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No.

IN THE SUPREME COURT OF CALIFORNIA

SUPREME COURT
FILED

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Deputy

DEPARTMENT OF PUBLIC HEALTH,

Petitioner,

vs.

THE SUPERIOR COURT OF SACRAMENTO COUNTY,

Respondent.

CENTER FOR INVESTIGATIVE REPORTING.

Real Party In Interest

After a Published Decision of the Court of Appeal,
Third Appellate District, Case No. C072325
(Justice M. Kathleen Butz), Vacating a Judgment Entered by the
Superior Court for the County of Sacramento, Case No. 34-2012-
80001044 (Hon. Timothy M. Frawley).

PETITION FOR REVIEW

Duffy Carolan (State Bar No. 154988)
Rochelle Wilcox (State Bar No. 197790)
Davis Wright Tremaine LLP
505 Montgomery Street, Suite 800
San Francisco, CA 94111-6533
Tel.: (415) 276-6500
Fax: (415) 276-6599

Attorneys for Real Party In Interest and Petitioner
THE CENTER FOR INVESTIGATIVE REPORTING

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Fax: (415) 276-6599

Attorneys for Real Party In Interest and Petitioner
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I. ISSUES PRESENTED

(1) Can the public posting and access mandates of the Long-Term Care, Health, Safety and Security Act of 1973 governing citations issued to long-term health care facilities for serious violations of laws and regulations relating to patient care be reconciled with the earlier enacted general confidentiality provisions of the Lanterman-Petris-Short Act governing information obtained in the course of providing services to developmentally disabled individuals in a manner that gives effect to all of the provisions of both statutes?

(2) If the statutes cannot be reconciled without compromising the Legislature's intent in enacting either, which statutory scheme controls?

(3) Must the state redact information required under the Long-Term Care, Health, Safety and Security Act of 1973 to be contained in an on-line consumer information service system about substantiated complaints and citations assessed against long-term health care facilities to protect information obtained in the course of providing services to mentally and developmentally disabled individuals under the Lanterman-Petris-Short Act?

II. WHY REVIEW SHOULD BE GRANTED

In a published decision addressing a matter of first impression, with a strong dissent adopting the trial court's considered ruling, the Court of Appeal of the State of California, Third Appellate District, has attempted to reconcile two statutory schemes aimed at protecting the state's most vulnerable populations – those residing in state licensed long-term health care facilities and mentally and developmentally disabled individuals receiving services overseen by the state. But in the process, the Court of Appeal has nullified a key remedial provision of one of those acts – the requirement that facilities publicly disclose serious violations related to

patient care – which the Legislature adopted specifically to ensure that the public, including families of patients and prospective patients, have complete information about those violations. And, by protecting some information covered under the other act only in limited circumstances, but not others, it has rendered protections under this act illusory. Review is necessary to prevent nullification of clear legislative intent in enacting both statutory schemes and to protect extremely vulnerable populations covered by the acts. Review also is necessary to ensure a uniform administrative process applied throughout the state so that more information is made public to encourage compliance with laws intended to protect those residing in long-term health care facilities – as the Legislature plainly intended.

The Long-Term Care, Health, Safety and Security Act of 1973 ("Long-Term Care Act" or "1973 Act") specifically requires that the ultimate administrative record chronicling serious violations of law and regulations pertaining to patient care at state licensed long-term health care facilities be publicly posted at the facility and made available to the public upon request, with only the names of patients and other individuals, except investigating personnel, redacted to protect patient privacy. Health & Safety Code §§ 1429(a)(1)(A); 1429(b); 1423(a)(2); 1439.

As this Court has recognized, this statutory scheme was enacted to protect one of the state's most vulnerable populations by, in part, providing "information to the public about the citation record of facilities." Kizer v. County of San Mateo, 53 Cal. 3d 139, 143, 150 (1991). Its public posting and access provisions, along with other provisions pertaining to the issuance of citations and civil penalties, were "designed to implement the Legislature's declared public policy objective of 'assur[ing] that long-term health care facilities provide the highest level of care possible." Id. at 143;

see also Health & Safety Code § 1422(a). As this Court also has recognized, the statute is remedial in nature, and as such it must be "liberally construed on behalf of the class of persons it is designed to protect." California Association of Health Facilities v. Dep't of Health Services, 16 Cal. 4th 284, 294-95 (1997) (quoting Kizer, 53 Cal. 3d at 147-48). Four of the eight categories of facilities covered by the 1973 Act are specifically designated for the care of developmentally disabled individuals. See Health & Safety Code § 1418.

The other statutory scheme at issue here – the Lanterman-Petris-Short Act and a companion provision under the Lanterman Developmental Services Act (collectively the "Lanterman Act") – governs the evaluation, supervision, protection, care and treatment of persons who are mentally ill, developmentally disabled or impaired by chronic alcoholism. Welf. & Inst. Code §§ 5001, 4500. A provision of the Lanterman Act, enacted in 1972, one year before the Long-Term Care Act, requires that "[a]ll information and records obtained in the course of providing services" under specified divisions of the Act shall be confidential. Welf. & Inst. Code §§ 5328; 4514. This "general" rule of confidentiality is followed by specific exemptions to the general rule under the code, in successive sections of the code and elsewhere. Albertson v. Superior Court, 25 Cal. 4th 796, 805 (2001).

The intersection of these statutes in the instant case arose in the context of a Public Records Act lawsuit brought by Real Party in Interest The Center for Investigative Reporting ("CIR"). It sought access to citations issued by the Department of Public Health ("DPH") for serious violations of law and regulations by state owned and operated long-term care facilities for the developmentally disabled. The trial court found that the Long-Term

Care Act's disclosure requirements could not be reconciled with the Lanterman Act's confidentiality provisions; under well-established rules of statutory construction, it ruled that the Long-Term Care Act prevailed, and ordered DPH to disclose to CIR the citations requested. Order at 9-11, attached. The Court of Appeal vacated the judgment. In the guise of harmonizing these statutes, it held that certain information expressly required to be public under the Long-Term Care Act if relied on by DPH in issuing a citation must be redacted from citations involving mentally and developmentally disabled individuals receiving services under the Lanterman Act, when, and only when, those citations are requested under the Public Records Act. Opinion ("Opn."). at 21; see also id. at 6, attached. Specific other information required to be considered in issuing a citation, which may implicate confidential information under the Lanterman Act, must be disclosed. Opn. at 20-21.[1]

By parsing the statutes in this manner, the Court of Appeal unabashedly negated express provisions of the 1973 Act requiring that "all relevant facts" considered by the department in determining the amount of the civil penalty to be assessed under the Long-Term Care Act "shall be documented by the department on an attachment to the citation and available in the public record." Health & Safety Code § 1424 (b) (emphasis added). "Relevant facts" to be considered by the department under the Act are defined to include the patient's or resident's mental condition, medical condition, and history of mental disability or disorder, the risk the violation

[1] An order modifying the opinion and judgment was entered on October 9, 2013, in response to a petition for rehearing by CIR addressing the recovery of fees on appeal. See Order Modifying Opinion, attached. Thus, this petition is timely.

presents to the patient's or resident's mental and physical condition; as well as the facility's good faith efforts to prevent the violation, and the licensee's history of regulatory compliance. Id., § 1424 (a)(1). Instead, the Court of Appeal decided that for mentally and developmentally disabled individuals, who also are covered by the Lanterman Act, these provisions of the Long-Term Care Act will not be enforced "in PRA-request citations," though they remain in effect for all others residing in long-term health care facilities covered by the 1973 Act,[2] and in other contexts. Opn. at 21.

Review should be granted because the Court of Appeal's decision does violence to both statutory schemes and, in the process, interjects substantial uncertainty into an administrative process governing all long-term health care facilities throughout the state, as well as the regional centers and state departments that oversee them. If left unchecked, the decision would result in the very type of "two-tiered system of enforcement" under the Long-Term Care Act that this Court rejected in Kizer when a county advocated that the civil penalty provisions of the 1973 Act should only apply to private long-term care facilities, not facilities owned by government entities covered by the Tort Claims Act. 53 Cal. 3d at 148. The decision robs the most vulnerable of an already vulnerable population – mentally and developmentally disabled individuals who reside in long-term health care facilities – of important protections that the Legislature clearly

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[2] Indeed, DPH publicly posts on its website citations issued to state licensed nursing homes falling under the 1973 Act with all of this same information disclosed. 2 Petitioner's Exhibits ("PE") 299;20-26; 432-534; see also http://www.cdph.ca.gov/certlic/facilities/Page/AACounties.aspx. Throughout this brief the record will be cited by reference to the volume then "PE" followed by the page number (without proceeding zeros) and line number if applicable.

intended to apply to them, while these same protections remain in effect for others covered by the 1973 Act.

The Court of Appeal's view that exceptions to the confidentiality provisions of the Lanterman Act have to be set forth in that statute also ignored this Court's decision in Albertson v. Superior Court, 25 Cal. 4th 796 (2001). There, the Court held that a statute that fell outside of the Lanterman Act requiring that an updated medical examination be provided to a petitioning attorney in commitment proceedings under the Sexually Violent Predictor Act was "an exception to section 5328's general rule of confidentiality of treatment records, and allows the district attorney access to treatment record information, insofar as that information is contained in an updated evaluation." Id. at 805.

Most concerning, however, is the fact that the Court of Appeal's decision sets up a compliance system – applicable throughout the state – that is simply not workable. By injecting the specter of civil liability for wrongful disclosure of confidential information under the Lanterman Act (see Welf. & Inst. Code § 5330) into the public posting and access mandates of the Long-Term Care Act, the decision puts long-term care facilities, and the state and counties charged with overseeing them, in a Catch-22. On the one hand, they must aggressively redact the citations or risk hefty civil penalties for guessing wrong. On the other hand, they face administrative penalties under the Long-Term Care Act if it does not fully disclose the citation information required by the Act. Health & Safety Code § 1429 (c). This could not have been what the Legislature intended in enacting a comprehensive statutory scheme requiring the public posting of citations, while carefully protecting patient privacy.

But the Court of Appeal did not stop there. Without any briefing or oral argument, the Court extended its interpretation of these statutes to disclosures of information that long has been required to be made public through DPH's on-line consumer information service system established in 1984 under Section 1422.5 of the Long-Term Care Act. Opn. at 24, n. 12. The breadth of the Court of Appeal's decision is concerning because this issue was never raised by either party below and it arguably would apply to any other information about facility compliance required to be disclosed under the 1973 Act. It similarly injects uncertainty into state mandated, state-wide administrative processes, and creates new, burdensome and unnecessary administrative duties, which ultimately will result in less information being publicly disclosed about facility compliance history than clearly is required by the Legislature.

For these reasons, and those more fully set forth below, CIR respectfully requests that the Court grant review of the Court of Appeal's published decision in this matter of statewide significance.

III. STATEMENT OF THE CASE

In May of 2011, CIR made a written Public Records Act request to DPH seeking citations issued by DPH to the state's seven Developmental Centers[3] from January 1, 2002 to the present. 1 PE 4:15-23; 19. On June

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[3] The facilities were Lanterman Developmental Center, Porterville Developmental Center, Sonoma Developmental Center; Fairview Developmental Center, Canyon Springs, Agnews Developmental Center, and Sierra Vista Developmental Center. The Department of Developmental Services is the state agency responsible for providing services to people with developmental disabilities. It presently operates five Developmental Centers, which house about 1,700 of the state's most severely developmentally-disabled patients, many with cerebral palsy, severe autism and mental disabilities. 2 PE 294:8-12; 403.

13, 2011, DPH produced 55 citations on a disk. 1 PE 6:1-6; 30-165 (copies of printed citations). No citations were produced for years 2002-2006. Each of the 55 citations was extensively redacted, removing all information except licensee information, oblique statutory references and some factually devoid statements about the violations or rights at issue on the initial page of the citation. Even the name of the department evaluator was redacted. Id.

DPH claimed that the near blanket redactions were necessary to comply with the confidentiality provisions of Section 5328 of the Welfare and Institutions Code and an express exemption to the confidentiality provisions for licensing personnel under Section 5328.15. 1 PE 7:24-27; 174-176.

On January 8, 2012, CIR filed a verified petition for writ of mandate under the Public Records Act and complaint for declaratory relief seeking an order compelling DPH to disclose in unredacted or minimally redacted form the previously produced "aggressively" redacted citations. 1 PE 1-177. On September 13, 2012, Respondent Court issued an 11-page order granting the petition and complaint for declaratory relief. 5 PE 1439-1450; Order attached hereto. Applying well accepted rules of statutory construction, Respondent Court found that where citations involve mental health records obtained in the course of providing services under the Lanterman Act, "DPH cannot make the citations publicly available [as required under the Long-Term Care Act] and simultaneously shield it from public disclosure." Order at 8. Thus, "[w]here mental health records are involved, there is an irreconcilable conflict between the Lanterman Act's confidentiality provisions and the Long-Term Care Act's accessibility provisions. The statutes cannot be harmonized by disclosing the citations denude of all the underlying factual information giving rise to the citation." Id.

Having found an irreconcilable conflict, Respondent Court went on to decide which statute prevails. In concluding that the Long-Term Care Act was the later enacted, specific act that controls the disclosure of citations, the court noted that "the ultimate purpose of both the confidentiality and the accessibility statutes is the same: to promote and protect the health and safety of mental health patients." Id. at 9. "It follows, that publicly disclosing the basis of the citations is consistent with the ultimate purpose of the Lanterman Act to promote the health and safety of patients. The converse is not true. Withholding such information undermines the public's interest in protecting patients." Id.

Respondent Court also rejected DPH's alternative theory that disclosure was governed by the later enacted exceptions to the confidentiality provisions for licensing personnel contained in Sections 5328.15 and 4514(n) of the Welfare and Institutions Code. Id. at 10. These provisions "were intended to authorize disclosure to licensing personnel conducting licensing duties, and not to supersede the public inspection provisions of the Long Term Care Act's citation system." Id.

On October 26, 2012, DPH filed a Petition for Extraordinary Writ of Mandate in the Court of Appeal. On November 21, 2012, the Court of Appeal issued an order granting the alternative writ. On September 18, 2013, after full briefing and oral argument, the Court of Appeal (Butz, J.) issued a peremptory writ of mandate directing Respondent Court to vacate its judgment and ruling and to enter a new one that directs DPH to produce to CIR the requested citations in accordance with the standards set forth in the opinion and to grant declaratory relief in favor of CIR. Opn. at 25. The Court of Appeal held that the Long-Term Care Act and the Lanterman Act could be harmonized by allowing disclosure of certain information that is

required to be considered by DPH in issuing a citation under the Long-Term Care Act, while prohibiting the disclosure of other information where disclosure implicates mentally and developmentally disabled individuals covered by the Lanterman Act's confidentiality provision. Opn. at 19-22; see also id. at 21 ("The patient's or resident's mental, physical, and medical conditions, history of mental disorder, as well as the risk the violation presents to the mental and physical condition, are not discloseable in the PRA-requested citations, in light of the mental health-based confidentiality provisions of the Lanterman Act.").

The Court did not rule that all information obtained in the course of providing services under the Lanterman Act is required to be redacted from the citations involving covered patients; instead, it categorized certain information that by statute is required to be considered and disclosed in the public record under the Long-Term Care Act. Id. at 19-22. An apt description of the majority's opinion is set forth in the dissent:

> Implicitly recognizing that sections 5328 and 4514 of the Lanterman Act conflict with section 1423, 1424, and 1439 of the Long-Term Care Act, the majority 'harmonizes' these provisions by holding that the Long-Term Care Act controls over the Lanterman Act on the issue of 'describ[ing] with particularity the nature of the violation' (Health & Safety Code, § 1423, subd. (a)(2)), but the Lanterman Act controls over the Long-Term Care Act on the issue of setting forth other 'relevant facts,' including the patient's or resident's 'medical' and 'mental' condition, his or her 'history of mental disability or disorder,' and 'the risk that the violation presents to [his or her] mental and physical condition.' (Health & Safety Code, § 1424, subds. (a), (b)(1)-(3).) Thus, under the guise of bringing harmony, the majority opinion does violence to two statutory enactments–carving out of the Lanterman Act an exception allowing public citations to include unredacted description of the nature of the violation, and severing from

> the Long-Term Care Act the requirement that the public record contain the aforementioned 'relevant facts.'

Dis. Opn. at 1 (Hoch, J., dissenting).

The dissent concluded that the two acts conflict, that no reasonable interpretation of them gives force and effect to all of their provisions, and that the citation provisions of the Long-Term Care Act, which "deal specifically with citations and precisely mandate the contents of these citations," is the later enacted, more specific statute that takes "precedence over the Lanterman Act's general confidentiality provisions." Id. at 3, 6, 9.

