

1 Bruce Thomas Murray, State Bar No. 306504
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4 Petitioner, *in propria persona*

5
6 SUPERIOR COURT OF THE STATE OF CALIFORNIA
7
8 FOR THE COUNTY OF LOS ANGELES
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10
11 **BRUCE THOMAS MURRAY,**) Case No.: BS158575
)
12) Petitioner,)
)
13 vs.) AMENDED PETITION FOR WRIT OF
) MANDATE
14 **MEDICAL BOARD OF CALIFORNIA;**)
)
15 **KIMBERLY KIRCHMEYER,** in her)
) Cal. Code Civ. Proc. § 1085
16 capacity as executive director,) Cal. Code Civ. Proc. § 472
)
17 Medical Board of California; and)
)
18 **KERRIE D. WEBB,** in her capacity as)
)
19 staff counsel, Medical Board of)
)
20 California
21 Respondents

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25 **I. REQUEST FOR MANDAMUS; INJUNCTIVE AND DECLARATORY RELIEF**

26 1. Bruce Thomas Murray petitions this Honorable Court for the issuance of a writ of
27 mandate, pursuant to Cal. Code Civ. Proc. § 1085, commanding Respondents to release all
28 information in their possession regarding Audrey Bevan Murray’s medical condition, treatment,

1 and the circumstances and cause(s) of her death, as requested in Petitioner's initial complaint to
2 the Medical Board. (See Exhibit 1.) Such information includes, but is not limited to, facts,
3 statements, analyses and conclusions contained in Medical Board of California investigation no.
4 800 2014 005263 regarding the death of Audrey B. Murray. In seeking this writ of mandate,
5 Petitioner asks the Court to overrule Respondents' final report to Petitioner, which contains no
6 substantive information. (See Exhibit 10.)

7 2. Petitioner asks this Honorable Court to issue a writ of mandate commanding Respondents
8 to release reports filed with the Medical Board pursuant to Cal. Bus. & Prof. Code § 2240
9 (Report for Death of Patient) and 16 C.C.R. 1356.4 (Outpatient Surgery--Reporting of Death)
10 regarding Audrey B. Murray's death. In seeking this mandate, Petitioner asks the Court to
11 expressly overrule Respondents' repeated and categorical rejections of his requests for this
12 information. (See Exhibits 4-9).

13 3. Petitioner asks this Court to declare invalid – as abuses of discretion – the Respondents'
14 erroneous interpretations of Cal. Gov. Code § 6254 (Records exempt from disclosure
15 requirements); Cal. Evid. Code § 1040 (Privilege for official information); Cal. Bus. & Prof.
16 Code § 2240; and 16 C.C.R. 1356.4. Additionally, Petitioner asks the Court to correct
17 Respondents' actions taken in accordance with these erroneous interpretations of law.

18 4. Petitioner requests costs and fees, as described below in the prayer for relief.

19 5. Petitioner requests any other appropriate declaratory and injunctive relief.

20 **II. THE PARTIES**

21 1. Bruce Thomas Murray is the son and beneficiary of Audrey Bevan Murray (deceased
22 June 5, 2013). Therefore, Bruce T. Murray is a beneficially interested party for the purposes of
23 Cal. Code Civ. Proc. §§ 1085-1086. As the beneficiary of his mother, Bruce Murray is entitled to
24 all information that would otherwise be privileged to her, according to Cal. Bus. & Prof. Code §
25 2225 (Privileged Communications; Confidential Information) and Cal. Health & Saf. Code §
26 123100 (Patient Access to Health Records). Additionally, for the purposes of the information
27 Petitioner seeks under the California Public Records Act, Bruce T. Murray is a member of the
28 public under Cal. Gov. Code § 6252(b).

1 2. Respondent, Medical Board of California, is a “board” under Cal. Bus. & Prof. Code §
2 2002; a “state agency” under Cal. Gov. Code § 6252(f); and a “public entity” under Cal. Evid.
3 Code § 1040. As a board/state agency/public entity, the Medical Board is under a duty to comply
4 with Cal. Gov. Code § 6253.1 (Agency to assist in inspection of public record), and is subject to
5 this Court’s jurisdiction for mandate under § 1085.

