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4 Petitioner, *in propria persona*

5
6 SUPERIOR COURT OF THE STATE OF CALIFORNIA
7 FOR THE COUNTY OF LOS ANGELES
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11 **BRUCE THOMAS MURRAY,**

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Petitioner,

vs.

MEDICAL BOARD OF CALIFORNIA;

KIMBERLY KIRCHMEYER, in her

capacity as executive director,

Medical Board of California; and

KERRIE D. WEBB, in her capacity as

staff counsel, Medical Board of

California

Respondents

) Case No.: BS158575

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) **MEMORANDUM IN SUPPORT OF MOTION**
) **FOR JUDGMENT ON WRIT**

) Cal. Code Civ. Proc. § 1085

) Hearing date: January 17, 2017

) Hearing time: 9:30 a.m.

) Department 82

) Hon. Judge Mary H. Strobel

Table of Contents

Table of Authorities ii

Memorandum of Points and Authorities 1

 I. Introduction 1

 II. Statement of the Case 1

 III. Statement of Facts 2

 IV. Legal Standard 3

 V. Argument 5

 (1) The court should compel the Medical Board to release all information in its possession regarding the death of Audrey B. Murray (including information that would otherwise be contained in reports filed pursuant to Cal. Bus. & Prof. Code § 2240 and 16 C.C.R. 1356.4) because this information is not properly privileged to Respondents or exempt from disclosure. 5

 (2) The court should weigh all of the information sought by petitioner under the balancing test for a qualified privilege set forth in Cal. Evid. Code § 1040, because respondents are not entitled to an absolute privilege. 7

 (3) To the extent that any of the information in the Respondents’ possession is legitimately privileged to them, this information should be segregated, and the remaining information released to the Petitioner.. 9

 (4) The court should compel the Medical Board to release the information sought by Petitioner in the spirit of the State Constitution, i.e., to provide access to “the people’s business.” 10

 (5) The court should compel the Medical Board to release the information sought by Petitioner as a matter of public policy with respect to the Medical Practice Act, the California Public Records Act, the California Evidence Code, and the California State Constitution.. 10

1 **TABLE OF AUTHORITIES**

2 **Cases**

3

4 *Dominguez v. Super. Court of L.A. Cnty.*, 101 Cal. App. 3d 6 (1980) 9

5 *Michael P. v. Super. Court*, 92 Cal. App. 4th 1036 (2001) 9

6 *Shapell Industries, Inc. v. Governing Board*, 1 Cal.App.4th 218 (1991) 4

7 *Shepherd v. Super. Court*, 17 Cal. 3d 107, 113 (1976) 8, 9

8 *W. States Petroleum Assn. v. Super. Court*, 9 Cal. 4th 559 (1995) 4

9 *Yamaha Corp. of Am. v. State Bd. of Equalization*, 19 Cal. 4th 1 (1998) 4, 5

10

11 **Statutes**

12

13 16 C.C.R. 1356.4 passim

14 Cal. Bus. & Prof. Code § 2001.1 11

15 Cal. Bus. & Prof. Code § 2225 3

16 Cal. Bus. & Prof. Code § 2240 passim

17 Cal. Code. Civ. Proc. § 1085 1

18 Cal. Evid. Code § 1040 passim

19 Cal. Gov. Code § 6250 5, 12

20 Cal. Gov. Code § 6253 10

21 Cal. Gov. Code § 6253.1 3

22 Cal. Gov. Code § 6254 passim

23 **Law Journals**

24 27 Cal. Law Revision Com. Rep. (1997) 3

25 **Constitutional Provisions**

26

27 Cal. Const, Art. I § 3(b) 10, 11

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I. INTRODUCTION

Petitioner Bruce Thomas Murray respectfully asks this court to issue a writ of mandate, pursuant to Cal. Code Civ. Proc. § 1085, commanding the Respondents to release all information in their possession regarding Audrey Bevan Murray’s medical condition, treatment, and the circumstances and cause(s) of her death. Such information includes, but is not limited to, facts, statements, analyses and conclusions contained in Medical Board of California investigation No. 800 2014 005263 regarding the death of Audrey B. Murray.