IV. ARGUMENT

A. REVIEW OF THE COURT OF APPEAL'S PUBLISHED DECISION IS NECESSARY TO PREVENT VIOLENCE TO TWO STATUTES INTENDED TO PROTECT VULNERABLE POPULATIONS.

1. The Decision Nullifies the Long-Term Care Act's Public Disclosure Requirement, Which the Legislature Adopted to Protect Vulnerable Citizens.

Through the Long-Term Care Act, the Legislature adopted a comprehensive inspection and citation system aimed at "assuring that long-term health care facilities provide the highest level of care possible." Health & Safety Code § 1422(a). It was the intent of the Legislature in enacting Chapter 2.4 (Sections 1417-1439.8) of Division 2 of the Health and Safety Code to establish: "(1) a citation system for the imposition of prompt and effective civil sanctions against long-term health care facilities in violation of the laws and regulations of this state relating to patient care; (2) an inspection and reporting system to insure that long-term health care facilities are in compliance with state statutes and regulations pertaining to patient care; and (3) a provisional licensing mechanism to insure that full-term

licenses are issued only to those long-term health care facilities that meet state standards relating to patient care." Health & Safety Code § 1417.1; see also Kizer, 53 Cal. 3d at 143, 147 (recognizing that the primary purpose of the 1973 Act was to "secure obedience to statutes and regulations imposed to assure important public policy objectives.").

The Act was intended to be more efficient and less drastic than the then-present system for enforcing compliance with laws and regulations through license suspension and revocation proceedings under Chapters 2 and 3 of Division 2 of the Health and Safety Code. 3 PE 725, 728. (Assembly Committee on Health Analysis of AB 1600); see also id. at 845-0848 (Report of the Joint Committee on Aging, Sept. 14, 1973, published in the Assembly Journal); id. at 744 (Staff Analysis of AB 1600, as amended June 21, 1973). That law, as noted by the Office of Attorney General in a study submitted to the Joint Committee on Aging, was a system shrouded in secrecy. Id. at 877-879.

Importantly, the Act's posting and public access mandates were integral to the bill. As noted, the bill "[r]equires posting of such citations until the violation is corrected up to a maximum of 120 days." Id. at 606 (Leg. Counsel's Dig., April 25, 1973); see also id. at 723 (Summary Digest) ("Requires posting of specified citations until the violation is corrected up to a maximum period of 120 days and requires licensee to promptly make available for inspection by any member of the public who so requests a copy of all final uncorrected violations.").

As enacted, the law requires the Department of Health Services, whose authority is now vested in DPH, to conduct onsite inspections and investigations of any complaints unless determined that it is willfully intended to harass a licensee. Health & Safety Code § 1420(a)(1). All the

authorizations necessary to conduct the complaint investigations under the Act, including the records to be disclosed to the inspectors and the timing and manner in which the inspections are to be conducted are set forth under the Act. Id. §§ 1420, 1421, 1423.

The Act requires DPH to consider "all relevant facts," including the patient's medical and mental condition and history of mental disability in imposing civil penalties. Id. §§ 1424(a); 1421(a). Importantly, "[r]elevant facts considered by the department in determining the amount of the civil penalty shall be documented by the department on an attachment to the citation and available in the public record." Id. § 1424(b) (emphasis added). The Act further specifies that each citation issued "shall be in writing and shall describe with particularity the nature of the violation, including a reference to the statutory provision, standard, rule or regulation alleged to have been violated, the particular place or area of the facility in which it occurred, as well as the amount of any proposed assessment of a civil penalty." Id., § 1423 (a)(2).

To fulfill the Act's goal of providing vital information to families and to the public about serious violations of law found to have occurred at long-term health care facilities, the Act specifically mandates access to citations through its public posting and access mandates. The two most serious violations, class "AA" and "A," must be prominently posted at the facility at "[a]n area accessible and visible to members of the public." Id., § 1429(a)(1)(A). Class "B" violations, while not required to be posted at the facility, "shall be made promptly available by the licensee for inspection or examination by any member of the public who so requests." Id., § 1429(b)

(emphasis added).[4] In response to a citation, the facility may post a plan of correction, a statement disputing the citation or the appeal status of the citation, along with the citation. Id., § 1429(a)(3) & (a)(4).[5] Even where the citation is ultimately dismissed, the Act requires that the department take action "immediately to ensure that the public records reflect in a prominent manner that the citation was dismissed." Id., § 1428(j) (emphasis added).

In addition to these specific provisions, the Act reiterates its intent that records generated in the course of conducting a complaint investigation under the citation system are public. Section 1439 provides, in relevant part, that "[a]ny writing received, owned, used, or retained by [DPH] in connection with the provisions of [the Long-Term Care Act] is a public record within the meaning of [the Public Records Act], and, as such, is open to public inspection pursuant to the provisions of Sections 6253, 6256, 6257, and 6258 of the Government Code." Health & Safety Code § 1439.

In requiring public disclosure of the citations, the Legislature expressly protected patient privacy. In particular, Section 1423 provides, "[t]he names of any patient jeopardized by the alleged violation shall not be specified in the citation in order to protect the privacy of the patient." Health & Safety Code § 1423(a)(2) (emphasis added). Moreover, while the licensee is authorized to receive a list of the names of patients allegedly

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[4] To ensure compliance with these posting and public access mandates, the Legislature made it a class "B" violation, subject to a civil penalty of $1,000.00, for a licensee to violate any provision of Section 1429. Health & Saf. Code § 1429(c).

[5] These public posting mandates are repeated in the California Code of Regulations without exception for developmentally disabled individuals under the Lanterman Act. 22 C.C.R. § 76721.

jeopardized by violation, this list is not subject to disclosure as a public record. Id., § 1423(a)(2).

Similarly, Section 1439 provides that the "names of any persons contained in such records, except the names of the duly authorized officers, employees, or agents of the state department conducting an investigation or inspection in response to a complaint filed pursuant to this chapter, shall not be open to public inspection and copies of such records provided for public inspection shall have such names deleted." Id., § 1439 (emphasis added).

As this Court has recognized, the Act's posting requirements, along with other reporting provisions of the Act, were intended "to provide information to the public about the citation record of facilities." Kizer, 53 Cal. 3d at 143 (recognizing that Act's measures were intended to "protect patients from actual harm, and encourage health care facilities to comply with the applicable regulations and thereby avoid imposition of the penalties."). It also has recognized that as a remedial statute, the Long-Term Care Act "is to be liberally construed on behalf of the class of persons it is designed to protect." California Association of Health Facilities,16 Cal. 4th at 295 (reviewing "reasonable licensee defense" under Section 1424 and concluding that unreasonable conduct of employee can be imputed to licensee to further remedial purpose of statute).

2. The Policies Underlying The Lanterman Act Do Not Support the Court of Appeal's Decision.

The Lanterman Act is a comprehensive law directed at the evaluation, supervision, protection, care and treatment of persons who are mentally ill, developmentally disabled or impaired by chronic alcoholism. Welf. & Inst. Code § 5001. Section 5328 of the Welfare and Institutions Code, added to

the Lanterman Act in 1973, makes all information and records obtained in the course of providing services under specified divisions of the Act confidential, subject to defined statutory exemptions. Welf. & Inst. Code § 5328 (Hist. & Stat. Notes); see also id., § 4514.[6] The Act defines "services" broadly to cover essentially anything "directed toward the alleviation of a developmental disability [or mental illness] or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability [or mental disability]. Welf. & Inst. Code 4512 (b).

The legislative purpose for confidentiality is to encourage persons with mental or severe alcohol problems or developmental disabilities to seek, undergo and accept treatment, and to be candid and open in the treatment. County of Riverside v. Superior Court, 42 Cal. App. 3d 478, 481 (1974). As the dissent pointed out below, however, "the Lanterman Act as a whole must be construed to, among other things, 'guarantee and protect public safety' and 'protect mentally disordered persons and developmentally disabled persons from criminal acts.'" Dis. Opn. at 4 (quoting Welf. & Inst. Code § 5001 (c), (g)).

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[6] Section 4514 was enacted in 1982 as a technical amendment intended to move the confidentiality laws as they relate to the developmentally disabled from existing Section 5328 under the Lanterman-Petris-Short Act to the Lanterman Developmental Services Act. The substance of the law did not change. Opn. at 11, n. 7; 4 PE 886-887 (Leg. Counsel's Digest of Senate Bill 1736); 901 (enrolled bill report); 903 (Senate Committee on Health and Welfare, staff analysis).

3. In Attempting to Harmonize These Statutes, The Court of Appeal Harms the Interests of the Individuals These Statutes Are Designed to Protect, and in the Process Sets up a Two-Tier System of Enforcement under the Long-Term Care Act Previously Rejected by This Court.

When engaged in statutory construction, the court's aim is "to ascertain the intent of the enacting Legislative body so that [it] may adopt the construction that best effectuates the purpose of the law." Chavez v. City of Los Angeles, 47 Cal. 4th 970, 986 (2010). The court first examines the words themselves "because the statutory language is generally the most reliable indicator of legislative intent.' [Citation] When construing the interaction of two potentially conflicting statutes, we strive to effectuate the purpose of each by harmonizing them, if possible, in a way that allows both to be given effect." Id. However, where the statutes cannot be reconciled, later and more specific enactments prevail over earlier and more general ones. Id. (citing Dep't of Fair Employment & Housing v. Mayr, 192 Cal. App. 4th 719, 725 (2011)). When a special and a general statute are in conflict, the specific provision governs, whether it was passed before or after the general statue. Id. (citing Nunes Turfgrass v. Vaughn-Jaklin Seed Co., 200 Cal. App. 3d 1518, 1539 (1988), Consumers Union of U.S., Inc. v. California Milk Producers Advisory Bd., 82 Cal. App. 3d 433, 446 (1978)).

Because the issue of statutory construction here arose in the context of a Public Records Act case, the constitutional mandate of narrow construction of limitations on the right of access must also be considered. See Cal. Const., art. 1 § 3(b) ("A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly

construed if it limits the right of access.); see also Sierra Club v. Superior Court, 57 Cal. 4th 157, 175 (2013) ("To the extent the term 'computer mapping system' is ambiguous, the constitutional canon requires us to interpret it in a way that maximizes the public's access to information 'unless the Legislature has expressly provided to the contrary.'") (quoting Office of the Inspector General v. Superior Court, 189 Cal. App. 4th 695, 709 (2010) (emphasis in original)).

While the Court of Appeal noted the general rules of statutory construction in its opinion, it failed to apply them; and, it also ignored entirely the construction mandate of the California Constitution. Engaging in its own rewrite of both statutes, the Court held that the Long-Term Care Act's provision requiring that the citations "describe with particularity the nature of the violation" (Health & Safety Code § 1423 (a)(2)) trumps the Lanterman Act's confidentiality provision, but the Lanterman Act controls over the Long-Term Care Act's requirement that "all relevant facts" be made part of the public record. Opn. at 19-22. Specifically, the Court of Appeal held that information that discloses "the patient's or resident's mental condition, medical condition, and history of mental disability or disorder, and the risk the violation presents to the patient's or resident's mental and physical condition, are not discloseable in PRA-requested citations in light of the mental health-based confidentiality provisions of the Lanterman Act." Id. at 21. This holding implicitly recognized that the statutes conflict. Far from harmonizing the statutes, the Court of Appeal stepped into the role of the Legislature and unilaterally decided which provisions of the Long-Term Care Act will be enforced and which will not. And, as noted by the dissent, it provided no analysis as to how its holding

comports with any theory of statutory construction. Dis. Opn. at 6. It does not.

By construing the statutes in this manner, the Court of Appeal "does violence to two statutory enactments—carving out of the Lanterman Act an exception allowing public citations to include an unredacted description of the nature of the violation, and severing from the Long-Term Care Act the requirement that the public record contain the aforementioned 'relevant facts.'" Dis. Opn. at 1.

Moreover, by withdrawing the protections of the Long-Term Care Act from the developmentally disabled individuals who also receive services under the Lanterman Act, the Court of Appeal's holding sets up the very type of "two-tier system of enforcement" under the Long-Term Care Act that this Court rejected in Kizer, 53 Cal. 3d at 324. There, a county that operated a long-term care facility which had been issued a citation claimed that the Tort Claim Act (Gov't Code § 818) prevented the state from imposing statutory civil penalties against it under the 1973 Act. Id. at 139. In evaluating this contention, the Court extensively reviewed the provisions of the Act and the legislative intent underlying them. Id. at 142-144. This Court recognized that several of the provisions of the Act are intended to provide information to the public, and that, considered together, "the Act's provisions are designed to implement the Legislature's declared public policy objective of 'assur[ing] that long-term health care facilities provide the highest level of care possible.'" Id. at 143 (citing Health & Safety Code § 1422(a)). In rejecting the county's contention, the Court noted that "[g]ranting immunity to public entities from the penalties would be contrary to the intent of the Legislature to provide a citation system for the imposition of prompt and effective civil sanctions against long-term health

care facilities in violation of the laws and regulations of this state." Id. (citing Health & Safety Code § 1417.1). The Court characterized the county's argument that only private nursing homes should be subject to the statutory fines, not public entities, as "a two-tiered system of enforcement of the Healthy and Safety Code provisions." Id. at 149. It further stated, "[t]his procedure contradicts the very public policy that the Legislature sought to implement with the citation and penalty provisions of the Act." Id.

The Court of Appeal's decision here does exactly what this Court rejected in Kizer. It adopts different sets of rules for public access – one governing facilities licensed to care for developmentally disabled individuals (which comprise one-half of the facilities covered under the Long-Term Care Act, Health & Safety Code § 1418), and the other governing the rest of the facilities covered by the Long-Term Care Act. But the Court of Appeal's decision is a far more serious contradiction of legislative intent than was at issue in Kizer. The decision effectively strips an entire class of individuals – mentally and developmentally disabled individuals residing in long-term health care facilities – from the protections of the Act, although the Legislature clearly intended that they also be protected. Review is necessary to protect this statewide class of individuals[7] and to ensure that the Long-Term Care Act is uniformly enforced against licensed long-term health care facilities.

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[7] Though the decision does not say so, it presumably also would apply to chronic alcoholics receiving services under the Lanterman Act who reside in licensed long-term health care facilities covered under the 1973 Act.

B. REVIEW OF THE COURT OF APPEAL'S PUBLISHED DECISION IS NECESSARY TO ENSURE UNIFORMITY WITH AUTHORITY OF THIS COURT AND ATTORNEY GENERAL OPINIONS.

The Court of Appeal's decision was, in part, constrained by its erroneous view that exceptions to the Lanterman Act's confidentiality provisions must be set forth under Section 5328 and 4515, or in successive sections to these statutes. Opn. at 15 ("Gilbert concluded that the Legislature intended, in fact 'intended precisely,' that these Lanterman Act records 'be absolutely confidential except for the specifically listed cases set forth in the several subdivisions of' sections 5328 and 4515 (and in their companion statutes).") (citing Gilbert v. Superior Court, 193 Cal. App. 3d 161, 169 (1987)). This construction of the Lanterman Act's confidentiality provision contradicts this Court's decision in Albertson v. Superior Court, 25 Cal. 4th 796 (2001). There, the issue before the Court was whether the petitioning attorney in a commitment proceeding under the Sexually Violent Predators Act ("SVPA") (Welf. & Inst. §§ 6000-6609.3) could obtain otherwise confidential information concerning a sexually violent predator to the extent that information was contained in an updated mental evaluation. Id. at 804, 807. In concluding that the attorney could, the Court looked to newly enacted amendments to the SVPA which authorized updated or replacement evaluations of persons subject to commitment proceedings and disclosure of the evaluation to the petitioning attorney. Id. at 803. It also took note of the fact that the evaluation was to include review of available treatment records and interviews of the person being evaluated. Id. at 805. Given this language, the court stated that "the current provision clarifies within the SVPA an exception to section 5328's general rule of confidentiality of treatment records, and allows the district attorney access

to treatment record information, insofar as that information is contained in an updated evaluation." Id.