6 3. Respondent Kimberly Kirchmeyer, in her capacity as executive director of the Medical
7 Board of California, is ultimately responsible for the operations of the MBC, including the
8 MBC’s compliance with its duties under the law. Kimberly Kirchmeyer’s subordinates, as
9 described below, did in fact deny Petitioner’s requests for information.

10 4. Respondent Kerrie D. Webb, in her capacity as senior staff counsel of the Medical Board
11 of California, is responsible for the MBC’s compliance with state laws, including compliance
12 with the California Constitution, the California Public Records Act, the Business & Professions
13 Code and the Evidence Code. Kerrie D. Webb did in fact deny Petitioner’s request for the
14 information sought here, based on her erroneous interpretations of Cal. Gov. Code § 6254; Cal.
15 Evid. Code § 1040; Cal. Bus. & Prof. Code § 2240; and 16 C.C.R. 1356.4.

16 **III. FACTS**

17 1. At approximately 8 a.m. June 4, 2013, Dr. James C. Matchison (med. license no.
18 A00097926) performed a cardiac catheterization procedure on Petitioner’s mother.

19 2. Due to complications during the procedure, the procedure was aborted.

20 3. At approximately 10 a.m. June 4, 2013, Audrey Murray was admitted to the Torrance
21 Memorial Medical Center Progressive Care Unit (PCU) for post-procedure recovery.

22 4. At approximately 11:30 a.m. June 5, 2013, Mrs. Murray was discharged from Torrance
23 Memorial and into the care of her eldest son, William E. Murray, who brought her home.

24 5. After she arrived home, Mrs. Murray began experiencing severe pain in her chest and
25 shoulder, and difficulty in breathing. As her pain and distress increased, William Murray called
26 911.

27 6. At approximately 3:30 p.m., Mrs. Murray was transported back to Torrance Memorial for
28 emergency treatment.

1 7. At approximately 4 p.m. June 5, 2013, Audrey B. Murray, died in the emergency room at
2 Torrance Memorial Medical Center.

3 8. June 11, 2013, Petitioner spoke with Dr. Matchison over the phone, seeking an
4 explanation for and the cause of his mother's death. The doctor provided none.

5 9. May 15, 2014, Petitioner filed a complaint with the Medical Board, seeking an
6 explanation for and cause of his mother's death. (See Exhibit 1.)

7 10. May 19, 2014, the Medical Board confirmed receipt of Petitioner's complaint and
8 assigned it Control Number 800 2014 005263. Letter from Central Complaint Unit, Medical
Board of California, to Bruce T. Murray (May 19, 2014).

9 11. May 23, 2014, the Medical Board sent Petitioner a request for authorization for release of
10 medical records and a copy of Audrey Murray's death certificate. (See Exhibit 2b).

11 12. Sept. 4, 2014, Petitioner responded to Serrano's request, granting authorization to all
12 records privileged to Audrey Murray. Petitioner cited his authority to do so as "beneficiary or
13 personal representative of the deceased patient," under Cal. Bus. & Prof. Code § 2225.

14 13. Sept. 9, 2014, Peter B. Murray, Petitioner's brother and Audrey Murray's personal
15 representative, sent Serrano the same authorization for access to Audrey Murray's medical
16 records, along with a copy of Audrey Murray's death certificate. Peter Murray also authorized
17 the Medical Board to communicate directly with Bruce Murray regarding any privileged
18 information pertaining to the investigation of Audrey Murray's death. (See Exhibit 2.)

19 14. Sept. 2-9, 2014, Petitioner exchanged emails with Cassandra Hockenson, JD, Public
20 Affairs Manager of the Medical Board of California. Petitioner requested assistance in locating
21 the rules of procedure that the Medical Board of California follows when conducting
22 investigations of licensees. "If this is not available on the MBC web site, if you could tell me the
23 name of the rule book so I could ask for it at one of my local law libraries, or if you could give
24 me the Blue Book citation so I could check on Lexis or Westlaw," Murray wrote. (See Exhibit
3.)

25 15. Sept. 9, 2014, Hockenson replied to Petitioner, "We do not have rules for the process and
26 procedures of an investigation. Our Investigative Unit has Enforcement Operations Manuals that
27 lay out the procedures of investigating a matter. I'm not sure they are public though, and if they
28 are they will likely need redacting." (See Exhibit 3.)