Respondents rejected Petitioner’s repeated requests for this information based on their unsupported interpretations of Cal. Gov. Code § 6254 (Records exempt from disclosure requirements) and Cal. Evid. Code § 1040 (Privilege for official information) (Am. Pet., Exh. 9). Case law strongly supports the contrary interpretation of these laws. As the case record will show, in situations involving death, the court weighs decidedly in favor of releasing information to interested parties, while weighing against government agencies that seek to conceal and withhold such information. (See page 9 below.) This memorandum will analyze the applicable statutes and the case law to demonstrate why the Medical Board’s interpretation and application of law is incorrect, prejudicial to the Petitioner, and contrary to the public interest.

Therefore, Petitioner asks this Honorable Court to declare the correct meaning of the laws cited here, and apply those laws accordingly.

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II. STATEMENT OF THE CASE

1. On October 5, 2015, Bruce T. Murray filed a petition for writ of mandate under Cal. Code Civ. Proc. § 1085, seeking the release of information relating to the cause and circumstances of his mother’s death. Petitioner also asked for declaratory and injunctive relief under and Cal. Gov. Code §6258.

2. On November 23, 2015, Respondents filed a demurrer to the petition. In addition to their legal points seeking the dismissal of Petitioner’s case, Respondents’ demurrer also included factual denials, claiming that specific records sought by petitioner did not exist. The records in question pertained to reports filed pursuant to Cal. Bus. & Prof. Code § 2240 (Report for Death of Patient) and 16 C.C.R. 1356.4) (Outpatient Surgery--Reporting of Death). However,

1 Respondents did not deny possession of the underlying facts that would be included in such
2 reports.

- 3 3. On January 2, 2016, Petitioner filed an amended petition.
- 4 4. On February. 8, 2016, Respondents demurred to the amended petition.
- 5 5. On April 14, 2016, Petitioner filed an opposition to Respondents' demurrer.
- 6 6. On May 3, 2016, this court overruled Respondents' demurrer in its entirety.

7 **III. STATEMENT OF FACTS**

- 8 1. At approximately 8 a.m. June 4, 2013, Dr. James C. Matchison (med. license no.
9 A00097926) performed a cardiac catheterization procedure on Petitioner's mother, Audrey
10 Bevan Murray.
- 11 2. Due to complications during the procedure, the procedure was aborted.
- 12 3. At approximately 10 a.m. June 4, 2013, Mrs. Murray was admitted to the Torrance
13 Memorial Medical Center Progressive Care Unit (PCU) for post-procedure recovery.
- 14 4. At approximately 11:30 a.m. June 5, 2013, Mrs. Murray was discharged from Torrance
15 Memorial and into the care of her eldest son, William E. Murray, who brought her home.
- 16 5. After she arrived home, Mrs. Murray began experiencing severe pain in her chest and
17 shoulder, and difficulty in breathing. As her pain and distress increased, William Murray called
18 911.
- 19 6. At approximately 3:30 p.m., Mrs. Murray was transported back to Torrance Memorial for
20 emergency treatment.
- 21 7. At approximately 4 p.m. June 5, 2013, Audrey B. Murray, died in the emergency room at
22 Torrance Memorial Medical Center.
- 23 8. On June 11, 2013, Petitioner spoke with Dr. Matchison over the phone, seeking an
24 explanation for and the cause of his mother's death. The doctor provided none.
- 25 9. On May 15, 2014, Petitioner filed a complaint with the Medical Board, seeking an
26 explanation for and cause of his mother's death. (Am. Pet., Exh. 1.)
- 27 10. On Feb. 10, 2015, Petitioner sent Kerrie Webb a letter requesting copies of reports filed
28 under Cal. Bus. & Prof. Code § 2240 (Report for Death of Patient) and 16 C.C.R. § 1356.4
(Outpatient Surgery-Reporting of Death). Petitioner made this request pursuant to Cal. Gov.

1 Code § 6253.1 (Agency to assist in inspection of public record) and his status as the beneficiary
2 of his mother, under Cal. Bus. & Prof. Code § 2225(c)(1). (Am. Pet., Exh. 8.)

3 11. In a letter dated Feb. 20, 2015, Webb denied Petitioner’s request for these documents on
4 three bases: (1) “Records of complaints to, and investigations conducted by, state licensing
5 agencies are not subject to disclosure pursuant to government Code section 6254(f);” because,
6 she asserted (2) “[r]eports for the death of a patient are treated as complaints to the Board, and
7 will not be disclosed.” Finally, (3) “[i]n addition, records of complaints and investigations of
8 state licensing agencies are privileged under Evidence Code section 1040.” (Am. Pet., Exh. 9.)