The California Attorney General similarly has opined that the Child Abuse Reporting Laws (Penal Code §§ 11165-11174) are a specific exception to the general confidentiality provisions of Section 5328 to the extent the laws require disclosure of information obtained in the course of providing services. 65 Ops.Cal.Att.Gen. 345 (1982); 58 Ops.Cal.Att.Gen. 824 (1975). The AG noted in both opinions the remedial nature of the reporting statutes and described the apparent conflict between Section 5328's confidentiality law and the mandatory reporting provisions as "merely superficial" given that the over-riding concern of both statutes is the patient's well-being. Id. at 349 (citing 58 Ops.Cal.Att.Gen. at 827). The AG assumed that persons required to report under the act acquire information in the course of rendering services under the Lanterman Act, that this information is confidential under Section 5328 and that none of the exceptions under Section 5328 applied. Id. at 348. Nevertheless, the AG concluded that the reporting laws "would be seriously curtailed if the persons who observe or who have knowledge of child abuse cases remain silent." Id. at 353. Accordingly, the AG opined that "a special statute, like the reporting law, overrides the general statute, section 5328." Id. at 355.[8]

[8] The AG has reached similar conclusions with respect to other laws it found to be exceptions to the general confidentiality provisions of Section 5328. See 53 Ops.Cal.Att.Gen 20, 23 (1970) (opining that earlier enacted Penal Code Section 290 requiring a limited class of patients who have been adjudged sexual psychopaths or have committed specified crimes to register with law enforcement was a special statute and thus an exemption from Section 5328's confidentiality law); 53 Ops.Cal.Att.Gen. 151 (1970) (opining that then-Welf. & Inst. Code Section 4118, requiring the Department of Mental Health to cooperate with Bureaus of Immigration "in

Thus, while sections 5328 and 4515 of the Lanterman Act provide that "[i]nformation and records shall be disclosed only in any of the following cases," followed by several exceptions to the confidentiality rule, Albertson and the several opinions by the AG make clear that exceptions to this general rule may be found in other statutory enactments.

Moreover, these authorities support the conclusion that the Long-Term Care Act is a specific exception to the general confidentiality rule set forth in Section 5328. Like the statute at issue in Albertson, the 1973 Act expressly authorizes a "review of all available evidence," including "interviewing residents and reviewing records," and requires unannounced inspections of health care facilities. Health & Safety Code § 1420(a)(2); 1421(a). It further requires that in determining the amount of the penalty a patient's "medical condition," "mental condition" and "history of mental disability," among other things, be considered. Id., § 1428(g). Thereafter, the Act mandates that citations issued to facilities found in violation of the law be posted or made accessible to the public. Id., § 1429. While the names of patients are not to be included in the citations to protect their privacy, relevant facts considered by the department must be documented and "made part of the public record." Id., § 1424(b). Thus, to the extent the citations include information falling within Section 5328, the Act poses as much a conflict with Section 5328 as do the SVPA provisions at issue in Albertson and the child abuse reporting statutes considered by the AG in its two opinions.

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arranging for the deportation of all aliens who are confined in, admitted, or committed to any state hospital," was an exception to Section 5328).

As aptly explained in the dissent below:

> These citation provisions are the more specific provisions because the Lanterman Act's confidentiality provisions, standing alone, include the citations at issue in this case, but also broadly cover any '[i]nformation and records obtained in the course of providing services' under the Lanterman Act and other specified statutory enactments. (Welf. & Inst. Code, § 5328.) The citation provisions, on the other hand, deal specifically with citations and precisely mandate the contents of these citations.

Dis. Opn. at 9. Thus, as the more specific statute governing the exact administrative record at issue here, the Long-Term Care Act's posting and public access mandates control over the Lanterman Act's general confidentiality provisions.

As both the dissent and trial court recognized, this reading of the statutes effectuates the purpose of both acts – to promote and protect the health and safety of mental health patients. Dis. Opn. at 10; Order at 9.

Because the Court of Appeal's structural error on fundamental principles of statutory construction, if left unchecked, will harm one of the state's most vulnerable populations, as well as determine the duties of DPH, regional centers and all licensed long-term care facilities subject to the 1973 Act throughout the state, review is necessary.

C. THE COURT OF APPEAL'S PUBLISHED DECISION CREATES AN UNWORKABLE, GOVERNMENTAL ADMINISTRATIVE MORASS.

By holding that certain information required to be contained in the citations must be disclosed while other information must be withheld "in PRA-requested citations," the Court of Appeal's decision sets up a statewide compliance system that is nonsensical and unworkable – creating problems as agencies and facilities struggle to understand and comply with the Court's

mandate in the multitude of situations the Opinion will be applied. Opn. at 6, 21.

First, confining the non-disclosure obligations to PRA-requested citations, as opposed to those required to be posted at the facility at "[a]n area accessible and visible to members of the public" (Health & Safety Code § 1429 (a)(1)(A)), or those required to be made available under provisions of the Long-Term Care Act for inspection by "any member of the public who so requests" (id., § 1429 (b)), makes no sense. Facilities would have no basis to distinguish between a request made under Section 1429(b), for example, and a request under the Public Records Act. Under the Public Records Act, requests do not need to be in writing; indeed, they need only "reasonably describe an identifiable record." Gov't Code § 6253(b); Los Angeles Times v. Alameda Corridor Transp. Authority, 88 Cal. App. 4th 1381 (2001). The government's obligation to comply with a request for access to public records may be triggered merely by a citizen's over-the-counter request to see a document in the hands of the government. Thus, there is no basis for facilities to distinguish between PRA-requested citations that it must redact and others it is obligated to make public under the 1973 Act.

Nor does it make sense to have the statutory vehicle under which access is sought determine the facility's disclosure obligations. Because the citations must be posted in an area visible to any member of the public, once a citation is posted pursuant to Section 1429(a)(2), it is public. No private right of action for invasion of privacy, for example, could thereafter be stated for the republication of those facts. See Gates v. Discovery Communications, Inc., 34 Cal. 4th 679 (2004) (rejecting publication of private facts claim where published facts came from official records of

criminal proceedings). Thus, any intended protections afforded to Lanterman Act patients through the obligation to redact PRA-requested citations are completely lost once the citation is posted.

Second, the Court of Appeal's decision injects uncertainly into a facility's disclosure obligation by substituting a clear statutory requirement that citations be publicly posted with names redacted, other than investigating personnel (Health & Safety Code §§ 1423(a)(2);1439), for one requiring that various categories of information be redacted. What information will actually be redacted from the citations based on these categories necessarily will be decided on a case-by-case basis and left to the complete discretion of the disclosing entity. This is all the more concerning given that the categories of information to be redacted are readily susceptible to broad interpretation. For example, could Sonoma Developmental Center redact the fact that 11 of 27 patients in a single unit received significant thermal burn injuries consistent with being shot with a Taser gun under a claim that this information pertains to the "physical" condition of a patient. 5 PE 1388-1391; 1378:25-27.[9] Similarly, could DPH redact information necessary for the public to understand its classification of a violation by broadly reading the requirement that it redact "the risk the violation presents to that mental and physical condition." Opn. at 21. The entire classification system turns on the degree of harm presented to the

[9] Because many of the citations involve crimes and abuse at the hands of caregivers or other residents, as opposed to a lack of adequate care, such a reading of the decision raises significant concerns. This is especially so where the redaction decisions are being made by entities whose own conduct is being questioned and who have strong financial incentives to redact information that arguably falls within the Court of Appeal's broad categories.

patient by the violation. Health & Safety Code § 1424. If read in this manner, the public will be unable to oversee whether DPH is properly classifying violations, which trigger significant obligations on the part of the licensee depending on the severity and frequency of the violations, including potential revocation of its license.

Third, by holding that some information in the citations is protected under the Lanterman Act's confidentiality provision, the decision introduces the specter of civil liability for wrongful disclosure of confidential information for complying with the Long-Term Care Act. Welf. & Inst. Code § 5330 (b) ("Any person may bring an action against an individual who has negligently released confidential information or records concerning him or her in violation of this chapter…"). By injecting the potential for civil liability into the public posting and access mandates of the Long-Term Care Act, the decision ensures that long-term care facilities, and the state and counties charged with overseeing them, will aggressively redact the citations or risk hefty civil penalties for guessing wrong. Surely, this was not what the Legislature intended when it enacted a comprehensive statutory scheme requiring, among other things, the public reporting of citations to encourage facility compliance with laws and regulations relating to patient care.

D. REVIEW IS NECESSARY TO PREVENT SIGNIFICANT DAMAGE TO THE CONSUMER INFORMATION SERVICE SYSTEM ESTABLISHED IN 1984 UNDER THE LONG-TERM CARE ACT.

Seemingly as an after-thought, the Court of Appeal in a footnote at the conclusion of its decision decides that the Long-Term Care Act's consumer information services system also must conform to its decision. Opn. at 24, n. 12. The Legislature required the implementation of this

system "to provide updated and accurate information to the general public and consumers regarding long-term care facilities' in their communities." Health & Safety Code § 1422.5 (a). It requires disclosure of a facility's history of citations and complaints for the last two survey cycles, information regarding substantiated complaints, information about citations, including the status of each, and the facilities plan of correction. Id., § 1422.5 (a)(2), (3), (4). Information is required to be made accessible through a statewide toll-free telephone number and the Internet. Id., § 1422.5(a)(1). During the implementation phase, the statute provided temporary disclosure methods to ensure disclosure of information about substantiated complaints, state citations assessed and the action taken against the facility. Id., § 1422.5(d)(1)(A), (B) & (C). The statute requiring the consumer information service system has been in effect since 1984.

Now, the Court of Appeal's decision requires DPH to conform this statutorily-mandated information system to its decision. Presumably, this means that the same categories of information that must be redacted from the citations must not be made available through the consumer services information system. What this means in practice is uncertain. This issue was never raised by the parties below and the record is silent on the matter.

To be sure, however, this requirement injects uncertainty into a statutorily-mandated, administrative process adopted specifically to provide information to the public about a facility's compliance history. By introducing Lanterman Act protections into the consumer information services system, DPH undoubtedly will err on the side of withholding information when confronted with the risk of civil liability for wrongful disclosure of confidential information under the Lanterman Act. Welf. & Inst. Code § 5330. It simply could not have been the Legislature's intent in

enacting Section 1422.5 to saddle DPH with the prospect of civil sanctions for carrying out a mandatory duty under the law.

This aspect of the Court of Appeal's decision also imposes new, burdensome and unnecessary, administrative responsibilities that did not previously exist. And, because the decision is apparently unbounded, it could just as readily apply to other existing information systems or new ones adopted in the future. The uncertainties raised by the decision to the present and future administrative duties of DPH, undertaken for the benefit of those living in long-term care facilities, their loved ones and the public, warrant review by this Court.

V. CONCLUSION

Review by this Court is necessary to preserve important protections afforded extremely vulnerable populations under present laws and to ensure uniformity of enforcement of these laws. Review is also necessary because the Court of Appeal's decision sets up statewide administrative obligations that are unnecessary, uncertain and that ultimately will lead to less information being released to the public about facility compliance with laws designed to protect those residing in long-term health care facilities. Absent review, the enforcement system over long-term care facilities could readily revert to the system shrouded in secrecy that the Legislature sought to correct in 1973 through enactment of the Long-Term Care Act.

Dated: November 18, 2013

DAVIS WRIGHT TREMAINE LLP

By:

Duffy Carolan

Attorneys for Real Party In Interest The Center for Investigative Reporting

COMPLIANCE CERTIFICATE

I certify that pursuant to Rules of Court 8.204(c) and 8.486(a)(6), the attached Petition for Review is proportionately spaced, has a typeface of 13 points, and contains 8,300 words.

Dated: November 18, 2013.

By:
Duffy Carolan

CERTIFIED FOR PUBLICATION

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

STATE DEPARTMENT OF PUBLIC HEALTH, Petitioner, v. THE SUPERIOR COURT OF SACRAMENTO COUNTY, Respondent; CENTER FOR INVESTIGATIVE REPORTING, Real Party in Interest.	C072325 (Super. Ct. No. 34-2012-80001044) ORDER MODIFYING OPINION [CHANGE IN JUDGMENT]

FILED
OCT - 9 2013
Court of Appeal, Third Appellate District
Deena C. Fawcett, Clerk
BY__________Deputy

THE COURT:

It is ordered that the Disposition of the published majority opinion filed herein on September 18, 2013, be modified as follows:

1. Delete the third sentence (and its following citation) of the Disposition, which reads "Each party shall pay its own costs in this writ review proceeding. (Cal. Rules of Court, rule 8.493(a)(1)(B); Gov. Code, § 6259, subd. (c).)"

2. At the end of the last sentence of the Disposition, which begins "To the extent the trial court" and ends with "court costs incurred in the trial court." insert the following text ", and in this court." so that the Disposition now reads:

DISPOSITION

Having complied with the procedural requirements for issuance of a peremptory writ in the first instance, we are authorized to issue the peremptory writ forthwith. (See *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171.) Let a peremptory writ of mandate issue directing respondent Superior Court to vacate its judgment of October 22, 2012, and its ruling under submission of September 13, 2012, and to enter a new judgment (1) that directs Public Health to produce to News Center the requested citations in accordance with the standards set forth in this opinion, *ante*, at pages 19 to 22 (pt. III.D. of the Discussion), and (2) that grants declaratory relief to News Center to this same extent (on News Center's parallel complaint for declaratory relief). To the extent the trial court determines that News Center prevailed in this matter, News Center is entitled to recover, upon appropriate application, reasonable attorney fees and court costs incurred in the trial court, and in this court. (Gov. Code, § 6259, subd. (d).)[14]

This modification represents a change in the judgment.

BY THE COURT:

HULL, Acting P. J.

BUTZ, J.

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[14] In this writ review proceeding, we have resolved the specific issue presented regarding the potential conflict between the Lanterman Act's confidentiality provisions and the Long-Term Care Act's public accessibility provisions in the context of the PRA request here. Public Health also asks us, more generally, whether it is obligated to produce other information and documents, and whether it is immune from sanctions for wrongful disclosures. To the extent these two issues are not covered by our resolution here, we decline to address them at this point. (See *Filarsky v. Superior Court* (2002) 28 Cal.4th 419, 432, 434-435 [public agency may not initiate declaratory relief action to determine its duties under the PRA].)

IN THE

Court of Appeal of the State of California

IN AND FOR THE

THIRD APPELLATE DISTRICT

MAILING LIST

Re: State Department of Public Health v. The Superior Court of Sacramento County
C072325
Sacramento County
No. 34201280001044

Copies of this document have been sent to the individuals checked below:

✓ Grant Lien
Office of the State Attorney General
P.O. Box 944255
1300 I Street, Suite 125
Sacramento, CA 95814

✓ Duffy Carolan
Davis Wright Tremaine
505 Montgomery Street, Suite 800
San Francisco, CA 94111-6533

✓ Honorable Timothy M. Frawley
Judge of the
Sacramento County Superior Court
720 Ninth Street
Sacramento, CA 95814

CERTIFIED FOR PUBLICATION

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

STATE DEPARTMENT OF PUBLIC HEALTH, Petitioner, v. THE SUPERIOR COURT OF SACRAMENTO COUNTY, Respondent; CENTER FOR INVESTIGATIVE REPORTING, Real Party in Interest.	C072325 (Super. Ct. No. 34-2012-80001044) FILED SEP 1 8 2013 Court of Appeal, Third Appellate District Deena C. Fawcett, Clerk BY_______________Deputy

ORIGINAL PROCEEDING; petition for extraordinary writ of mandate. Timothy M. Frawley, Judge. Peremptory writ issued.

Kamala D. Harris, Attorney General, Julie Weng-Gutierrez, Assistant Attorney General, Niromi W. Pfeiffer and Grant Lien, Deputy Attorneys General, for Petitioner.

No appearance for Respondent.

Davis Wright Tremaine, Duffy Carolan and Jeff Glasser for Real Party in Interest.

(SEE DISSENTING OPINION)

This is an action under the California Public Records Act (PRA) (Gov. Code, § 6250 et seq.). Pursuant to the PRA, an investigative news organization requested citations for patient care violations that the State Department of Public Health (Public Health) issued to state facilities housing mentally ill and developmentally disabled patients. These citations were issued under California's Long-Term Care, Health, Safety, and Security Act of 1973 (hereinafter, Long-Term Care Act) (Health & Saf. Code, § 1417 et seq.).

Long-Term Care Act citations are publicly accessible in certain contexts, including through a PRA request. However, another statutory scheme, the Lanterman-Petris-Short Act (Welf. & Inst. Code, § 5000 et seq.) and companion statutes in the Lanterman Developmental Disabilities Services Act (*id.*, § 4500 et seq.), renders mental health records, and information obtained in the course of providing such services, confidential (*id.*, §§ 5328, 5328.15, 4514).[1]

Pursuant to the Lanterman Act, Public Health redacted from the citations it provided the news organization essentially all the facts concerning the nature of the violations.

In this writ review proceeding (Gov. Code, § 6259, subd. (c)), we harmonize the Long-Term Care Act's public accessibility provisions with the Lanterman Act's confidentiality provisions in the context of this PRA request. We conclude, among other things, that Public Health must not redact from the citations provided under the PRA the particular description of what the nature of the violation was, a description required by the Long-Term Care Act. Consequently, we issue a peremptory writ of mandate along these lines.