1 16. Oct 10, 2014, Petitioner sent an email to Linda Serrano, requesting that the Medical
2 Board provide Petitioner with Dr. Matchison’s required filings under Cal. Bus. & Prof. Code §
3 2240 (Report for Death of Patient) and 16 C.C.R. § 1356.4 (Outpatient Surgery-Reporting of
4 Death). [See Exhibit 4.] Serrano did not reply to this email.

5 17. Dec. 15, 2014, Petitioner sent another email to Linda Serrano, reiterating the request of
6 his Oct. 10 email. (See Exhibit 5.) Serrano did not reply to this email.

7 18. At various times during 2014 and 2015, Petitioner called Serrano and left voice messages
8 requesting the aforementioned documents. Serrano did not return these phone calls.

9 19. Jan. 15, 2015, the Medical Board confirmed receipt of all records and documentation
10 required for a review of the complaint. Letter from Linda Serrano, Associate Enforcement
11 Analyst, Medical Board of California, to Bruce T. Murray (Jan. 15, 2015).

12 20. Jan. 21, 2015, Petitioner sent Serrano another email reiterating the requests of his Oct. 10
13 and Dec. 15 emails. (See Exhibit 6.) This time, finally, Serrano replied to the email, saying only,
14 “We do not provide copies of those reports.” (See exhibit 7.)

15 21. Feb. 10, 2015, Petitioner sent Kerrie Webb a letter requesting copies of Dr. Matchison’s
16 required filings under Cal. Bus. & Prof. Code § 2240 (Report for Death of Patient) and 16 C.C.R.
17 § 1356.4 (Outpatient Surgery-Reporting of Death). Petitioner made this request pursuant to Cal.
18 Gov. Code § 6253.1 (Agency to assist in inspection of public record) and his status as the
19 beneficiary of his mother, under Cal. Bus. & Prof. Code § 2225(c)(1). (See Exhibit 8.)

20 22. In a letter dated Feb. 20, 2015, Respondent Webb denied Petitioner’s request for these
21 documents on three bases: (1) “Records of complaints to, and investigations conducted by, state
22 licensing agencies are not subject to disclosure pursuant to government Code section 6254(f);”
23 because, she asserts (2) “[r]eports for the death of a patient **are treated** as complaints to the
24 Board, and will not be disclosed.” [Emphasis added.] And (3) “[i]n addition, records of
25 complaints and investigations of state licensing agencies are privileged under Evidence Code
26 section 1040.” (See Exhibit 9.)

27 23. In her Feb. 20 letter, Respondent Webb failed to cite any authority for her interpretations
28 of Cal. Gov. Code § 6254, Cal. Evid. Code § 1040, Cal. Bus. & Prof. Code § 2240, and 16
C.C.R. § 1356.4. Specifically, she failed (1) to provide any authority for “treating” reports for the
death of patient as “complaints to the Board”; (2) she did not cite any authority for exempting

1 these documents from the disclosure requirements of Cal. Gov. Code § 6253.1; and (3) she did
2 not cite any authority for assigning an absolute privilege to the information sought by Petitioner
3 (rather than the qualified privilege of § 1040).

4 24. Additionally, Respondent Webb failed to “provide suggestions for overcoming any
5 practical basis for denying access to the records or information sought,” as is required by Cal.
6 Gov. Code § 6253.1(a)(3).

7 25. In a document dated April 14, 2015, the Medical Board provided Petitioner with its final
8 report regarding case number 800 2014 005263. The final report contains six-sentences and 108
9 words. The report concludes, “It was the opinion of our consultant that the treatment rendered
10 did not constitute a violation of the law as it relates to the practice of medicine. ... Thank you for
11 contacting the Medical Board of California.” (See Exhibit 10.)

12 26. The final report does not state the bases for the Medical Board’s conclusion, nor does it
13 include any facts or analysis of the facts involved in the investigation. Most critically, the final
14 report does not provide any explanation for or the cause of Audrey Murray’s death – the central
15 issue of Petitioner’s initial complaint to the board. (See exhibit 1.) Therefore, the final report is
16 entirely useless to Petitioner.

17 27. The final report, coupled with the Medical Board’s total and unqualified refusal to
18 provide Petitioner with any additional information, leave Petitioner aggrieved and exhausted of
19 any administrative remedy.