9 12. In her Feb. 20 letter, Respondent Webb did not cite any authority for her interpretations
10 and applications of Cal. Gov. Code § 6254 and Cal. Evid. Code § 1040. Specifically, she
11 provided no executive or common law authority for assigning an absolute privilege to the
12 information sought by Petitioner, rather than the qualified privilege of § 1040(b)(2).

13 Additionally, Webb cited no authority for treating the optional exemptions of § 6254 as a
14 mandatory nondisclosure regime.

15 13. In a document dated April 14, 2015, the Medical Board provided Petitioner with its final
16 report regarding case number 800 2014 005263. The final report contains six-sentences and 108
17 words. The final report does not state the bases for the Medical Board’s conclusion, nor does it
18 include any facts or analysis. Most critically, the final report does not provide any explanation
19 for or the cause of Audrey Murray’s death – the central issue of Petitioner’s initial complaint to
20 the board. (Am. Pet., Exh. 1.)

21 14. Any other relevant facts contained in the Amended Petition are incorporated by reference
22 here.

23 **IV. STANDARD OF REVIEW**

24 Because the remaining issues in this case are legal rather than factual, independent
25 judgment is the most appropriate standard of review.

26 “The standard for judicial review of agency interpretation of law is the independent
27 judgment of the court, giving deference to the determination of the agency appropriate to the
28 circumstances of the agency action.” *Yamaha Corp. of Am. v. State Bd. of Equalization*, 19 Cal.
4th 1, 8, (1998) (Quoting from 27 Cal. Law Revision Com. Rep. (1997)).

1 Within the scope of independent judgment, the California Supreme Court has laid out a
2 varying scale of deference the court should afford to administrative actions – with high deference
3 given to agency-enabled quasi-legislative (law-making) actions; and a low level of deference
4 given to agency interpretations of general law, i.e., law that is not specific to the agency, or law
5 that does not govern the agency.

6 “Unlike quasi-legislative regulations adopted by an agency to which the Legislature has
7 confided the power to ‘make law,’ and which, if authorized by the enabling legislation, bind this
8 and other courts as firmly as statutes themselves, the binding power of an agency’s interpretation
9 of a statute or regulation is contextual: Its power to persuade is both circumstantial and
10 dependent on the presence or absence of factors that support the merit of the interpretation.” *Id.*
11 at 7.

12 “The appropriate degree of judicial scrutiny in any particular case is perhaps not
13 susceptible of precise formulation, but lies somewhere along a continuum with nonreviewability
14 at one end and independent judgment at the other. [Citation] Quasi-legislative administrative
15 decisions are properly placed at that point of the continuum at which judicial review is more
16 deferential; ministerial and informal actions do not merit such deference, and therefore lie toward
17 the opposite end of the continuum.” *W. States Petroleum Assn. v. Super. Court*, 9 Cal. 4th 559,
18 575-76 (1995) (Mosk, J, quoting from *Shapell Industries, Inc. v. Governing Board*, 1
19 Cal.App.4th 218, 232 (1991)).

20 Here, the Medical Board’s administrative actions rest primarily on its interpretations and
21 applications of the California Evidence Code, section § 1040; and the California Public Records
22 Act (Cal. Gov. Code § 6250 et seq.). The Evidence Code is broadly applicable and entirely non-
23 specific to the Medical Board; and the Public Records Act binds the Medical Board as “any other
24 state or local agency (Cal. Gov. Code § 6254(f)).” Since the Public Records Act is generally
25 applicable to any state agency, the Medical Board cannot be said to possess the “special
26 familiarity with satellite legal and regulatory issues” that it would from its own enabling
27 legislation, quasi-legislation, or the Business & Professions Code. *Yamaha*, 19 Cal. 4th at 11. As
28 that court noted, “An important corollary of agency interpretations, however, is their diminished
power to bind. Because an interpretation is an agency’s legal opinion, however ‘expert,’ rather

1 than the exercise of a delegated legislative power to make law, it commands a commensurably
2 lesser degree of judicial deference.” *Id.*

3 Accordingly here, the Medical Board’s interpretations of the Evidence Code and the
4 Public Records Act should be independently judged at the low end of the deference scale.