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[1] We will refer to this statutory scheme—the Lanterman-Petris-Short Act and the Lanterman Developmental Disabilities Services Act—collectively as the Lanterman Act.

FACTUAL AND PROCEDURAL BACKGROUND

In May 2011, the Center for Investigative Reporting (News Center), an investigative news organization, requested under the PRA (Gov. Code, § 6250 et seq.) copies of citations for violations of patient care standards that Public Health issued to seven of the state's residential facilities for the mentally ill and the developmentally disabled (occasionally hereinafter, state facilities; these facilities are operated by the State Department of Developmental Services, not a party herein).[2] News Center sought citations issued from January 1, 2002, to the present.

Public Health responded to News Center's PRA request by stating that Public Health was required to maintain citations for only four years, and that any citations produced would be redacted pursuant to the confidentiality provisions set forth in the Lanterman Act, applying to the mentally ill and the developmentally disabled.

Public Health produced 55 extensively redacted citations for the years 2007 to 2011. Public Health removed essentially all factual information about the nature of the violation from the citations, so that they stated generically along the following lines: "The facility failed to keep Client 1 free from harm"; "The facility . . . failed to ensure clients' rights to be free from the harm of abuse"; "The facility . . . failed to treat clients with dignity and respect"; or simply, "The facility failed to: [remainder redacted]."

News Center filed a complaint for declaratory relief and petitioned the trial court for a writ of mandate to obtain the PRA-requested citations in unredacted or minimally redacted form. News Center relied principally on the Long-Term Care Act (Health & Saf. Code, § 1417 et seq.), the statutory scheme under which Public Health issued the

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[2] The term "developmental disability" includes "mental retardation, cerebral palsy, epilepsy, and autism" and disabling conditions "closely related to mental retardation"; the term does not include "handicapping conditions that are solely physical in nature." (Welf. & Inst. Code, § 4512, subd. (a).)

citations. The Long-Term Care Act provides that its citations (for found violations) are publicly available (*id.*, § 1429; see *id.*, §§ 1423, 1424), and that its writings are open to public inspection pursuant to the PRA, except for the names of individuals other than certain investigating officers (*id.*, § 1439).

In ruling on News Center's complaint and writ petition, the trial court concluded that (1) "[w]here mental health records are involved [(i.e., the records at issue here)], there is an irreconcilable conflict between the Lanterman Act's confidentiality provisions and the Long-Term Care Act's accessibility provisions"; (2) "[t]he statutes cannot be harmonized by disclosing the citation denuded of all the underlying factual information giving rise to the citation"; and (3) "the Legislature intended the accessibility provisions of the Long-Term Care Act to prevail as a special exception to the Lanterman Act's general rule of confidentiality." Consequently, the trial court issued a writ of mandate (and corresponding declaratory relief) directing Public Health to produce the citations requested by News Center "without redaction, except as to the names of individuals other than investigating officers . . . ."[3]

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[3] The trial court also stated that Public Health could not rely on "its internal retention policy" (i.e., Public Health's policy that it was required to maintain citations for only four years), and concluded that if Public Health still has responsive documents, it is obligated to produce them. In the context of our resolution of this case, we agree.

Public Health filed a petition for extraordinary writ of mandate with us, seeking review of the trial court's decision. (Gov. Code, § 6259, subd. (c).)[4] We issued an alternative writ and stayed further proceedings.[5]

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[4] In a one-paragraph passage in its writ review petition, Public Health contends the trial court's writ of mandate also overlooked the privacy protections set forth in the Information Practices Act of 1977 (Civ. Code, § 1798 et seq.), which prohibits state agencies from releasing an individual's personal identifying information unless authorized to do so—for example, name, home address, home phone number, social security number, or medical history or financial matters. (Civ. Code, §§ 1798.3, subd. (a), 1798.24.) The trial court's ruling and writ order redacted names, and contemplated redacting any personal identifying information that could be akin to "naming" someone (except, as the relevant statutes provide, the names of certain investigators). We intend our resolution of this case to similarly foreclose the release of personal identifying information.

[5] News Center claims that we lack jurisdiction to consider Public Health's writ review petition, because Public Health filed its petition late. (Gov. Code, § 6259, subd. (c); *People v. Superior Court* (*Brent*) (1992) 2 Cal.App.4th 675, 683 [where a statute sets forth a specific time limit within which a writ petition must be filed, the failure to do so has been held jurisdictional].) We disagree. Under the PRA review procedure, Public Health had 25 days from the date the court clerk served notice of the trial court's ruling (20 days plus five days for mailing) either to file with us its petition for extraordinary writ (seeking review), or to request a filing extension from the trial court of up to 20 more days. (Gov. Code, § 6259, subd. (c); see *Cornell University Medical College v. Superior Court* (1974) 38 Cal.App.3d 311, 314 [it is generally implied in such a statute that an extension must be requested before the statutory filing deadline expires].) The court clerk stated that it mailed the trial court's ruling on September 13, 2012, but the trial court's postage meter disclosed the ruling was mailed September 17, 2012. Public Health's first act regarding its writ review petition was to seek in the trial court on October 10, 2012, an extension of time to file the petition (and the trial court granted Public Health a 20-day extension). This October 10 date is *27* days from September 13, but only *23* days from September 17. Recognizing the import of which mailing date was the correct one given the *25*-day deadline to act, the parties letter-briefed the trial court on this issue, and the trial court, as authorized by Code of Civil Procedure section 1013a, subdivision (4), impliedly determined that the September 17 date was the correct one. Public Health then filed its petition for extraordinary writ of mandate (seeking review) with us on October 26, 2012, which is 39 days from September 17.

DISCUSSION

I. Issue and Standard of Review

New Center's PRA request for the Public Health citations for the state facilities implicates three statutes: the PRA (Gov. Code, § 6250 et seq.); the Long-Term Care Act (Health & Saf. Code, § 1417 et seq.); and the Lanterman Act (Welf. & Inst. Code, §§ 5000 et seq., 4500 et seq.).[6]

The issue is, in the context of a PRA request for citations issued by Public Health to state facilities housing the mentally ill and the developmentally disabled: Can the public accessibility provisions for citations issued under the Long-Term Care Act be reconciled with the confidentiality provisions of the Lanterman Act, and, if so, how?

The PRA provides for the inspection of public records maintained by state and local government agencies to fulfill the "fundamental and necessary right of every person in this state" to have access to information concerning the conduct of the people's business. (Gov. Code, § 6250.) The PRA's general policy is to favor disclosure; a claim of nondisclosure must be found in a specific exemption enumerated in that act. (*Cook v. Craig* (1976) 55 Cal.App.3d 773, 781; Gov. Code, § 6253.) The PRA exemption at issue here masks "[r]ecords, the disclosure of which is exempted or prohibited pursuant to . . . state law . . . [the state law here being the Lanterman Act confidentiality provisions]." (Gov. Code, § 6254, subd. (k).) The Long-Term Care Act, however, makes its citations publicly accessible via statutory provisions on posting, requesting, and the PRA. (See Health & Saf. Code, §§ 1423, 1424, 1429, 1439.)

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[6] Because the statutes we discuss are found in various codes, for simplicity, we will refer to the statutes *in discussion* pursuant to their act rather than their code—for example, section 6254 of the PRA (i.e., the Government Code); section 1417 of the Long-Term Care Act (i.e., the Health and Safety Code); and section 5328 of the Lanterman Act (i.e., the Welfare and Institutions Code). We will, however, *cite* to the acts by their respective code attributions.

As for any reconciliation between the Long-Term Care Act's public accessibility provisions and the Lanterman Act's confidentiality provisions, "[t]he issue presented is essentially one of statutory construction. When engaged in statutory construction, our aim is 'to ascertain the intent of the enacting legislative body so that we may adopt the construction that best effectuates the purpose of the law.' [Citations.] 'We first examine the words themselves because the statutory language is generally the most reliable indicator of legislative intent.' [Citation.] When construing the interaction of two potentially conflicting statutes, we strive to effectuate the purpose of each by harmonizing them, if possible, in a way that allows both to be given effect." (*Chavez v. City of Los Angeles* (2010) 47 Cal.4th 970, 986 (*Chavez*).)

We turn now to the statutory purposes and relevant language of the Long-Term Care Act and the Lanterman Act.

II. The Statutory Purposes and Relevant Language of the Long-Term Care Act and the Lanterman Act

A. The Long-Term Care Act

The Long-Term Care Act (Health & Saf. Code, § 1417 et seq.), which applies to the state facilities for the mentally ill and the developmentally disabled at issue here, also applies to the much more populous skilled nursing facilities and convalescent hospitals in the state (and essentially to all long-term health care facilities in the state). (See Health & Saf. Code, §§ 1418, 1250.)

The Long-Term Care Act establishes an inspection, citation, reporting, and civil (monetary) penalty system that is designed to create a less cumbersome, less draconian, and more preventative enforcement method than the system of suspending and revoking health facility licenses. (See Health & Saf. Code, div. 2, chs. 2, 2.4, 3; Health & Saf. Code, § 1417.1; *California Assn. of Health Facilities v. Department of Health Services* (1997) 16 Cal.4th 284, 294-295 (*California Assn.*); *Kizer v. County of San Mateo* (1991)

53 Cal.3d 139, 150 (*Kizer*).) This act is designed to "ensure that long-term health care facilities provide the highest level of care possible," by ensuring that patient care standards are met. (Health & Saf. Code, §§ 1422, subd. (a), 1417.1.) The Long-Term Care Act applies to some "of the most vulnerable segments of our population"—for example, " 'nursing care patients . . . who are already disabled by age and infirmity' " and, as here, the mentally ill and the developmentally disabled. (*California Assn.*, *supra*, 19 Cal.4th at p. 295; *Kizer*, *supra*, 53 Cal.3d at p. 150.) As a remedial statute, the Long-Term Care Act's citation provisions are to be liberally construed on behalf of the class of persons they are designed to protect. (*California Assn.*, *supra*, at p. 295; Health & Saf. Code, § 1424.)

Public Health (formerly the Department of Health Services) administers and enforces the Long-Term Care Act. (*California Assn.*, *supra*, 16 Cal.4th at p. 288.) The Long-Term Care Act contains provisions that make citations publicly available, except for the names of individuals other than specified investigating officers. (See Health & Saf. Code, §§ 1423, subd. (a)(2), 1424, 1429, 1439.) Public availability of the citations is accomplished primarily through prominent posting at the facility (for the more serious class A and class AA citations), public request, and PRA request. (Health & Saf. Code, §§ 1429, 1439.) In this way, the Long-Term Care Act affords the public an oversight role concerning long-term health care facilities. We note, however, that the media, such as News Center, has no greater right of access to public records pursuant to a PRA request than the general public. (*Dixon v. Superior Court* (2009) 170 Cal.App.4th 1271, 1279.)

The two most pertinent provisions of the Long-Term Care Act covering the nature of citation information available to the public are sections 1423 and 1424. (Health & Saf. Code, §§ 1423, 1424.)

Health and Safety Code section 1423, subdivision (a)(2) specifies, as relevant, that "[e]ach citation shall be in writing and shall describe with particularity the nature of the

violation, including a reference to the statutory provision, standard, rule or regulation alleged to have been violated, the particular place or area of the facility in which it occurred, as well as the amount of any proposed assessment of a civil penalty. The name of any patient jeopardized by the alleged violation shall not be specified in the citation in order to protect the privacy of the patient. . . . The citation shall fix the earliest feasible time for the elimination of the condition constituting the alleged violation, when appropriate."

And Health and Safety Code section 1424, subdivisions (a) and (b) add, as relevant:

"Citations issued pursuant to [the Long-Term Care Act] shall be classified according to the nature of the violation and shall indicate the classification on the face thereof [(i.e., class 'B', class 'A', and class 'AA' [in increasing severity])].

"(a) In determining the amount of the civil penalty, all relevant facts shall be considered, including, but not limited to, the following:

"(1) The probability and severity of the risk that the violation presents to the patient's or resident's mental and physical condition.

"(2) The patient's or resident's medical condition.

"(3) The patient's or resident's mental condition and his or her history of mental disability or disorder.

"(4) The good faith efforts exercised by the facility to prevent the violation from occurring.

"(5) The licensee's history of compliance with regulations.

"(b) Relevant facts considered by [Public Health] in determining the amount of the civil penalty shall be documented by [Public Health] on an attachment to the citation and available in the public record. . . ."

News Center made its request for the Public Health citations pursuant to section 1439 of the Long-Term Care Act, the act's PRA provision. (Health & Saf. Code, § 1439.)

Section 1439 of the Long-Term Care Act states that "[a]ny writing received, owned, used, or retained by [Public Health] in connection with the [Long-Term Care Act] is a public record within the meaning of [the PRA], and, as such, is open to public inspection pursuant to the [PRA] provision[s] of Sections 6253, 6256, 6257, and 6258 of the Government Code. However, the names of any persons contained in such records, except the names of duly authorized officers, employees, or agents of the state department conducting an investigation or inspection in response to a complaint filed pursuant to [the Long-Term Care Act], shall not be open to public inspection and copies of such records provided for public inspection shall have such names deleted." (Health & Saf. Code, § 1439.) Government Code section 6253, subdivision (b) of the PRA states, as relevant, that public records are to be made promptly available, "[e]xcept with respect to public records exempt from disclosure by express provisions of law . . . ." Government Code sections 6256 and 6257 have been repealed. (Stats. 1998, ch. 620, §§ 7, 10, p. 4121.) Government Code section 6258 governs the proceedings to enforce the right to the record.

Section 6254 of the PRA specifies the particular types of records exempt from PRA disclosure. The PRA disclosure exemption at issue here, as noted, is for "[r]ecords, the disclosure of which is exempted or prohibited pursuant to . . . state law, including, but not limited to, provisions of the Evidence Code relating to privilege." (Gov. Code, § 6254, subd. (k).)

That leads us to the state law here on exempting or prohibiting disclosure—sections 5328 and 4514 of the Lanterman Act. (Welf. & Inst. Code, §§ 5328, 4514.)

B. The Lanterman Act

The Lanterman Act (see Welf. & Inst. Code, §§ 4500 et seq., 5000 et seq.) is a comprehensive state law directed at the evaluation, supervision, protection, care and treatment of persons who are mentally ill, developmentally disabled or impaired by chronic alcoholism. (Welf. & Inst. Code, § 5001.)[7]

The Lanterman Act states that all information and records obtained in the course of providing services under the Lanterman Act (and other specified mental health programs) shall be confidential, subject to defined statutory exceptions. (Welf. & Inst. Code, §§ 4514, 5328.) The legislative purpose for confidentiality is to encourage persons with mental or severe alcohol problems or developmental disabilities to seek, undergo and accept treatment, and to be candid and open in such treatment, knowing such treatment will remain confidential and any embarrassment, undesired publicity or stigma will be avoided. (*In re S. W.* (1978) 79 Cal.App.3d 719, 721; *County of Riverside v. Superior Court* (1974) 42 Cal.App.3d 478, 481 (*County of Riverside*); see also *Tarasoff v. Regents of University of California* (1976) 17 Cal.3d 425, 440 (*Tarasoff*).)

Section 5328 of the Lanterman Act sets forth the following general rule of confidentiality applying to the mentally ill: "All information and records obtained in the

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[7] As originally enacted, the Lanterman-Petris-Short Act, including its confidentiality provisions, applied to both the mentally ill and the developmentally disabled. (Welf. & Inst. Code, § 5328, added by Stats. 1972, ch. 1058, § 2, pp. 1960-1961; *Gilbert v. Superior Court* (1987) 193 Cal.App.3d 161, 168-169 (*Gilbert*).) For our purposes, a later nonsubstantive statutory division kept the mentally ill (and chronically alcoholic) in the Lanterman-Petris-Short Act, and placed the developmentally disabled in the parallel companion statutory scheme of the Lanterman Developmental Disabilities Services Act; the confidentiality provisions of both acts are quite similar. (See, e.g., Welf. & Inst. Code, §§ 4500, 4514, 5328; *Gilbert*, *supra*, at pp. 168-169.)

course of providing services under Division 4 (commencing with Section 4000 [mental health]), Division 4.1 (commencing with Section 4400 [developmental services]), Division 4.5 (commencing with Section 4500 [the Lanterman Developmental Disabilities Services Act]), Division 5 (commencing with Section 5000 [the Lanterman-Petris-Short Act]), Division 6 (commencing with Section 6000 [admissions and judicial commitments]), or Division 7 (commencing with Section 7100 [mental institutions]), to either voluntary or involuntary recipients of services shall be confidential. . . . Information and records shall be disclosed only in any of the following cases." (Welf. & Inst. Code, § 5328.) Presently, section 5328 has 25 exemptions to its general rule of confidentiality, covering service provider communications, patient consent, insurance claims, research purposes, courts, law enforcement, senate and assembly rules committees, patient's attorney, coroner, licensing and investigative agency personnel, medical boards, and patient safety. (Welf. & Inst. Code, § 5328, subds. (a)-(y).) In addition, additional exemptions are set out in successive code sections to section 5328.[8]

Section 4514 of the Lanterman Act—as noted, enacted as a nonsubstantive amendment intended to move the confidentiality laws concerning the developmentally disabled from the Lanterman-Petris-Short Act to the Lanterman Developmental Disabilities Services Act—sets forth now the general confidentiality rule for the developmentally disabled, and provides as pertinent: "All information and records obtained in the course of providing intake, assessment, and services under Division 4.1 (commencing with Section 4400), Division 4.5 (commencing with Section 4500),

[8] See Welfare and Institutions Code sections 5328.01 (particular law enforcement investigation), 5328.02 (correctional authorities), 5328.04 (social workers/probation officers), 5328.05 (elder abuse), 5328.06 (protection and advocacy agency), 5328.1 (patient's family), 5328.2 (Justice Department), 5328.3 (patient disappearance), 5328.4 (crimes by or against patients), 5328.5 (elder abuse), 5328.8 (patient death), 5328.9 (employer), and 5328.15 (authorized licensing personnel).

Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100) to persons with developmental disabilities shall be confidential. . . . Information and records shall be disclosed only in any of the following cases." (Welf. & Inst. Code, § 4514; see *Gilbert, supra*, 193 Cal.App.3d at pp. 168-169.) Section 4514 has exemptions to its general confidentiality rule that parallel those for section 5328. (Welf. & Inst. Code, §§ 4514, subds. (a)-(v), 4514.3, 4514.5.)

"Services" is defined broadly in the Lanterman Act, as including, but not limited to, "diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, physical, occupational, and speech therapy, training, education, . . . employment, mental health services, recreation, counseling . . . , protective and other social and sociolegal services, information and referral services, follow-along services, adaptive equipment and supplies, advocacy assistance, . . . assessment, assistance in locating a home, child care, behavior training and behavior modification programs, camping, community integration services, community support, daily living skills training, emergency and crisis intervention, facilitating circles of support, habilitation . . . ," and so on and so forth, covering essentially anything "directed toward the alleviation of a developmental disability [or a mental illness] or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability [or a mental illness] . . . ." (Welf. & Inst. Code, § 4512, subd. (b).)

We now turn to the application of this statutory language. Let reconciliation begin, if it is possible.

III. Applying and Harmonizing the Lanterman Act's Confidentiality Provisions and the Long-Term Care Act's Public Accessibility Provisions

A. Application of the Lanterman Act

We must first consider Public Health's threshold argument that "[t]he Long-Term Care Act authorizes [PRA] requests for citations issued to long-term care facilities,

subject to the exceptions set forth in the [PRA]. (Health & Saf. Code, § 1439.) The [PRA] does not require the disclosure of records whose disclosure is exempted or prohibited under . . . state law. (Gov. Code, § 6254, subd. (k).) Under the Lanterman Act, all information and records obtained in the course of providing services to mentally ill and developmentally disabled patients shall remain confidential. (Welf. & Inst. Code, [§§ 5328, 4514].)" "Hence, any request for [Long-Term Care Act] citations should not result in the production of information or documents privileged by the Lanterman Act." "The [Long-Term Care Act] and the Lanterman Act are not in conflict, and Public Health abided by both statutes when it produced heavily redacted citations [i.e., devoid of all facts regarding the nature of the violation] to [News Center]."

The problem with this argument is that it uses the Long-Term Care Act to defeat the Long-Term Care Act with respect to the mentally ill and the developmentally disabled. Public Health's argument uses one of the Long-Term Care Act's public accessibility provisions—PRA requests (Health & Saf. Code, § 1439)—to foreclose, almost completely, public accessibility to Long-Term Care Act citations issued to state facilities housing the mentally ill and the developmentally disabled. In making this argument Public Health notes that, since nearly everything that happens to a patient in one of the state facilities at issue happens "in the course of providing services" to that patient, the Lanterman Act's general confidentiality rule conceivably applies to nearly all patient-related mental health records. Through this argument, Public Health completes a hat trick of public oversight denial, by effectively nullifying the public accessibility of Long-Term Care Act citations via facility posting, public request, and PRA request; and Public Health does so in the context of one of the most vulnerable populations protected by the Long-Term Care Act. The Legislature did not exempt state facilities housing the mentally ill and the developmentally disabled from the Long-Term Care Act's public

oversight protection through its public accessibility provisions. But Public Health's argument does; so we reject it.[9]

As noted, "[w]hen construing the interaction of two potentially conflicting statutes, we strive to effectuate the purpose of each by harmonizing them, if possible, in a way that allows both to be given effect." (*Chavez*, *supra*, 47 Cal.4th at p. 986.)

On the one hand, the case for confidentiality under the Lanterman Act is indeed strong.

The Lanterman Act's confidentiality provisions are quite broad, given the statutory definition of "services," and use mandatory language—"[a]ll information and records obtained in the course of providing services . . . shall be confidential" and "shall be disclosed only in any of the following [statutorily identified] cases." (Welf. & Inst. Code, §§ 5328, 4514, 4512, subd. (b); *Gilbert*, *supra*, 193 Cal.App.3d at p. 169.)

In light of this mandatory language, *Gilbert* concluded that the Legislature intended, in fact "intended precisely," that these Lanterman Act records "be absolutely confidential except for the specifically listed cases set forth in the several subdivisions of" sections 5328 and 4514 (and in their companion statutes). (*Gilbert*, *supra*, 193 Cal.App.3d at p. 169; Welf. & Inst. Code, §§ 5328, 4514.) *Gilbert* held, for our

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[9] As an opposing aside to this point, News Center argues that information obtained in a citation investigation is not information "obtained in the course of providing services." (Citing *Devereaux v. Latham & Watkins* (1995) 32 Cal.App.4th 1571, 1585-1586 [in an action for breach of Lanterman Act confidentiality, the court stated, "[w]here there is no showing by the person claiming confidentiality of records under [Welfare and Institutions Code] section 5328 that the records were generated in the course of receiving treatment under the statutory sections therein specified, disclosure is not governed by section 5328"]; see also *Tarasoff*, *supra*, 17 Cal.3d at p. 443 [because the psychotherapy at issue there was not provided under any of the mental health programs specified in the Lanterman Act, that act's confidentiality provisions did not apply].) We agree with the trial court that a citation for violating patient care standards still is likely to include information obtained in the course of providing services to patients.

purposes, that an owner/operator of a facility for the developmentally disabled, in an administrative license revocation proceeding, could not obtain records of three of its former patients for possible use in impeaching complaining witnesses or in mitigating any penalty. (*Gilbert*, at pp. 164-165, 169; see also *County of Riverside*, *supra*, 42 Cal.App.3d at pp. 480-481 [state chiropractic board, in license revocation proceeding, could not obtain alcoholic treatment center records involving the accused chiropractor, because the matter did not fall within any of the specific disclosure exceptions set forth in Welf. & Inst. Code, § 5328 and succeeding sections]; *People v. Gardner* (1984) 151 Cal.App.3d 134, 140 [§ 5328 prohibited patient information disclosure to probation officer preparing probation report for court, because the section (at that time) had no such confidentiality exception].)

This strict interpretation of the confidentiality provisions of sections 5328 and 4514 of the Lanterman Act (and succeeding statutes) is further buttressed by a trio of amendments to that act, including a very recent one:

(1) a 1980 enactment (Welf. & Inst. Code, § 5328.15, subd. (a)) and a 1982 enactment (Welf. & Inst. Code, § 4514, subd. (n)) authorizing disclosure of Lanterman Act confidential information and records to authorized licensing personnel of Public Health, as necessary to the performance of their duties to inspect, license, and investigate health facilities to ensure that the standards of care are being met; and setting forth measures to keep such information confidential in related criminal, civil, or administrative proceedings (Stats. 1980, ch. 695, § 1, p. 2095; Stats. 1982, ch. 1141, § 1, pp. 4111-4112);

(2) parallel amendments in 1985 to the two statutes listed in (1), broadening those sections to also include authorized legal staff and special investigators of the Department of Social Services, in connection with inspecting, licensing and investigating (Stats.

1985, ch. 994, §§ 1, 2, pp. 3190-3194, 3198-3199; see *Gilbert*, *supra*, 193 Cal.App.3d at p. 172); and

(3) amendments to Welfare and Institutions Code sections 5328.15 and 4514, adopted just last September (2012), that authorize protection and advocacy agencies—i.e., private, nonprofit corporations created by statute to protect and advocate for the rights of the mentally ill and the developmentally disabled (and other disabled persons)—to obtain otherwise confidential Lanterman Act information and records incorporated within unredacted citation reports, licensing reports, survey reports, statements of deficiency, and plans of correction (Welf. & Inst. Code, §§ 5328.15, subd. (c), 4514, subd. (v), Stats. 2012, ch. 664, §§ 3, 1, respectively; see §§ 4514.3, 5328.06, 4900 et seq., 4901, subd. (a)).

The point is—if explicit statutory permission was needed for authorized licensing personnel, legal staff, special investigators, and protection and advocacy agencies to fully obtain the otherwise confidential Lanterman Act information and records—it is clear the Legislature intends to maintain confidentiality in the Lanterman Act context. Furthermore, if nearly all of this information could have been obtained through a simple PRA request, these statutory enactments and amendments would have been unnecessary.

B. Application of the Long-Term Care Act

On the other hand, the case for public accessibility to Long-Term Care Act citations is strong as well.

Through the Long-Term Care Act, the Legislature intended to establish an inspection, citation and reporting system to ensure that long-term health care facilities comply with patient care standards. (Health & Saf. Code, § 1417.1.) An integral part of this system is public oversight—a public look behind the doors of these institutions—by making citations for violations of patient care standards publicly available through

various statutory means, including facility posting, public request, and PRA request. (*Id.*, §§ 1423, 1424, 1429, 1439.)

The Long-Term Care Act is designed to protect some of the "most vulnerable segments of our population." (*California Assn.*, *supra*, 16 Cal.4th at p. 295; *Kizer*, *supra*, 53 Cal.3d at p. 150.) The mentally ill and the developmentally disabled in the state facilities comprise some of the most vulnerable of these most vulnerable—i.e., some of those most in need of the safeguards provided by public oversight of patient care standards as envisioned in the Long-Term Care Act.

Given the strong hands played by both the Lanterman Act's confidentiality provisions and the Long-Term Care Act's public accessibility provisions, legislative intention would best be served by harmonizing them, if possible, in a way that allows both to be given effect. (See *Chavez*, *supra*, 47 Cal.4th at p. 986.)

As the trial court recognized, because the confidentiality provisions of the Lanterman Act apply to mental health programs, any conflict between those confidentiality provisions and the Long-Term Care Act's public accessibility provisions occurs in the context of mental health records (including the developmentally disabled).

C. Common Purpose of Both Acts

The mentally ill and the developmentally disabled in state facilities comprise a relatively small portion of the overall population protected by the Long-Term Care Act. Significantly, with respect to the mentally ill and the developmentally disabled in state facilities, the Lanterman Act and the Long-Term Care Act apply to the same population and seek the same purpose—to promote and protect the health and safety of mental health patients. But the two acts effectuate this common purpose from opposite directions. The Lanterman Act effectuates this purpose by ensuring the confidentiality of mental health records—this encourages persons with mental problems to seek, accept and undergo treatment, and to be open and candid in treatment. The Long-Term Care Act effectuates

this purpose, as relevant here, by making citations for violations of patient care standards publicly accessible, so the public can oversee what is happening in these facilities. This congruence of population and purpose, and this effectuation of purpose from opposite directions, creates a complementarity of method to effectuate the common purpose for this common population. In this way, these confidentiality and public accessibility provisions can be harmonized.[10]

That takes care of the theory supporting harmonization here. What does harmonization mean in practical terms, in terms of the statutory language at issue?

D. Giving Effect to Both the Lanterman Act and the Long-Term Care Act

We have seen that a citation issued under the Long-Term Care Act (1) must describe "with particularity the nature of the violation" (Health & Saf. Code, § 1423, subd. (a)(2)), and (2) must set forth certain "[r]elevant facts" (*id.*, § 1424, subd. (b)), except for the names of the persons involved in the incident (other than specified investigators and inspectors) (*id.*, § 1439).

1. Names of involved persons.

We start, then, with the easiest harmonization concerning the Long-Term Care Act's public accessibility provisions and the Lanterman Act's confidentiality provisions—any names contained in the citations, other than those of the authorized inspectors and investigators specified in section 1439 of the Long-Term Care Act, must be deleted. (Health & Saf. Code, § 1439; Welf. & Inst. Code, §§ 5328, 4514.)

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[10] Moreover, this congruence of population and purpose also distinguishes the present case from the strict view of Lanterman Act confidentiality taken in the *Gilbert* line of decisions, where the competing legal interests did not involve such congruity. (See, e.g., *Gilbert*, *supra*, 193 Cal.App.3d at pp. 164, 168-169 [confidential records of developmentally disabled patients sought by accused facility to assist its defense in license revocation proceeding]; *County of Riverside*, *supra*, 42 Cal.App.3d at p. 481 [in license revocation proceeding, chiropractic board sought confidential alcoholic treatment records of the accused chiropractor]; see Welf. & Inst. Code, §§ 5328, 4514.)

2. Nature of the violation.

Turning to the description of the nature of the violation, Health and Safety Code section 1423, subdivision (a)(2) of the Long-Term Care Act specifies that each citation issued "shall be in writing and shall describe with particularity the nature of the violation, including a reference to the statutory provision, standard, rule or regulation alleged to have been violated, the particular place or area of the facility in which it occurred, as well as the amount of any proposed assessment of a civil penalty. . . . The citation shall fix the earliest feasible time for the elimination of the condition constituting the alleged violation, when appropriate."

The redacted citations provided by Public Health did properly cite and set forth "the statutory provision, standard, rule or regulation [found] to have been violated" (Health & Saf. Code, § 1423, subd. (a)(2)), "the amount of [the] assessment of a civil penalty" (*ibid.*), and "the earliest feasible time for the elimination of the condition constituting the alleged violation" (by specifying a deadline for compliance) (*ibid.*), as well as the "classification" of the citation (in increasing severity, Class "B," Class "A," and Class "AA" as required by Health & Saf. Code, § 1424). The citations also properly listed the name and address of the facility.

The redacted citations that Public Health provided to News Center stated next to nothing, however, regarding the nature of the violation; all that was said along those lines, for example, was that the client was not kept free from harm or from abuse, or that the facility failed to comply with the designated regulation, or that the facility simply "failed to: . . ." In terms of describing the nature of the violation, the Long-Term Care Act's public accessibility provisions can be harmonized with the Lanterman Act's mental health-based confidentiality provisions, by having the citations describe with particularity, for example, *what* was the harm, *what* was the abuse, *what* was the lack of respect or dignity afforded, and *what* was the action that the facility did or failed to do. In addition, Public Health must also identify "the *particular place or area of the facility*

in which [the violation] occurred." (Health & Saf. Code, § 1423, subd. (a)(2), italics added.)

One further point on this topic deserves mention. At oral argument, News Center's counsel agreed that if a requested citation specifies facts that identify an individual whose name is not to be disclosed (i.e., specifies facts that are the functional equivalent of naming that individual), those facts may be redacted. At this stage of the proceedings, we do not know if the (heavily redacted) requested citations contain any such facts. On remand, if there is a disclosure issue in this regard, the trial court can determine that issue by reviewing the challenged citation in camera.

That covers the issue of harmonizing the disclosure of "the nature of the violation." (Health & Saf. Code, § 1423, subd. (a)(2).) We turn to the issue of the "relevant facts."

3. Relevant facts.

Section 1424, subdivision (b) of the Long-Term Care Act states that "[r]elevant facts considered by [Public Health] in determining the amount of the civil penalty shall be documented by [Public Health] on an attachment to the citation and available in the public record." (Health & Saf. Code, § 1424, subd. (b).) These relevant facts include the patient's or resident's mental condition, medical condition, and history of mental disability or disorder, and the risk the violation presents to the patient's or resident's mental and physical condition; as well as the facility's good faith efforts to prevent the violation, and the licensee's history of regulatory compliance. (*Id.*, § 1424, subd. (a)(1)-(5).)

