsuit to strike it down.

Very truly yours,

/s/ Aaron Siri
Aaron Siri, Esq.
Elizabeth A. Brehm, Esq.
Caroline Tucker, Esq.

² <https://www.icandecide.org/wp-content/uploads/2022/03/Mazer-Ruling.pdf>.