20 28. Petitioner has no plain, speedy and adequate remedy in the ordinary course of law other
21 than the relief sought in this petition, in that there is no alternate method for Petitioner to obtain
22 the information sought. Petitioner therefore seeks a writ of mandate under Cal. Code Civ. Proc. §
23 1085 and declaratory and injunctive relief under and Cal. Gov. Code §6258, compelling
24 Respondents to perform their legal duty to disclose the information and documents requested
25 here.

26 **IV. STANDARD OF REVIEW FOR MANDAMUS**

27 Mandamus lies to compel the performance of a clear, present, and ministerial duty where
28 the petitioner has a beneficial right to performance of that duty. *Carrancho v. California Air
Resources Bd.*, 111 Cal. App. 4th 1255 (3d Dist. 2003). Additionally, an ordinary mandamus

1 action under Cal. Code Civ. Proc. § 1085 permits judicial intervention to correct an abuse of
2 ministerial discretion. *Id.*

3 Abuse of discretion is established when “the public official or agency invested with
4 discretion acted arbitrarily, capriciously, fraudulently, or without due regard for his rights, and
5 that the action prejudiced him.” *Gordon v. Horsley*, 86 Cal. App. 4th 336, 338 (2001). Otherwise
6 formulated, an abuse of discretion exists where the law imposes on a public officer specific
7 duties that the officer “refuses to perform because of an erroneous conception” as to the officer’s
8 legal duties. *Berkeley Unified School Dist. of Alameda County v. City of Berkeley*, 141 Cal. App.
2d 841 (1st Dist. 1956).

9 In this action for mandamus, Petitioner will show that Respondents acted (1) “without
10 due regard for his rights, and that the action prejudiced him”; (2) that Respondents refused to
11 perform because of “an erroneous conception” of law; and, (3) by the stronger argument, that
12 Respondents acted “arbitrarily and capriciously.”

13 **FIRST CAUSE OF ACTION**

14 **Abuse of discretion in denying Petitioner’s requests for information** 15 **under Cal. Gov. Code § 6254**

16 Petitioner incorporates the allegations of the preceding paragraphs as though fully set
17 forth herein.

18 In her three-pronged attack on Petitioner’s request for information regarding the death of
19 his mother, Respondent Webb justified withholding Petitioner’s requests for information by (1)
20 claiming such information is exempt from disclosure under Cal. Gov. Code § 6254(f), because,
21 (2) she asserts, “[r]eports for the death of a patient are treated as complaints to the Board, and
22 will not be disclosed.” [See Exhibit 9.] (The third prong of Webb’s justification, the claim of
23 privilege under Cal. Evid. Code § 1040, will be analyzed in the second cause of action.)
24 Respondent Webb’s bases for denying Petitioner’s request for information are erroneous and
25 constitute an abuse of discretion, for the reasons set forth below.

26 California Government Code section 6254 states, “[T]his chapter **does not require** the
27 disclosure of any of the following records ... (f) Records of complaints to, or investigations
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1 conducted by, or records of intelligence information or security procedures of, the office of the
2 Attorney General and the Department of Justice.” [Emphasis added.]

3 The California Supreme Court has explained the scope of Cal. Gov. Code § 6254: “It is
4 manifest . . . that the effect of section 6254 is limited to ‘this chapter’ (i.e. the California Public
5 Records Act, dealing with public inspection of certain governmental documents) and has no
6 application to any procedure not under that act. Moreover, section 6260, the final provision of
7 the act, specifically provides that ‘The provisions of this chapter shall not be deemed in any
8 manner to affect . . . the rights of litigants, including parties to administrative proceedings, under
9 the laws of discovery of this state.’” *Shepherd v. Super. Court*, 17 Cal. 3d 107, 123-24 (1976).

10 Here, by calling the reports requested by Petitioner “complaints to the Board,”
11 Respondent Webb erroneously places these documents under the ambit the exemption described
12 in Cal. Gov. Code § 6254(f). However, nothing in the language of Cal. Gov. Code § 6254 states
13 that reports for the death of a patient “are treated” as complaints to the Board – and thus exempt
14 from disclosure; and nothing in the statute’s annotations indicates such a treatment. Moreover,
15 with respect to Cal. Bus. & Prof. Code § 2240 and 16 C.C.R. 1356.4, neither of these laws
16 contains statutory language attaching them to Cal. Gov. Code § 6254(f); nor do these laws
17 contain statutory language indicating that information filed under them is exempt from
18 disclosure.