The patient's or resident's mental, physical, and medical conditions, history of mental disability or disorder, as well as the risk the violation presents to that mental and physical condition, are not disclosable in PRA-requested citations, in light of the mental health-based confidentiality provisions of the Lanterman Act. (Health & Saf. Code,

§ 1424, subd. (a)(1)-(3); Welf. & Inst. Code, §§ 5328, 4514.) However, the Lanterman Act's confidentiality provisions do not foreclose public disclosure of the "good faith efforts exercised by the facility to prevent the violation from occurring" (Health & Saf. Code, § 1424, subd. (a)(4)), and "[t]he licensee's history of compliance with regulations" (*id.*, § 1424, subd. (a)(5)); indeed, these disclosures to the public would further the Long-Term Care Act's public oversight component.

E. Conclusion

Public Health argues that it properly harmonized the Lanterman Act's confidentiality provisions with the Long-Term Care Act's public accessibility provisions by redacting essentially all facts in the citation concerning the nature of the violation, given the Lanterman Act's confidentiality provisions.

As we saw at the outset of this part of the Discussion, *ante* (pt. III.A.), though, Public Health's position effectively writes public oversight of state facilities for the mentally ill and the developmentally disabled out of the Long-Term Care Act. The Long-Term Care Act is an integral, complementary part of the statutory protection afforded to patients and residents of long-term health care facilities, including the state facilities; indeed, the Long-Term Care Act provides the more efficient, more preventative, less draconian citation-based protective system to the system of suspending or revoking licenses. And an integral part of this integral act is the accessibility it affords the public to the citations issued under it. The Long-Term Care Act is a remedial statute, and as such, is to be liberally construed on behalf of the class of persons it is designed to protect; as we have seen, a most vulnerable class here. (See *California Assn., supra*, 16 Cal.4th at p. 295.)

That said, News Center argues that the Long-Term Care Act's public accessibility provisions trump the Lanterman Act's confidentiality provisions, and all that must be

redacted from the requested citations are the names of those involved in an incident (except investigating and inspecting officers).

News Center's position, however, effectively dismisses the strong protections of confidentiality afforded the mentally ill and the developmentally disabled under the Lanterman Act in state facilities. The Legislature has determined that these protections are necessary for the mentally ill to seek and accept treatment, and for that treatment to be effective. The Legislature, just late last year, amended the Lanterman Act's confidentiality provisions to allow protection and advocacy agencies to obtain, among other information, information within unredacted citation reports; this amendment recognized that the Legislature has long granted to mental health records a strong protection of confidentiality. (Welf. & Inst. Code, §§ 5328.15, subd. (c), 4514, subd. (v), Stats. 2012, ch. 664, §§ 3, 1, respectively.)[11] We must keep in mind that what is before

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[11] News Centers also cites to three instances where later enacted, non-Lanterman statutes were deemed to constitute exceptions to the Lanterman Act confidentiality provisions. The first instance, *Albertson v. Superior Court* (2001) 25 Cal.4th 796, involved an amendment to the Sexually Violent Predators Act (SVPA) (Welf. & Inst. Code, § 6000 et seq.), which permitted a district attorney in an SVPA proceeding to obtain otherwise confidential treatment information in an updated mental evaluation of the inmate. As Public Health notes, *Albertson* is distinguishable because the Legislature specifically considered the confidentiality provision of section 5328 of the Lanterman Act in drafting this SVPA amendment. (*Albertson, supra*, 25 Cal.4th at pp. 805-807.) The other two instances involve Attorney General opinions, both of which concluded that a mandated reporter's statutory duty to report child abuse supersedes the confidentiality provisions of the Lanterman Act, because these reporting and confidentiality laws both promote the safety of children and because the entire legislative scheme in the area of child protection, as it has developed, has been directed toward discovering more abuse cases and preventing serious harm by taking prompt remedial action. (65 Ops.Cal.Atty.Gen. 345 (1982); 58 Ops.Cal.Atty.Gen. 824 (1975).) The Attorney General opinions did not encompass statutory reconciliation, but one statute trumping the other. Furthermore, we must note the informational context presented here: a PRA request from the public for Long-Term Care Act citations.

us is a PRA request from the public for Long-Term Care Act citations involving state facilities for the mentally ill and the developmentally disabled.[12]

Because we have found that the Lanterman Act and the Long-Term Care Act can be reconciled in the manner we have set forth in part III.D. of this Discussion, *ante*, we need not consider the parties' arguments as to which statute is general or specific, and which statute is earlier or later. (See *Department of Fair Employment & Housing v. Mayr* (2011) 192 Cal.App.4th 719, 725.)[13]

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[12] We also note that the Long-Term Care Act has a consumer information service system, under which the general public may obtain the following information, among other information: a history of all citations and complaints for the last two full survey cycles pursuant to a facility profile; substantiated complaints, including the action taken and the date of the action; state citations assessed, including the procedural status of the citation and the facility's plan or correction; state actions, including license suspensions, revocations, and receiverships; and federal enforcement sanctions imposed. (Health & Saf. Code, §§ 1422.5, 1439.5, subd. (b).) Under this system, Public Health must "ensure the confidentiality of personal and identifying information of residents and employees and shall not disclose this information . . . ." (*Id.*, § 1422.5, subd. (e).) The disclosure of this information under the Long-Term Care Act's consumer information service system is, or can be made, compatible with our interpretation of the citation information publicly available in the context of the state facilities at issue.

[13] We grant News Center's November 5, 2012 request for judicial notice of certain legislative history of Senate Bill No. 1377 (2011-2012 Reg. Sess.) chapter 664, sections 3 and 1, which added subdivision (c) to Welfare and Institutions Code section 5328.15, and subdivision (v) to section 4514, respectively—concerning information available to protection and advocacy agencies as exemptions to the Lanterman Act's confidentiality provisions. (Evid. Code, §§ 452, 459.)

We also grant Public Health's October 26, 2012 request for judicial notice of certain legislative history of Senate Bill No. 1377, and two incidents involving unique circumstances akin to naming an otherwise confidential individual. (Evid. Code, §§ 452, 459.)

DISPOSITION

Having complied with the procedural requirements for issuance of a peremptory writ in the first instance, we are authorized to issue the peremptory writ forthwith. (See *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171.) Let a peremptory writ of mandate issue directing respondent Superior Court to vacate its judgment of October 22, 2012, and its ruling under submission of September 13, 2012, and to enter a new judgment (1) that directs Public Health to produce to News Center the requested citations in accordance with the standards set forth in this opinion, *ante*, at pages 19 to 22 (pt. III.D. of the Discussion), and (2) that grants declaratory relief to News Center to this same extent (on News Center's parallel complaint for declaratory relief). Each party shall pay its own costs in this writ review proceeding. (Cal. Rules of Court, rule 8.493(a)(1)(B); Gov. Code, § 6259, subd. (c).) To the extent the trial court determines that News Center prevailed in this matter, News Center is entitled to recover, upon appropriate application, reasonable attorney fees and court costs incurred in the trial court. (Gov. Code, § 6259, subd. (d).)[14] ***(CERTIFIED FOR PUBLICATION)***

BUTZ, J.

I concur:

HULL, Acting P. J.

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[14] In this writ review proceeding, we have resolved the specific issue presented regarding the potential conflict between the Lanterman Act's confidentiality provisions and the Long-Term Care Act's public accessibility provisions in the context of the PRA request here. Public Health also asks us, more generally, whether it is obligated to produce other information and documents, and whether it is immune from sanctions for wrongful disclosures. To the extent these two issues are not covered by our resolution here, we decline to address them at this point. (See *Filarsky v. Superior Court* (2002) 28 Cal.4th 419, 432, 434-435 [public agency may not initiate declaratory relief action to determine its duties under the PRA].)

I respectfully dissent. Implicitly recognizing that sections 5328 and 4514 of the Lanterman Act conflict with sections 1423, 1424, and 1439 of the Long-Term Care Act,[1] the majority "harmonizes" these provisions by holding that the Long-Term Care Act controls over the Lanterman Act on the issue of "describ[ing] with particularity the nature of the violation" (Health & Saf. Code, § 1423, subd. (a)(2)), but the Lanterman Act controls over the Long-Term Care Act on the issue of setting forth other "relevant facts," including the patient's or resident's "medical" and "mental" conditions, his or her "history of mental disability or disorder," and "the risk that the violation presents to [his or her] mental and physical condition." (Health & Saf. Code, § 1424, subds. (a), (b)(1)-(3).) Thus, under the guise of bringing harmony, the majority opinion does violence to two statutory enactments—carving out of the Lanterman Act an exception allowing public citations to include an unredacted description of the nature of the violation, and severing from the Long-Term Care Act the requirement that the public record contain the aforementioned "relevant facts." As will be explained immediately below, I believe such an approach runs contrary to established rules of statutory construction.

I

Principles of Statutory Construction

"'As in any case involving statutory interpretation, our fundamental task here is to determine the Legislature's intent so as to effectuate the law's purpose.' [Citation.] We begin by examining the statutory language because the words of a statute are generally

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1 In this dissenting opinion, the Lanterman Act refers to the combined Lanterman-Petris-Short Act (Welf. & Inst. Code, § 5000 et seq.) and Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code, § 4500 et seq.). The Long-Term Care Act refers to the Long-Term Care, Health, Safety, and Security Act (Health & Saf. Code, § 1417 et seq.).

The petitioner, Department of Public Health, is referred to as Public Health.

the most reliable indicator of legislative intent. [Citations.] We give the words of the statute their ordinary and usual meaning and view them in their statutory context. [Citation.] We harmonize the various parts of the enactment by considering them in the context of the statutory framework as a whole. [Citations.] 'If the statute's text evinces an unmistakable plain meaning, we need go no further.' [Citation.] 'Only when the statute's language is ambiguous or susceptible of more than one reasonable interpretation, may the court turn to extrinsic aids to assist in interpretation.' [Citations.]" (*In re C.H.* (2011) 53 Cal.4th 94, 100-101; *San Leandro Teachers Assn. v. Governing Bd. of San Leandro Unified School Dist.* (2009) 46 Cal.4th 822, 831.)

"'A court must, where reasonably possible, harmonize statutes, reconcile seeming inconsistencies in them, and construe them to give force and effect to all of their provisions. [Citations.] This rule applies although one of the statutes involved deals generally with a subject and another relates specifically to particular aspects of the subject.'" (*Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2012) 55 Cal.4th 783, 805, quoting *Hough v. McCarthy* (1960) 54 Cal.2d 273, 279.) However, "[i]f conflicting statutes cannot be reconciled, later enactments supersede earlier ones [citation], and more specific provisions take precedence over more general ones [citation]. Absent a compelling reason to do otherwise, we strive to construe each statute in accordance with its plain language. [Citation.]" (*Collection Bureau of San Jose v. Rumsey* (2000) 24 Cal.4th 301, 310; see also *People v. Moody* (2002) 96 Cal.App.4th 987, 993.)

II

Conflict Between the Lanterman Act and the Long-Term Care Act

Reading sections 5328 and 4514 of the Lanterman Act (confidentiality provisions) and sections 1423, 1424, and 1439 of the Long-Term Care Act (citation provisions) in accordance with the plain meaning of the words used therein, I conclude the two statutory

enactments are in conflict and no reasonable interpretation will give force and effect to all of their provisions.

First, some context. This case involves a request for citations under the Public Records Act. (Gov. Code, § 6250 et seq.) The Public Records Act "embodies a strong policy in favor of disclosure of public records (see Gov. Code, §§ 6250 & 6252, subds. (a), (b)), and any refusal to disclose public information must be based on a specific exception to that policy." (*Lorig v. Medical Board* (2000) 78 Cal.App.4th 462, 467.) One such exception applies to "[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law." (Gov. Code, § 6254, subd. (k).) However, "[s]ince disclosure is favored, all exemptions are narrowly construed. [Citations.] The agency opposing disclosure bears the burden of proving that an exemption applies. [Citation.]" (*County of Santa Clara v. Superior Court* (2009) 170 Cal.App.4th 1301, 1321.)

The Lanterman Act, the majority opinion correctly observes, is a "comprehensive state law directed at the evaluation, supervision, protection, care and treatment of persons who are mentally ill, developmentally disabled or impaired by chronic alcoholism. (Welf. & Inst. Code, § 5001.)" (Maj. Opn. at p. 11.) The enactment's confidentiality provisions make all information and records obtained in the course of providing services under that enactment (and other specified enactments) confidential, subject to defined statutory exceptions. (Welf. & Inst. Code, §§ 5328, 4514; see also *id.*, § 5328.01 et seq. [setting out additional exceptions to the general rule of confidentiality].) The enactment defines "services" broadly to cover essentially anything "directed toward the alleviation of a developmental disability [or a mental illness] or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability [or a mental illness]." (Welf. & Inst. Code, § 4512, subd. (b).) The majority opinion also correctly notes the legislative purpose for confidentiality is "to encourage persons with

mental or severe alcohol problems or developmental disabilities to seek, undergo and accept treatment, and to be candid and open in such treatment." (Maj. Opn. at p. 11.) However, the Lanterman Act as a whole must be construed to, among other things, "guarantee and protect public safety" and "protect mentally disordered persons and developmentally disabled persons from criminal acts." (Welf. & Inst. Code, § 5001, subds. (c), (g).)

The Long-Term Care Act, the majority opinion again correctly observes, applies to long-term health care facilities, including the state facilities for the mentally ill and the developmentally disabled at issue here. (Maj. Opn. at p. 7.) The enactment "authorizes [Public Health] to inspect such facilities for compliance with statutes and regulations on patient care and to issue citations to noncomplying facilities. [Citations.] [Public Health] is authorized to enter any facility for inspection . . . . When [Public Health] observes a violation of a statute or regulation, it issues a citation to the facility. [Citation.] Citations are classified according to the seriousness of the violation, and a penalty range is prescribed for each class." (*Kizer v. County of San Mateo* (1991) 53 Cal.3d 139, 142.) This system of inspection and citation "is to be liberally construed on behalf of the class of persons it is designed to protect," e.g., nursing care patients, the mentally ill, and the developmentally disabled, who are some of "the most vulnerable segments of our population." (*California Assn. of Health Facilities v. Department of Health Services* (1997) 16 Cal.4th 284, 295.)

Section 1423 of the Long-Term Care Act provides, in relevant part, that "[e]ach citation shall be in writing and *shall describe with particularity the nature of the violation, including a reference to the statutory provision, standard, rule, or regulation alleged to have been violated, the particular place or area of the facility in which it occurred, as well as the amount of any proposed assessment of a civil penalty. The name of any patient jeopardized by the alleged violation shall not be specified in the citation in*

order to protect the privacy of the patient. However, at the time the licensee is served with the citation, the licensee shall also be served with a written list of each of the names of the patients alleged to have been jeopardized by the violation, that shall not be subject to disclosure as a public record. The citation shall fix the earliest feasible time for the elimination of the condition constituting the alleged violation, when appropriate." (Health & Saf. Code, § 1423, subd. (a)(2), italics added.)

Section 1424 of the enactment directs Public Health to consider "all relevant facts" in determining the amount of the civil penalty, "including, but not limited to, the following: [¶] (1) *The probability and severity of the risk that the violation presents to the patient's or resident's mental and physical condition.* [¶] (2) *The patient's or resident's medical condition.* [¶] (3) *The patient's or resident's mental condition and his or her history of mental disability or disorder.* [¶] (4) The good faith efforts exercised by the facility to prevent the violation from occurring. [¶] (5) The licensee's history of compliance with regulations." (Health & Saf. Code, § 1424, subd. (a), italics added.) This section also provides: "Relevant facts considered by [Public Health] in determining the amount of the civil penalty *shall be documented by [Public Health] on an attachment to the citation and available in the public record.*" (Health & Saf. Code, § 1424, subd. (b), italics added.)

Section 1439 of the enactment provides: "Any writing received, owned, used, or retained by [Public Health] in connection with the provisions of [the Long-Term Care Act] is a public record within the meaning of [the Public Records Act], and, as such, is open to public inspection pursuant to the provision of Sections 6253, 6256, 6257, and 6258 of the Government Code. However, the names of any persons contained in such records, except the names of duly authorized officers, employees, or agents of the state department conducting an investigation or inspection in response to a complaint filed pursuant to [the Long-Term Care Act], shall not be open to public inspection and copies

of such records provided for public inspection shall have such names deleted." (Health & Saf. Code, § 1439; see also *id.*, § 1429, subds (a), (b) [requiring posting of class "AA" and class "A" citations "in plain view of the patients or residents in the long-term health care facility, persons visiting those patients or residents, and persons who inquire about placement in the facility," and requiring class "B" citations that have become final to be "retained by the licensee at the facility cited until the violation is corrected" and "made promptly available by the licensee for inspection or examination by any member of the public who so requests"].)