5 6 V. ARGUMENT

7 8 **(1) THE COURT SHOULD COMPEL THE MEDICAL BOARD TO RELEASE** 9 **ALL INFORMATION IN ITS POSSESSION REGARDING THE DEATH OF** 10 **AUDREY B. MURRAY (INCLUDING INFORMATION THAT WOULD** 11 **OTHERWISE BE CONTAINED IN REPORTS FILED PURSUANT TO CAL.** 12 **BUS. & PROF. CODE § 2240 AND 16 C.C.R. 1356.4) BECAUSE THIS** 13 **INFORMATION IS NOT PROPERLY PRIVILEGED TO RESPONDENTS OR** 14 **EXEMPT FROM DISCLOSURE.**

15 In her three-pronged rejection of Petitioner’s request for information regarding the death
16 of his mother, Respondent Webb justified withholding Petitioner’s requests for information by
17 (1) claiming such information is exempt from disclosure under Cal. Gov. Code § 6254(f),
18 because, (2) she asserted, “[r]eports for the death of a patient are treated as complaints to the
19 Board, and will not be disclosed.” (Am. Pet., Exh. 9.) (The third prong of Webb’s justification,
20 the claim of privilege under Cal. Evid. Code § 1040, will be analyzed in the second argument
21 below.)

22 As is discussed at length in the Amended Petition, incorporated by reference here,
23 Respondent Webb’s bases for denying Petitioner’s request for information are erroneous, and
24 therefore should be afforded no deference. By calling the reports requested by Petitioner
25 “complaints to the Board,” Respondent Webb illicitly places these documents under the ambit
26 the exemption described in Cal. Gov. Code § 6254(f). Contrary to this interpretation, nothing in
27 the language of Cal. Gov. Code § 6254 states that reports for the death of a patient “are treated”
28 as complaints to the Board – and thus exempt from disclosure. Nor do Cal. Bus. & Prof. Code §
2240 or 16 C.C.R. 1356.4 contain any statutory language or annotations indicating that
information filed under them constitutes a “complaint” that is exempt from disclosure.

1 Respondents fail to cite any authority indicating who, how or why such reports “are
2 treated” as complaints to the board, and thus falling under the exemption of Cal. Gov. Code §
3 6254(f). The case history is lacking any instance of a court “treating” such documents as
4 complaints to the Board, and thus, exempt from disclosure. Respondents’ claim of exemption
5 finds no support in the case record, and therefore it should not be allowed to stand in this case.

6 Furthermore, as analyzed in the Amended Petition, it strains logic to call reports for the
7 death of a patient “complaints to the board.” When a medical doctor files a report under Cal.
8 Bus. & Prof. Code § 2240 and 16 C.C.R. 1356.4, he does so out of a statutorily mandated duty,
9 not because he or she is “complaining” about anything to the Board. And certainly by filing such
10 reports, a doctor cannot logically be said to be “complaining” about himself, or even more
11 farfetched, complaining about his patient. Respondents’ “treatment” of these laws is self-serving
12 legal fiction, which should be afforded no deference by this court.

13 In its demurrers, the Medical Board denied the existence the particular records sought by
14 petitioner, Cal. Bus. & Prof. Code § 2240 (Report for Death of Patient) and 16 C.C.R. 1356.4
15 (Outpatient Surgery–Reporting of Death), which Petitioner believed were filed by Dr. James
16 Matchison regarding the death of Audrey B. Murray. Regardless of whether or not these
17 particular records exist, the Medical Board has never denied possession of **the underlying**
18 **information** that would be contained in these reports, including but not limited to “the
19 circumstances of the patient’s death.” 16 C.C.R. 1356.4(c).

20 At this point, whether or not these particular documents exist is irrelevant; it is **the**
21 **underlying information** that counts. Respondents do not deny possession of the underlying
22 information. Indeed, if the Medical Board did conduct an investigation into Dr. James
23 Matchison’s treatment of Petitioner’s mother, as the Medical Board claims, then it certainly
24 should have garnered information as to “the circumstances of the patient’s death,” and such
25 information would presumably include more than an empty conclusory statement, with no facts
26 or analysis. (Am. Pet., Exh. 9.)

27 Therefore, the underlying information that would otherwise be contained reports filed
28 pursuant to Cal. Bus. & Prof. Code § 2240 and 16 C.C.R. 1356.4 should be released to
Petitioner, in addition to all other information in its possession regarding Audrey B. Murray’s
medical condition, treatment and death.