19 Respondent Webb fails to cite any authority indicating who, how or why such reports
20 “are treated” as complaints to the board, and thus falling under the exemption of Cal. Gov. Code
21 § 6254(f). Indeed case history is completely lacking any record of a court “treating” such
22 documents as complaints to the Board, and thus, exempt from disclosure. Absent such a holding,
23 and absent statutory language indicating that information filed under § 2240 and 16 C.C.R.
24 1356.4 constitutes a “complaint to the Board,” Respondent Webb’s claim of exemption in this
25 instance is unwarranted, unreasonable and prejudicial, and thus an abuse of discretion.

26 Furthermore, by unilaterally and unreasonably “treating” Cal. Bus. & Prof. Code § 2240
27 and 16 C.C.R. 1356.4 as non-disclosable “complaints to the Board,” Respondent Webb and/or
28 the Medical Board have abused their discretion by creating an untenable legal fiction. Logically,
when a medical doctor files a report under Cal. Bus. & Prof. Code § 2240 and 16 C.C.R. 1356.4,
he does so out of a statutorily mandated duty, not because he or she is “complaining” about

1 anything to the Board. And certainly by filing such reports, a doctor cannot logically be said to
2 be “complaining” about himself, or even more farfetched, complaining about his patient. Thus,
3 by creating this logically unsound legal fiction, Respondents have acted arbitrarily and
4 capriciously. In doing so, Respondent Webb and/or the Medical Board have acted in a manner
5 that is prejudicial to Petitioner and the public.

6 The fiction of calling “reports for the death of a patient ... as complaints to the Board”
7 finds no support in the statutory text, the common law, or in reason. This false formulation of
8 law should not be allowed to stand in any context. Petitioner therefore asks the court to declare
9 this legal fiction invalid, and compel Respondents to release the information that Petitioner
10 rightly seeks.

11 In summary thus far, Respondents have abused their discretion by (1) acting without due
12 regard to Petitioner’s rights, thus prejudicing him; (2) willfully distorting the law through a false
13 and illogical legal fiction; and (3) in doing so, Respondents have acted arbitrarily and
14 capriciously and denied Petitioner his beneficial rights. Petitioner therefore asks the court to
15 issue the requested mandamus to cure these abuses.

16 **SECOND CAUSE OF ACTION**

17 **Abuse of discretion in the interpretation and application of Cal. Evid. Code § 1040**

18 Petitioner incorporates the allegations of the preceding paragraphs as though fully set
19 forth herein.

20 In her three-pronged rejection of Petitioner’s request for information regarding the death
21 of his mother, Respondent Webb declares that “records of complaints and investigations of state
22 licensing agencies are privileged under Evidence Code section 1040.” [See Exhibit 9.] This is an
23 overbroad – and hence inaccurate statement in several respects, as will be analyzed below.

24 First, California Evidence Code section 1040 creates a two-tiered privilege regime for
25 “official information ... acquired in confidence by a public employee in the course of his or her
26 duty”: (1) an unqualified privilege, when “disclosure is forbidden by an act of the Congress of
27 the United States or a statute of this state”; and (2) a qualified privilege for all other official
28 information. *Id.*

1 The California Supreme Court has defined the applicability and scope of Cal. Evid. Code
2 § 1040: This provision of the Evidence Code “represents the exclusive means by which a public
3 entity may assert a claim of governmental privilege based on the necessity for secrecy.” *Pitchess*
4 *v. Superior Court*, 11 Cal.3d 531, 540 (1974).

5 The California Supreme Court has explained the relation between Cal. Evid. Code § 1040
6 and Cal. Gov. Code § 6254. As the Court noted in *Shepherd* and its progeny, the exemptions
7 listed in section 6254 are limited to that chapter, i.e. the California Public Records Act, and have
8 no application to any procedure not under that act. “**Accordingly the provisions of section 6254**
9 **of the Government Code cannot serve as a basis of absolute privilege under Evidence Code**
10 **section 1040**, subdivision (b)(1).” *Shepherd*, 17 Cal. 3d at 123. [Emphasis added.]