Thus, the Long-Term Care Act makes citations (containing a description of the nature of the violation) and their attachments (containing the relevant facts surrounding the violation, including the patient's or resident's medical and mental conditions, his or her history of mental disability or disorder, and the risk that the violation presents to his or her mental and physical condition) public records under the Public Records Act. The Lanterman Act, however, makes confidential, and therefore not subject to disclosure under the Public Records Act, all information obtained in the course of providing services to the mentally ill and developmentally disabled under the Lanterman Act and other specified enactments. Accordingly, unless the Long-Term Care Act's requirements that the citation contain a description of the nature of the violation and the attachment contain a statement of the relevant facts surrounding the violation can be reasonably interpreted to not require inclusion of information obtained in the course of providing services within the meaning of the Lanterman Act, the two statutory enactments conflict. I see no way to so construe the citation provisions of the Long-Term Care Act. Nor do my colleagues in the majority offer such an interpretation of these provisions. Indeed, the majority opinion acknowledges the conflict by holding that "[t]he patient's or resident's mental, physical, and medical conditions, history of mental disability or disorder, as well as the risk the violation presents to that mental and physical condition, are not disclosable . . . in light of

the mental health-based confidentiality provisions of the Lanterman Act." (Maj. Opn. at p. 21.)

Simply put, the Long-Term Care Act and the Lanterman Act conflict because the Long-Term Care Act requires public disclosure of information the Lanterman Act requires to remain confidential, and vice versa.

III

Resolution of the Conflict

I conclude the Long-Term Care Act's citation provisions, in addition to making citations public records, also created an exception to the Lanterman Act's exemption from disclosure under the Public Records Act.

"'It is the general rule that where the general statute standing alone would include the same matter as the special act, and thus conflict with it, the special act will be considered as an exception to the general statute whether it was passed before or after such general enactment.'" (*In re Williamson* (1954) 43 Cal.2d 651, 654; see also *Miranda v. 21st Century Ins. Co.* (2004) 117 Cal.App.4th 913, 924-925; Code Civ. Proc., § 1859 ["when a general and particular provision are inconsistent, the latter is paramount to the former"].) Moreover, "[i]t is well settled that a later statute may supersede, modify, or so affect the operation of an earlier law as to repeal the conflicting earlier law by implication. [Citations.]" (*Orange County Air Pollution Control Dist. v. Public Util. Com.* (1971) 4 Cal.3d 945, 954, fn. 8.)

In *Albertson v. Superior Court* (2001) 25 Cal.4th 796 (*Albertson*), our Supreme Court held the Legislature created "an exception to [the Lanterman Act's] general rule of confidentiality of treatment records" by a subsequent and more specific statutory enactment amending the Sexually Violent Predators Act (SVPA). (*Id.* at p. 805.) There, prior to the petitioner's release from prison, the district attorney filed a petition for commitment under the SVPA. The trial court found probable cause to believe the

petitioner was a sexually violent predator and set the matter for trial. Nearly a year and a half after the petitioner's initial interviews and evaluations by mental health experts, the district attorney sought an order directing him to undergo an updated mental health interview and evaluation. The district attorney also sought access to the petitioner's mental health treatment files. (*Id.* at pp. 798-800.) The trial court granted these requests. (*Id.* at pp. 800-801.) Issuing a writ of mandate directing the trial court to deny the district attorney's requests, the Court of Appeal held, as relevant here, that the trial court's order granting access to mental health treatment files violated section 5328 of the Lanterman Act. (*Id.* at p. 801.) Our Supreme Court reversed based on "newly enacted amendments to the SVPA," specifically, Welfare and Institutions Code section 6603, subdivision (c). (*Id.* at p. 803.) The court explained that this provision "sets out express authority for the updated evaluations" and "provides that '[t]hese updated or replacement evaluations shall include review of available medical and psychological records, including treatment records, consultation with current treating clinicians, and interviews of the person being evaluated . . . .' [Citation.] By this language, the current provision clarifies within the SVPA an exception to [the Lanterman Act's] general rule of confidentiality of treatment records, and allows the district attorney access to treatment record information, insofar as that information is contained in an updated evaluation." (*Id.* at p. 805.)

Thus, while sections 5328 and 4514 of the Lanterman Act provide that "[i]nformation and records shall be disclosed *only* in any of the following cases" (italics added), followed by several exceptions to the general confidentiality rule (both in subsequent subdivisions within sections 5328 and 4514, and also in separate sections immediately following section 5328), none of which applies in this case, our Supreme Court made clear in *Albertson, supra*, 25 Cal.4th 796 that exceptions to this general rule may be found in other statutory enactments, there, the SVPA. Similarly, the Attorney General's office has issued opinions concluding that specific reporting statutes supersede,

and therefore create exceptions to the general confidentiality provisions of the Lanterman Act. (65 Ops.Cal.Atty.Gen. 345 (1982) [duty to report child abuse under the Child Abuse Reporting Law supersedes the confidentiality provisions of the Lanterman Act]; see also 58 Ops.Cal.Atty.Gen. 824 (1975).)

The same reasoning applies to the citation provisions of the Long-Term Care Act. These citation provisions are the more specific provisions because the Lanterman Act's confidentiality provisions, standing alone, include the citations at issue in this case, but also broadly cover any "[i]nformation and records obtained in the course of providing services" under the Lanterman Act and other specified statutory enactments. (Welf. & Inst. Code, § 5328.) The citation provisions, on the other hand, deal specifically with citations and precisely mandate the contents of these citations. As the more specific statutes, the Long-Term Care Act's citation provisions take precedence over the Lanterman Act's general confidentiality provisions.[2]

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[2] I am not persuaded by Public Health's argument that the Lanterman Act is the specific statute that trumps the Long-Term Care Act because the Lanterman Act pertains to a subclass of mentally ill and developmentally disabled patients, while the Long-Term Care Act applies to all patients/residents of long-term care facilities. Public Health relies on two cases I find distinguishable: *McDonald v. Conniff* (1893) 99 Cal. 386; and *In re Ward* (1964) 227 Cal.App.2d 369. The 1893 case involved an action to foreclose a lien of a street assessment. The Supreme Court held that an assessment statute making certain documents *prima facie* evidence of the regularity of the proceedings did not contravene the constitutional provision prohibiting the legislature from passing special or local laws "regulating the practice of courts of justice." The court explained it is not necessary that a law shall affect all the people of the state or concern a procedure applicable to every court action to be considered a general law. (*McDonald, supra*, 99 Cal. at pp. 390-391.) Thus, there were no conflicting statutes in *McDonald*.

The 1964 case involved two sentencing statutes that conflicted when applied to the defendant who was convicted of selling marijuana. One statute (former Health and Safety Code section 11531) provided that every person who sells any marijuana shall be punished by imprisonment in state prison from five years to life and shall not be eligible for parole or release until he or she has served not less than three years. Another statute

Moreover, like the reporting laws at issue in the Attorney General's opinions, the Long-Term Care Act's citation provisions are in essence reporting statutes that are designed to protect the patients/residents in long-term health care facilities by requiring inspection and reporting of inadequate care (via issuing citations). By posting these citations at the facilities and making them public records (with specific names removed), the information is made available to the patients/residents, their families, employees, and the general public. This informs and protects the public and patients/residents from facilities that provide inadequate treatment of patients/residents who are vulnerable and dependent upon the facilities for good care. (Health & Saf. Code, §§ 1422.5, 1422.6, 1422.7, 1429.) Thus, treating the Long-Term Care Act's citation provisions as an exception to the Lanterman Act's confidentiality rule comports with the legislative purpose of the Lanterman Act, which must be construed to "guarantee and protect public

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(former Penal Code section 1202b) provided that for any person who was under the age of 23 years at the time of committing a felony or felonies, the court may, notwithstanding any other provision of law fixing or affecting the penalty for the felony or felonies, specify that the minimum term of imprisonment shall be six months. The Court of Appeal concluded former Penal Code section 1202b was the more specific provision that created an exception to the general sentencing rule of former Health and Safety Code section 11531 for persons under the age of 23 years at the time of committing the crime. This was because former Health and Safety Code section 11531 began with the "generic" phrase "'[*e*]*very person*,'" while former Penal Code section 1202b applied only to persons under the age of 23 years at the time of committing the crime and used the phrase "'notwithstanding any other provision of law fixing or affecting the penalty for the offense.'" (*In re Ward*, *supra*, 227 Cal.App.2d at pp. 374-375.) Here, unlike former Penal Code section 1202b, the Lanterman Act's confidentiality provisions were not made to apply *notwithstanding any other provision of law*. Indeed, these provisions have been held to be general in nature and subject to numerous exceptions, both within the Lanterman Act and outside of that enactment. (See Welf. & Inst. Code, §§ 5328, subds. (a)-(y), 5328.01 et seq.; *Albertson*, *supra*, 25 Cal.4th at p. 805.) Nor are the Long-Term Care Act's citation provisions phrased in generic terms. Instead, as already explained, they specifically mandate the content of citations.

safety" and "protect mentally disordered persons and developmentally disabled persons from criminal acts." (Welf. & Inst. Code, § 5001, subds. (c), (g).)

Additionally, the citation provisions of the Long-Term Care Act, enacted in 1973 (Stats. 1973, ch. 1057, § 1, pp. 2088-2095), were enacted after the confidentiality provisions of the Lanterman Act, which were originally enacted in 1972 (Stats. 1972, ch. 1058, § 2, pp. 1960-1961).[3] As mentioned, "[i]t is well settled that a later statute may supersede, modify, or so affect the operation of an earlier law as to repeal the conflicting earlier law by implication. [Citations.]" (*Orange County Air Pollution Control Dist. v. Public Util. Com.*, *supra*, 4 Cal.3d at p. 954, fn. 8.) Nor am I persuaded by Public Health's argument that the enactment, in 1980, of an exception to the Lanterman Act's confidentiality provisions (Welf. & Inst. Code, § 5328.15; Stats. 1980, ch. 695, § 1, p. 2095) makes the confidentiality provisions the later-enacted statutes simply because this exception reiterated the general rule of confidentiality before setting forth the exception.

In sum, the Long-Term Care Act makes citations and their attachments public records under the Public Records Act. (Health & Saf. Code, §§ 1423, subd. (a), 1424, subd. (b), 1439.) The Lanterman Act, prohibiting disclosure of information obtained in the course of providing services under that enactment (and other specified enactments), subject to defined statutory exceptions (Welf. & Inst. Code, §§ 5328, 4514; see also *id.*, § 5328.01 et seq.), creates an exemption from disclosure under the Public Records Act.

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3 While Welfare and Institutions Code section 4514 was enacted in 1982 (Stats. 1982, ch. 1141, § 1, pp. 4108-4112), as mentioned in the majority opinion, this was part of a "nonsubstantive statutory division [that] kept the mentally ill (and chronically alcoholic) in the Lanterman-Petris-Short Act, and placed the developmentally disabled in the parallel companion statutory scheme of the Lanterman Developmental Disabilities Services Act; the confidentiality provisions of both acts are quite similar." (Maj. Opn. at p. 11, fn. 7.) Accordingly, the Lanterman Act's confidentiality provisions were originally enacted in 1972.

However, as also mentioned, this exemption must be narrowly construed. (*County of Santa Clara v. Superior Court, supra*, 170 Cal.App.4th at p. 1321.) By specifically setting forth the required contents of the citations and attachments, some of which would be confidential under the Lanterman Act, the Legislature created "within the [Long-Term Care Act] an exception to [the Lanterman Act's] general rule of confidentiality." (*Albertson, supra*, 25 Cal.4th at p. 805.) This is what the trial court concluded. I would deny the petition for writ of mandate.

HOCH, J.

Department 29
Superior Court of California
County of Sacramento
720 Ninth Street
Timothy M. Frawley, Judge
Frank Temmerman, Clerk

Friday, September 7, 2012, 1:30 p.m.

CENTER FOR INVESTIGATIVE REPORTING v. CALIFORNIA DEPARTMENT OF PUBLIC HEALTH	Case Number: 34-2012-80001044

Proceedings: Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief

Filed By: Duffy Carolan, of Davis Wright Tremaine LLP, Attorneys for Petitioner/Plaintiff

On Friday, September 7, 2012, at 1:30 p.m., this matter came on for hearing with counsel present as indicated on the record. The matter was argued and submitted. Having taken the matter under submission, the court now rules as follows:

RULING UNDER SUBMISSION

Petitioner/Plaintiff Center for Investigative Reporting ("Petitioner") has filed a petition for a peremptory writ of mandate and complaint for declaratory and injunctive relief against Respondent/Defendant California Department of Public Health ("DPH"). Petitioner seeks in its petition to compel DPH to produce, in unredacted or minimally-redacted form, any citations issued by DPH to state-run developmental centers from January 1, 2002, to the present, and a declaration of its constitutional and statutory rights of access to these records under the California Public Records Act and Section 3(b) of the California Constitution. For the reasons described below, the Court shall grant the petition and complaint for declaratory relief.

Background Facts and Procedure

Petitioner in this case is a non-profit news organization. Respondent DPH is a state agency operating within the California Health and Human Services Agency.

DPH is responsible for licensing, regulating, and inspecting health care facilities in California, including the state-run developmental centers at issue in this case.

The Department of Developmental Services ("DDS"), which is not a party to this lawsuit, is the state agency responsible for providing services to people with developmental disabilities. It presently operates five developmental centers, which house about 1,700 of the State's most severely developmentally-disabled patients. Those centers are Sonoma Developmental Center, Fairview Developmental Center, Porterville Developmental Center, Canyon Springs Developmental Center, and Lanterman Developmental Center. It also formerly operated two other developmental centers -- Agnews Developmental Center and Sierra Vista Developmental Center -- but both of those centers have since closed. All seven of these state-run developmental centers (collectively, the "Developmental Centers") are/were long-term health care facilities subject to citation and enforcement provisions of the Long-Term Care, Health, Safety, and Security Act of 1973 (the "Long-Term Care Act").

On May 6, 2011, Petitioner made a written California Public Records Act request to DPH. The request sought records relating to citations issued by DPH from January 1, 2002, to the present, for the Developmental Centers.

On or about May 16, 2011, a representative from DPH responded to Petitioner's request, stating that it is only required to maintain citations for four years and that any citations produced would be redacted pursuant to Welfare and Institutions Code section 5328 to remove any and all confidential information obtained in the course of providing services to developmentally disabled persons.

On June 1, 2011, Petitioner called DPH to check on the status of the request. On June 2, 2011, DPH emailed Petitioner stating that DPH had located fifty-five citations responsive to Petitioner's request and that DPH was in the process of redacting them.

On June 13, 2011, DPH produced the citations on a disk. Fifty-five citations were produced, all for the years 2007-2011. No citations were produced for the years 2002-2006. Each of the fifty-five citations produced was extensively redacted to remove nearly all factual information from the citation. In essence, the only information not redacted were general statements about the nature of the violation – such as, "The facility failed to keep Client 1 free from harm" – and references to the statutory/regulatory provisions allegedly violated. Otherwise, with minor exceptions, the citations were completely redacted of all factual information, including the names of the persons involved, the chronology and location of events giving rise to the citation, and the results of any investigation into the incident.

After DPH's production, Petitioner requested DPH to justify its aggressive redactions. DPH responded that the redactions were necessary to comply with

the requirements of section 5328 of the Lanterman-Petris-Short Act and section 4514 of the Lanterman Developmental Disabilities Service Act of 1978

On January 19, 2012, Petitioner filed the instant action seeking a declaration of its rights of access and an order compelling DPH to disclose in unredacted or minimally-redacted form the requested citations.

Requests for Judicial Notice

The Court grants Petitioner's Request for Judicial Notice filed June 29, 2012, and Respondent DPH's Request for Judicial Notice filed August 13, 2012.

Standard of Review

The California Public Records Act (CPRA) provides for the inspection of public records maintained by state and local agencies. (*See* Gov. Code § 6250 *et seq.*) The purpose of the CPRA is to fulfill the "fundamental and necessary right of every person in this state" to have access to information concerning the conduct of the people's business. (*See* Gov. Code § 6250; *Register Div. of Freedom Newspapers, Inc. v. County of Orange* (1984) 158 Cal.App.3d 893, 901.) As stated by the California Supreme Court in *CBS, Inc. v. Block*:

> Implicit in the democratic process is the notion that government should be accountable for its actions. In order to verify accountability, individuals must have access to government files. Such access permits checks against the arbitrary exercise of official power and secrecy in the political process. (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 651.)

To advance this purpose, the CPRA embodies a strong policy in favor of disclosure. (*See* Gov. Code § 6253.) Support for a claim of nondisclosure must be found, if at all, among the specific exemptions enumerated in the Act. (*Register Div. of Freedom Newspapers, supra*, 158 Cal.App.3d at p.901.)