1 **(2) THE COURT SHOULD WEIGH ALL OF THE INFORMATION SOUGHT BY**
2 **PETITIONER UNDER THE BALANCING TEST FOR A QUALIFIED**
3 **PRIVILEGE SET FORTH IN CAL. EVID. CODE § 1040, BECAUSE**
4 **RESPONDENTS ARE NOT ENTITLED TO AN ABSOLUTE PRIVILEGE.**

5 California Evidence Code section 1040 creates two tiers of privilege “official information
6 ... acquired in confidence by a public employee in the course of his or her duty”: (1) an
7 unqualified privilege, when “disclosure is forbidden by an act of the Congress of the United
8 States or a statute of this state”; and (2) a qualified privilege for all other official information. *Id.*

9 The gateway question, in order to establish an absolute privilege, is whether the
10 information sought for disclosure is prohibited by statute. The candidate here is Cal. Gov. Code §
11 6254, which states, “[T]his chapter **does not require** the disclosure of any of the following
12 records ... (f) Records of complaints to, or investigations conducted by, or ... any investigatory
13 or security files compiled by any other state or local agency for ... licensing purposes.”

14 [Emphasis added.]

15 By the statute’s plain language, it is clear that the exemption is permissive and not
16 mandatory. The statute does not say, for example, “Records of investigations conducted by any
17 state agency are privileged and must not be disclosed.” The statute provides no such blanket
18 exemption – as the Medical Board claims. Non-disclosure of such information, according to the
19 statute, is optional and discretionary. But the Medical Board, in abusing its discretion, has
20 misconstrued the law into affording it an absolute privilege; when instead, the qualified privilege
21 is the most appropriate standard.

22 In the context of discovery disputes, the California Supreme Court has affirmed the
23 application of a qualified privilege to exemptions under the Public Records Act. “Accordingly
24 the provisions of Cal. Gov’t Code § 6254 of the Government Code cannot serve as a basis of
25 absolute privilege under Cal. Evid. Code § 1040 (b)(1), in circumstances such as those in the
26 case at bench.” *Shepherd v. Super. Court*, 17 Cal. 3d 107, 113 (1976). In the particular
27 circumstances of that case, the respondent public agencies (police department and district
28 attorney) refused the plaintiff’s discovery requests, and the plaintiff sought motions to compel.
The trial court denied the motions, but the Supreme Court remanded the case with a clarified
analytical framework for the qualified privilege. *Id.* at 127-8.

1 In the present case, the Petitioner’s action for a writ of mandate is analogous to a motion
2 to compel or a subpoena *duces tecum*, as was the procedural situation in *Shepherd*. As such, the
3 same rules of Cal. Evid. Code § 1040 apply. Thus, Medical Board is not entitled to an absolute
4 privilege. Instead, it is appropriate to assess the information sought by Petitioner under the
5 qualified privilege, and weigh it accordingly.

6 Cal. Evid. Code § 1040(b)(2) sets out a balancing test, in which the court determines
7 whether “[d]isclosure of the information is against the public interest because there is a necessity
8 for preserving the confidentiality of the information that outweighs the necessity for disclosure in
9 the interest of justice.” *Id.* Moreover, “[i]n determining whether disclosure of the information is
10 against the public interest, **the interest of the public entity as a party in the outcome of the
11 proceeding may not be considered.**” *Id.* [Emphasis added.]

12 In weighing the public interest under § 1040(b)(2), when a death is involved, the court
13 favors releasing information to citizens and individuals, rather than granting secrecy to public
14 agencies and public officials. For example, in a wrongful death action against police officers, the
15 California Supreme Court held that the respondent district attorney’s claim of “public interest in
16 secrecy ... wholly fails”; and then the Court ordered a particularized balancing of each item of
17 information sought by the petitioner – the mother of a 14-year-old boy who had been shot and
18 killed by the police. *Shepherd*, Cal. 3d at 130. In a dependency action stemming from the death
19 of a child under petitioner father’s care, the appellate court vacated a decision granting the
20 respondent police agencies’ motion to quash petitioner’s request for forensic reports compiled by
21 those agencies. *Michael P. v. Super. Court*, 92 Cal. App. 4th 1036, 1048 (2001). In so doing, the
22 court weighed strongly in favor of the petitioner father’s interest in obtaining information
23 gathered by public agencies. *Id.* In another wrongful death action against the police, the
24 appellate court rejected the city’s claim of blanket privilege to deny documents sought by the
25 petitioner – the father of an 18-year-old man who had been shot and stabbed to death by a retired
26 officer. *Dominguez v. Super. Court of L.A. Cnty.*, 101 Cal. App. 3d 6 (1980). In that case, the
27 court noted that determination of the public interest required consideration of the consequences
28 to the litigant of nondisclosure, as well as the importance of the information to the fair
presentation of the litigant’s case, the availability of the material to the litigant by other means,
and the effectiveness and relative difficulty of such other means. *Id.* at 12.