11 But here, Respondent Webb has done precisely this – weaving together Cal. Gov. Code §
12 6254 and Cal. Evid. Code § 1040 – and coming out with a Gordian knot of absolute privilege.
13 The process by which Webb arrives at this multi-layered lock-down appears as follows: First, as
14 analyzed above in the first cause of action, Webb improperly triggers Cal. Gov. Code § 6254 by
15 creating the legal fiction that a doctor’s mandatory reporting to the Medical Board constitutes a
16 “complaint to the board.” Then, if this fiction falters, Webb jumps to the unqualified privilege
17 under Cal. Evid. Code § 1040(b)(1) by declaring that “records of complaints and investigations
18 of state licensing agencies are privileged under Evidence Code section 1040.” [See Exhibit 9.]
19 This statement is yet another fiction, since Cal. Evid. Code § 1040 contains no such language.
20 Webb’s language appears to be lifted from Cal. Gov. Code § 6254(f), and then grafted onto the
21 Evidence Code. What the Evidence Code does address is “information acquired in confidence by
22 a public employee” – information which is then sub-categorized as either unqualified or qualified
23 for the purposes of the balancing test. § 1040.

24 Since the information Petitioner seeks is not prohibited by Cal. Gov. Code § 6254, or any
25 other state or federal law, disclosure of this information is more properly weighed under the
26 qualified privilege.

27 The qualified privilege of Cal. Evid. Code § 1040(b)(2) sets out a balancing test, in which
28 the court inquires whether “[d]isclosure of the information is against **the public interest** because
there is a necessity for preserving the confidentiality of the information that outweighs the
necessity for disclosure in the interest of justice.” *Id.* [Emphasis added.] Moreover, “[i]n

1 determining whether disclosure of the information is against the public interest, **the interest of**
2 **the public entity as a party in the outcome of the proceeding may not be considered.”** *Id.*
3 [Emphasis added.]

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

23 Common to all of the cases quoted above is death – death by police shooting, death by
24 allegedly negligent child care, and an alleged murder under the color of law. Similarly here,
25 Petitioner’s action for writ of mandate arises from a death – the death of Petitioner’s mother
26 following a routine outpatient medical procedure. Death is the worst possible outcome of
27 surgery. But yet, Petitioner has received no explanation whatsoever for his mother’s death from
28 either the doctor or the Medical Board. Petitioner has no other means to obtain this information.
Therefore, in the interests of justice, Petitioner asks the court to weigh all of the information
sought by Petitioner according to the standards of Cal. Evid. Code § 1040(b)(2).

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THIRD CAUSE OF ACTION
VIOLATION OF GOV. CODE §6250, et seq.

Failure to Properly Respond to a Request under the California Public Records Act

Petitioner incorporates the allegations of the preceding paragraphs as though fully set forth herein.

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

Additionally, Cal. Gov. Code § 6253.1 states that a public agency “**shall** ... (1) [a]ssist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated ... [and] (3) [p]rovide suggestions for overcoming any practical basis for denying access to the records or information sought.” Cal. Gov. Code § 6253.1(a).

A member of the public who believes that public records are being improperly withheld may bring suit for mandate to enforce the Public Records Act. Govt. Code §§ 6258, 6259(a). If the Court finds that the public official’s decision to refuse disclosure is not justified, it shall order the public official to make the records public. *Id.* § 6259(b).

As analyzed in the first cause of action above, Respondent Webb erroneously classified the information sought by Petitioner as exempt under Cal. Gov. Code § 6254(f). Moreover, by inappropriately applying a blanket privilege to all information sought by Petitioner, Respondent Webb failed to identify and release “any reasonably segregable portion” of the records sought by Petitioner, as required by CPRA.

In her trifecta denial of Petitioner’s request for information, Respondent Webb provided no suggestions or any practical basis for overcoming her denial of access to the records and information sought by Petitioner, as is required by CRPA. (See Exhibit 9.) Webb’s Feb. 20 letter is, in reality, bureaucratic stonewalling.

1 Based on the Respondents' failure to follow the requirements of CRPA, Petitioner
2 requests that the court grant him all remedies available under CPRA – mandamus and disclosure
3 of the information he seeks.

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5 **FOURTH CAUSE OF ACTION**

6 **VIOLATION OF CALIFORNIA CONSTITUTION ARTICLE I, SECTION 3(b)**

7 **Failure to Provide Access to 'The People's business'**

8 Petitioner incorporates the allegations of the preceding paragraphs as though fully set
9 forth herein.

10 Respondents' failure to provide a proper response to Petitioner's Public Records Act
11 Request and make public documents available for inspection violates Article I, Section 3(b) of
12 the California Constitution, which provides that "the people have the right of access to
13 information concerning the conduct of the people's business, and, therefore ... the writings of
14 public officials and agencies shall be open to public scrutiny." *Id.*

15 Reports for death of patients – and the Medical Board's investigation of such deaths – are
16 of vital importance to consumers and to the public health of the people of California. Thus, such
17 information constitutes "the people's business." Therefore, in compliance with the state
18 constitution, all nonprivileged portions of such reports should rightly be made available to the
19 public, and information privileged to the deceased should be made available to beneficiaries.

20 **FIFTH CAUSE OF ACTION**

21 **Violation of Public Policy with Respect to the California Constitution, the California Public
22 Records Act, the Medical Practice Act and the California Evidence Code**

23 The Business & Professions Code sets forth the priorities of the Medical Board:
24 "Protection of the public shall be the highest priority for the Medical Board of California in
25 exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the
26 public is inconsistent with other interests sought to be promoted, the protection of the public
27 shall be paramount." Cal. Bus. & Prof. Code § 2001.1. However, in this instance, by writing in
28 its own non-statutory exemption to the Public Records Act, the Medical Board has put its own

1 interests first rather than the public interest. Thus, the Medical Board has acted contrary to public
2 policy.

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

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

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

23 The California Public Records Act states, “In enacting this chapter, the Legislature,
24 mindful of the right of individuals to privacy, finds and declares that access to information
25 concerning the conduct of the people’s business is a fundamental and necessary right of every
26 person in this state.” Cal. Gov. Code § 6250. However, in this instance, the Medical Board has
27 treated access to information concerning the people’s business as optional and discretionary
28 rather than fundamental and necessary. Indeed, this case demonstrates that the Medical Board’s
practices are bureaucratically self-serving, and therefore contrary to law and public policy.

1 In its final report to Petitioner regarding the death of Audrey B. Murray, Respondent
2 Medical Board failed to provide Petitioner any information responsive to the central issue of his
3 initial complaint to the Board, i.e., an explanation for and cause of his mother's death. (See
4 exhibits 1 and 10.) The MBC's failure to provide any relevant information renders Petitioner's
5 entire effort of bringing a complaint to the Board futile. A futile consumer complaints system –
6 one that is wholly unresponsive to consumers – is contrary to public policy.

7
8 **PRAYER FOR RELIEF**

9 1. Wherefore, Petitioner prays that this Court issue a peremptory writ of mandate directing
10 Respondents to provide copies of all of the documents described here within 10 days of this
11 Court's ordering them to do so. Particularly, as described on pp. 1-2, Petitioner seeks copies of
12 the following:

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

PETITIONER ALSO PRAYS AS FOLLOWS:

2. That the Court find that Respondents have violated Petitioner’s rights under the California Constitution, Article I, sec. 3, and Cal. Gov. Code §§ 6250 *et seq.*, by failing to produce the documents he requested and otherwise failing to cooperate with him in any way;

3. That Respondents’ erroneous interpretations and legal fictions that modify and distort the California Evidence Code, the California Public Records Act, and the Business & Professions Code, be found invalid and contrary to law and public policy;

4. For court costs pursuant to Cal. Gov. Code § 6259(d).

5. For fees pursuant to Cal. Code Civ. Proc. § 1021.5 (“private attorney general”) and/or the equitable private attorney fee doctrine, to the extent that success on the merits of any cause of action here confers a significant public benefit or vindicates a constitutional right.

6. For other relief this Court deems just and proper.

Dated: Jan. 2, 2016

Respectfully Submitted,

By: Bruce Thomas Murray, Esq.
Petitioner, in pro per
619-501-8556

1 VERIFICATION
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3

4 I, Bruce Thomas Murray, declare that I am the Petitioner in the above-entitled
5 proceeding; that I have written and read the foregoing Petition for a Writ of Mandate, and know
6 the contents thereof; that the same is true of my own knowledge except as to the matters which
7 are therein alleged on information or belief, and, as to those matters, I also believe them to be
8 true.

9 I declare under the penalty of perjury under the laws of the State of California that the
10 foregoing is true and correct. Executed this second of January, 2016, in San Diego, California.
11
12

13 Bruce Murray
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