1 Common to all of the cases quoted above is death – death by police shooting, death by
2 allegedly negligent child care, and an alleged murder under the color of law. Similarly here,
3 Petitioner’s action for writ of mandate arises from a death – the death of Petitioner’s mother
4 following a routine outpatient medical procedure. Death is the worst possible outcome of
5 surgery. But yet, Petitioner has received no explanation whatsoever for his mother’s death from
6 either the doctor or the Medical Board. Petitioner has no other means to obtain this information.

7 In light of the common law pattern favoring disclosure when a death is involved,
8 Petitioner asks the court to weigh all of the information sought by Petitioner and release it to
9 him.

10 **(3) TO THE EXTENT THAT ANY OF THE INFORMATION IN THE**
11 **RESPONDENTS’ POSSESSION IS LEGITIMATELY PRIVILEGED TO THEM,**
12 **THIS INFORMATION SHOULD BE SEGREGATED, AND THE REMAINING**
13 **INFORMATION RELEASED TO THE PETITIONER.**

14 The California Public Records Act provides that, “[e]xcept with respect to public records
15 exempt from disclosure by express provisions of law, each state or local agency, upon a request
16 for a copy of records that reasonably describes an identifiable record or records, shall make the
17 records promptly available ... Any reasonably segregable portion of a record shall be available
18 for inspection by any person requesting the record after deletion of the portions that are
19 exempted by law.” Cal. Gov. Code § 6253.

20 As analyzed above, Respondents improperly assigned themselves a blanket privilege and
21 wrongly classified ALL the information sought by Petitioner as exempt under Cal. Gov. Code §
22 6254(f). In doing so, Respondents failed to identify and release “any reasonably segregable
23 portion” of the records sought by Petitioner, as required by CPRA, and more broadly under the
24 Evidence Code.

25 If the Medical Board conducted an investigation into Audrey Murray’s medical
26 treatment, as the Respondents claim, then the Medical Board necessarily possesses information
27 regarding Audrey Murray’s medical condition. This information is privileged to the Petitioner,
28 Bruce Murray, as the beneficiary of his mother. This information is **not** privileged to the Medical
Board.

1 The Medical Board may not assert a blanket privilege over all of the information in its
2 possession without parsing information that is either public or privileged to the Petitioner.
3 Therefore, the Respondents must be compelled to release this information.

4
5 **(4) THE COURT SHOULD COMPEL THE MEDICAL BOARD TO RELEASE**
6 **THE INFORMATION SOUGHT BY PETITIONER IN THE SPIRIT OF THE**
7 **STATE CONSTITUTION, I.E., TO PROVIDE ACCESS TO ‘THE PEOPLE’S**
8 **BUSINESS.’**

9 Article I, Section 3(b) of the California Constitution provides that “the people have the
10 right of access to information concerning the conduct of the people’s business, and, therefore ...
11 the writings of public officials and agencies shall be open to public scrutiny.” Cal. Const., Art. I
§ 3(b).

12 The Medical Board’s investigations of patient deaths are of vital importance to
13 consumers and to the public health of the people of California. The issue is one of life and death.
14 It is hard to imagine any other category of information more critical to “the people’s business.”
15 Therefore, in the spirit of the state constitution, all nonprivileged portions of such investigations
16 should rightly be made available to the public, and information that is privileged to the deceased
17 should be made available to the beneficiaries.

18 In the spirit of the California state constitution, the Medical Board should be compelled
19 to release the information the Petitioner seeks regarding the death of his mother.

20 **(5) THE COURT SHOULD COMPEL THE MEDICAL BOARD TO RELEASE**
21 **THE INFORMATION SOUGHT BY PETITIONER AS A MATTER OF PUBLIC**
22 **POLICY WITH RESPECT TO THE MEDICAL PRACTICE ACT, THE**
23 **CALIFORNIA PUBLIC RECORDS ACT, THE CALIFORNIA EVIDENCE**
24 **CODE, AND THE CALIFORNIA STATE CONSTITUTION.**

25 The public policy of this state, as enunciated in many sources, clearly favors openness,
26 transparency and accountability.

27 The Business & Professions Code sets forth the priorities of the Medical Board:
28 “Protection of the public shall be the highest priority for the Medical Board of California in

1 exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the
2 public is inconsistent with other interests sought to be promoted, the protection of the public
3 shall be paramount.” Cal. Bus. & Prof. Code § 2001.1. However, in this case, by liberally
4 granting themselves a blanket exemption to the Public Records Act, the Respondents have put
5 their own interests first rather than the public interest. Thus, the Medical Board has acted
6 contrary to public policy and must be corrected.

7 In its own mission statement, the Medical Board fashions itself as the protector of
8 consumers and the keeper of its section of the Business & Professions Code: “The mission of the
9 Medical Board of California is to protect health care consumers through the proper licensing and
10 regulation of physicians and surgeons and certain allied health care professions and through the
11 vigorous, objective enforcement of the Medical Practice Act, and to promote access to quality
12 medical care through the Board’s licensing and regulatory functions.” <http://www.mbc.ca.gov>.
13 However in this case, by stonewalling the Petitioner, the Medical Board has made itself the
14 adversary rather than the advocate of the consumer.

15 California Evidence Code, section 1040 states that “in determining whether disclosure of
16 the information is against the public interest, the interest of the public entity as a party in the
17 outcome of the proceeding may not be considered.” However in this case, by cherry-picking
18 portions of the Evidence Code that are most convenient to itself, the Medical Board makes itself
19 the priority rather than the public.

20 The California Constitution states, “A statute, court rule, or other authority, including
21 those in effect on the effective date of this subdivision, shall be broadly construed if it furthers
22 the people’s right of access, and narrowly construed if it limits the right of access.” Cal. Const,
23 Art. I § 3(b)(2). However, in this case, the Medical Board has done just the opposite: It has
24 broadly construed the Evidence Code in order to limit the right of access, and it has narrowly
25 construed the Medical Practice Act in order to classify and withhold broad categories of
26 documents – totally absent any legislative intent to do so.

27 The California Public Records Act states, “In enacting this chapter, the Legislature,
28 mindful of the right of individuals to privacy, finds and declares that access to information
concerning the conduct of the people’s business is a fundamental and necessary right of every
person in this state.” Cal. Gov. Code § 6250. However, in this case, the Medical Board has

1 treated access to information concerning the people's business as optional and discretionary
2 rather than fundamental and necessary. Indeed, this case demonstrates that the Medical Board's
3 practices are bureaucratically self-serving, and therefore contrary to law and public policy.

4 For all of the reasons stated above, Petitioner Bruce Thomas Murray respectfully asks
5 this court to issue a writ of mandate, ordering the Medical Board to release all of the information
6 in its possession regarding his mother's medical condition, treatment and death. The
7 particularities of this request are as follows:

- 8 (i) All information, reports and statements acquired by the Medical Board regarding
9 Audrey B. Murray's medical condition, treatment and death.
- 10 (ii) All documents contained in MBC file number 800 2014 005263 that contain
11 information regarding the cause and circumstances Audrey B. Murray's death.
- 12 (iii) All statements made to the Medical Board by Dr. James Matchison and any other
13 third parties regarding Audrey B. Murray's medical condition, treatment and death.
- 14 (iv) All of the underlying information that would otherwise be contained in a report filed
15 with the Medical Board pursuant to Cal. Bus. & Prof. Code § 2240 and 16 C.C.R.
16 1356.4 regarding the death of Audrey Bevan Murray.
- 17 (v) If any information in these documents is legitimately and lawfully privileged to
18 someone other than Audrey B. Murray or her beneficiaries, or appropriately requires
19 redaction or in camera inspection, Petitioner requests that the Medical Board produce
20 an accompanying privilege log that (a) expressly makes the claim (b) with specificity
21 and particularity; (c) states on whose behalf the Medical Board is asserting the
22 privilege, and (d) describes the nature of the documents, communications, or tangible
23 things not produced or disclosed – and does so in a manner that, without revealing
24 information itself privileged or protected, will enable Petitioner to assess the claim.

25 Petitioner also prays for costs and fees, as so particularized in the Amended Petition, and for
26 any other relief this Court deems just and proper.

1 Dated: November 17, 2016

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3 Respectfully Submitted,

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Bruce Thomas Murray, Esq.

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Petitioner, in pro per

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