Under the CPRA, records may be exempted from disclosure in two ways. First, materials may be exempt from disclosure pursuant to one of the express categorical exemptions set forth in section 6254 *et seq.* (Gov. Code § 6254.) Second, materials may be exempted from disclosure under the residual exemption set forth in section 6255, which allows a government agency to withhold records if it can demonstrate, on the facts of a particular case, that the public interest served by withholding the records clearly outweighs the public interest served by disclosure. (Gov. Code § 6255.) These exemptions are narrowly construed, and the burden of establishing an exemption is on the public agency. (*Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 476; Cal. Const. art. I, § 3(b).)

Except as otherwise prohibited by law, a public agency has the discretionary authority to override a statutory exemption and open its records to public inspection. However, the CPRA does not allow public officials to engage in selective disclosure, favoring one citizen with disclosures denied to another. Records are either completely public or completely confidential. (*See Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645, 656 [consumer complaints against private collection agencies became public records available for public inspection when defendants elected to supply copies of the complaints to the affected agencies].)

Arguments of the Parties

In this case, DPH has refused to produce any citation issued prior to 2007 and it has heavily redacted those that it did produce to remove nearly all factual information about the incident giving rise to the citation.

DPH contends that it is not required to produce records pre-dating 2007 because it has a document retention policy that records shall only be maintained for four years. (See Dickfoss Declaration, ¶3, Ex. A.)

DPH further contends its redactions are proper because the CPRA does not require disclosure of records where disclosure is exempted or prohibited by law. (Cal. Gov. Code § 6254(k).) Here, DPH contends its redactions are necessary to comply with the confidentiality provisions of the Lanterman-Petris-Short Act and Lanterman Developmental Disabilities Service Act. According to DPH, those acts prohibit disclosure to the public of any information or records obtained in the course of providing services to persons with mental or developmental disabilities. (See Cal. Welf. & Inst. Code §§ 5328, 4514.) Under the legal maxim that when a statute expresses certain exceptions to a general rule, other exceptions are necessarily excluded, DPH argues that the only exceptions to the general prohibition against disclosure are those exceptions specifically enumerated in the Lanterman-Petris-Short and Lanterman Developmental Disabilities Service Acts (hereinafter referred to collectively as the "Lanterman Act"). (See Cal. Welf. & Inst. Code §§ 4514(n), 4514.3, 5328(a)-(y), 5328.15, 5328.06.)

DPH contends that the redacted information consists of confidential information obtained in the course of providing services to developmentally or mentally disabled individuals, and that none of the specifically enumerated exceptions apply. Thus, while the citations themselves can be disclosed, DPH contends it is strictly prohibited from disclosing the underlying facts.

DPH also contends that even if Government Code section 6254(k) does not apply, disclosure of the requested information should not be required because it would constitute an unwarranted invasion of the patient's private medical files under Government Code § 6254(c), and because the public interest served by

not making the record public clearly outweighs the public interest served by disclosure of the record under Government Code § 6255.

With regard to the citations from 2002-2006, Petitioner argues that DPH has failed to establish any basis for refusing to locate and disclose the requested records. According to Petitioner, DPH has, at most, established that it was not "required" to retain citations issued prior to 2007, but it has not established, or even claimed, it did not retain citations issued prior to 2007. In the absence of such a showing, Petitioner argues that DPH should be ordered to search for and produce any citations from 2002-2006 that it still has in its possession.

With regard to the redacted information, Petitioner relies on the provisions of the Long Term Care Act, which mandates that citations issued to facilities found to be in violation of the law be posted or otherwise made accessible to the public. (See Cal. Health & Saf. Code §§ 1417.1, 1423, 1424, 1429, 1439.) While the names of patients affected by the alleged violations are not open to public inspection, the particular underlying facts giving rise to the citation are required to be made available to the public. (See Cal. Health & Saf. Code §§ 1423(a)(2), 1424(b), 1439.)

Thus, to the extent the citations include any information that otherwise might be protected as confidential under the Lanterman Act, Petitioner contends the two Acts are in conflict, and the Long Term Care Act should be treated as a special exception to the Lanterman Act's general rule of confidentiality. To do otherwise, Petitioner contends, would seriously undermine the purpose of the Long Term Care Act's citation system.

Moreover, even if the Court were to adopt DPH's construction of the Lanterman Act, Petitioner contends the Court should grant the requested relief because DPH's aggressive redactions go well beyond what is required by the Lanterman Act.

Finally, Petitioner contends DPH has waived any right to assert exemptions from the CPRA by providing minimally-redacted citations to other members of the public.

Discussion

The Court is called upon in this case to resolve an apparent conflict between the Lanterman Act's prohibition against disclosure of records obtained in the course of providing mental health or developmental services, and the Long Term Care Act's requirement that citations issued to long-term health care facilities be open to public inspection. Ultimately, this presents a question of statutory interpretation.

The paramount goal of statutory interpretation is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law. (*Meaney v. Sacramento Housing & Redevelopment Agency* (1993) 13 Cal.App.4th 566, 580-581.) To determine legislative intent, the court first examines the words of the statute, applying their usual, ordinary, and common sense meaning based upon the language used and the evident purpose for which the statute was adopted. (*Guillemin v. Stein* (2002) 104 Cal.App.4th 156, 164.) If the words themselves are not ambiguous, we presume the Legislature meant what it said, and the statute's plain meaning governs. (*Sheppard v. North Orange County Regional Occupational Program* (2010) 191 Cal.App.4th 289, 299.)

If two potentially conflicting statutes are contained in different legislative acts, courts will strive to effectuate the purpose of each by harmonizing them, if possible, in a way that allows both to be given effect. (*Chavez v. City of Los Angeles* (2010) 47 Cal.4th 970, 986.)

However, where the statutes cannot be reconciled, later and more specific enactments prevail, pro tanto, over earlier and more general ones. (*Department of Fair Employment & Housing v. Mayr* (2011) 192 Cal.App.4th 719, 725.) If earlier and later enactments conflict, the most recent expression of legislative will prevails. (*California Correctional Peace Officers Assn. v. Department of Corrections* (1999) 72 Cal.App.4th 1331, 1340.) When a special and a general statute are in conflict, the specific provision governs, whether it was passed before or after the general statute. (*Nunes Turfgrass v. Vaughan-Jacklin Seed Co.* (1988) 200 Cal.App.3d 1518, 1539; *Consumers Union of U. S., Inc. v. California Milk Producers Advisory Bd.* (1978) 82 Cal.App.3d 433, 446.)

In this case, the Court concludes that the competing statutory provisions cannot be reconciled.

On the one hand, the Welfare and Institutions Code requires that all information obtained in the course of providing mental health or developmental services shall remain "confidential," subject only to the legislative exceptions listed under those sections. (See Cal. Welf. & Inst. Code §§ 4514, 5328.[1]) According to DPH,

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[1] California Welfare and Institutions Code section 4514 provides that, subject to certain exceptions:

> All information and records obtained in the course of providing intake, assessment, and services under Division 4.1 (commencing with Section 4400), Division 4.5 (commencing with Section 4500), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100) to persons with developmental disabilities shall be confidential. . . . Information and records shall be disclosed only in any of the following cases: . . . ."(Cal. Welf. & Inst. Code § 4514.)

California Welfare and Institutions Code section 5328 provides that, subject to certain exceptions:

since nearly everything that happens to a patient in a developmental center happens "in the course of providing services" to that patient, this general prohibition against disclosure conceivably applies to nearly all patient-related mental health records.[2]

On the other hand, the Health and Safety Code provides for an inspection and reporting system to ensure that long-term health care facilities are in compliance with state statutes and regulations pertaining to patient care. (See Cal. Health & Saf. Code § 1417.1.) When DPH observes a violation of a statute or regulation, it authorizes DPH to issue citations to the non-complying facility. (See Cal. Health & Saf. Code § 1423.) When a citation is issued, the citation is required to describe "with particularity" the nature of the violation and the "relevant facts," except for the names of the persons involved in the incident.[3] (See Cal. Health & Saf. Code §§ 1423(a)(2), 1424(b), 1439.) Further, once issued, the citation is required to be open and available to the public. (See Cal. Health & Saf. Code §§ 1429, 1439.)

The statutes are not always in conflict. Where citations do not concern mental health records, there is no conflict, and the citations can be publicly disclosed without breaching the confidentiality provisions of the Lanterman Act.

All information and records obtained in the course of providing services under Division 4 (commencing with Section 4000), Division 4.1 (commencing with Section 4400), Division 4.5 (commencing with Section 4500), Division 5 (commencing with Section 5000), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100), to either voluntary or involuntary recipients of services shall be confidential. . . . Information and records shall be disclosed only in any of the following cases: . . . ." (Cal. Welf. & Inst. Code § 5328.)

[2] Petitioner argues that a citation issued as part of a complaint investigation is not information "obtained in the course of providing services." The Court agrees, but the citation still is likely to include information obtained in the course of providing services.

Petitioner also argues that certain types of violations, like patient abuse, cannot be deemed to have occurred in the course of providing "services" to the patient since abuse is not a "service" to the patient. While it is axiomatic that abuse is not a "service," the Court rejects the suggestion that patient abuse does not occur in the course of providing services to the patient for purposes of the confidentiality provisions of the Lanterman Act. Putting aside the accessibility provisions of the Long Term Care Act, if a patient's right to privacy extends to intake and treatment records, it also should extend to records of patient abuse since disclosing such records would reveal not only that the person is receiving mental health services, but also that the person was subjected to abuse.

[3] The clear purpose in excluding the names of the persons involved (other than the investigating officers) is to protect the privacy rights of such persons. The statute reflects the Legislature's determination of the proper balancing of those privacy rights against the need for disclosure. The balance struck is to exclude "names," but the intent clearly is to prevent members of the public who do not know the persons involved from being able to identify them from the citation. It is therefore possible that, to achieve the purpose of the Act, DPH could, in appropriate circumstances, redact personal descriptions from citations if such descriptions would be akin to "naming" the individual. However, since this case does not present such issue, the Court need not – and does not – so decide here.

However, where mental health records are involved, a conflict exists. DPH cannot make the citation publicly available and simultaneously shield it from public disclosure.

Recognizing this conflict, DPH's solution was to disclose the fact that a citation was issued, but to redact all factual information from the citation. This construction cannot stand since it violates both the letter and spirit of the accessibility provisions of the Long Term Care Act.

The purpose of requiring citations to be publicly accessible is to promote the health and safety of mental health patients by providing information to the public about violations of statutes and regulations pertaining to patient care. Such disclosure not only encourages facilities to prevent violations, but also allows mental health patients to protect themselves.

To achieve this purpose, the Long Term Care Act requires citations to describe with particularity the nature of the violation and the relevant facts of the incident giving rise to the violation, except for the names of the persons involved,[4] and it requires citations to be posted in an area accessible by the public or made available to the public upon request.

Under DPH's construction, redacting factual information from the citation, the public knows a violation has occurred, but cannot ascertain how the violation occurred, whether it has been corrected, or whether it is likely to be repeated. The purpose of making the citation public is defeated. Thus, the Court concludes that DPH's construction violates both the letter and spirit of the Long Term Care Act.

Where mental health records are involved, there is an irreconcilable conflict between the Lanterman Act's confidentiality provisions and the Long Term Care Act's accessibility provisions. The statutes cannot be harmonized by disclosing the citation denuded of all the underlying factual information giving rise to the citation.

Having concluded that the provisions cannot be harmonized, the Court next must decide which provision prevails where there is a conflict. In making this determination, it must be remembered that the paramount goal of statutory interpretation is to ascertain the intent of the Legislature so as to effectuate the purpose of the law.

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[4] To protect the privacy of the persons involved, the Act requires that the names of patients and other individuals involved, other than the investigating officers, be redacted from the citations. (See Cal. Health & Saf. Code §§ 1429, 1439.)

In this case, the Court is persuaded that the Legislature intended the accessibility provisions of the Long Term Care Act to prevail as a special exception to the Lanterman Act's general rule of confidentiality.

First, when earlier and later enactments are in conflict, the most recent enactment generally prevails. (*California Correctional Peace Officers Assn. v. Department of Corrections* (1999) 72 Cal.App.4th 1331, 1340.) Relevant here is that the confidentiality provisions of the Lanterman Act were first enacted in 1967, approximately one year before the Legislature adopted the accessibility provisions as part of the Long Term Care Act. (*Gilbert v. Superior Court* (1987) 193 Cal.App.3d 161, 168-169.) This supports the view that the Legislature intended the accessibility provisions to serve as an exception to the general rule of confidentiality.[5]

Second, it is settled law that when a special and a general statute are in conflict, the special act will be considered as an exception to the general statute, whether it was passed before or after the general enactment. (*Nunes Turfgrass v. Vaughan-Jacklin Seed Co.* (1988) 200 Cal.App.3d 1518, 1539.) The provisions of the Long Term Care Act are special statutes governing accessibility of citations issued to long-term health care facilities, and therefore they prevail over the Lanterman Act's general limitation on disclosure of mental health records.

Third, legislative policy favors the conclusion that the Legislature intended the accessibility provisions of the Long Term Care Act to be an exception to the confidentiality provisions of the Lanterman Act. In reaching this determination, the Court notes that the ultimate purpose of both the confidentiality and the accessibility statutes is the same: to promote and protect the health and safety of mental health patients. It follows that publicly disclosing the basis for citations is consistent with the ultimate purpose of the Lanterman Act to promote the health and safety of patients. The converse is not true. Withholding such information undermines the public's interest in protecting patients.

Finally, opinions issued by the California Supreme Court and the California Attorney General support the conclusion that public reporting or accessibility obligations enacted outside the Lanterman Act may trump the Act's general rule of confidentiality. (See *Albertson v. Superior Court* (2001) 25 Cal.4th 796, 800 [provisions of Sexually Violent Predators Act constitute an exception to § 5328's general rule of confidentiality]; 65 Ops. Cal. Atty. Gen. (1982) [Child Abuse Reporting Law supersedes confidentiality provisions of Lanterman Act]; 58 Ops.

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[5] The Court recognizes that Welfare and Institutions Code § 4514 was not added until 1982. However, prior to the enactment of § 4514, the same level and coverage of confidentiality was afforded by Welfare and Institutions Code § 5328 which, as originally enacted, applied to treatment information and records for both mentally and developmentally disabled persons. Now § 4514 applies only to developmentally disabled persons, while § 5328 protects the mentally disabled. (*Gilbert v. Superior Court* (1987) 193 Cal.App.3d 161, 168-169.) Accordingly, the date of enactment of § 4514 does not affect the Court's analysis.

Cal. Atty. Gen. (1975) [psychotherapist obligation to report child abuse under Penal Code § 11161.5 trumps confidentiality provisions of Lanterman Act].)

The Court rejects DPH's argument that because the Legislature later enacted some exceptions to the general confidentiality rule – i.e., Welfare and Institutions Code sections 4514(n) and 5328.15) – this shows the Legislature intended no other exceptions. To the contrary, the later enacted exceptions show that the general rule of confidentiality is not absolute and must yield to special legislative exceptions. (See, e.g., Cal. Welf. & Inst. Code §§ 5328.1, 5328.3, 5328.4, 5328.8, 5328.9 [other later-enacted exceptions to the general rule of confidentiality in § 5328].)

Moreover, the Court agrees with Petitioner that Welfare and Institutions Code sections 4514(n) and 5328.15 were intended to authorize disclosure to licensing personnel conducting licensing duties, and not to supersede the public inspection provisions of the Long Term Care Act's citation system.[6]

DPH has failed to carry its burden of proving that the withheld information is exempt from disclosure under Government Code section 6254(k). To the contrary, the Long Term Care Act requires the information to be made public.[7]

This also disposes of DPH's argument that the information can be withheld under Government Code § 6254(c). In enacting the accessibility provisions of the Long Term Care Act, the Legislature already has made the determination that disclosure of the citations does not constitute an unwarranted invasion of personal privacy. DPH cannot seriously contest this point, since it already discloses this information in relation to citations issued to other long-term health care facilities. (See, e.g., Gabrielson Declaration, Ex. 4; see also http://www.cdph.ca.gov/certlic/facilities/Pages/AACounties.aspx.)

For similar reasons, the Court rejects DPH's argument that the information can be withheld under Government Code § 6255. As discussed above, the public interest served by disclosure of the record outweighs the public interest in not making the record public.

Finally, the Court agrees with Petitioner that DPH cannot rely on its internal retention policy to exempt it from the disclosure obligations under the Long Term Care Act and CPRA. If DPH still has responsive documents, it is obligated to produce them.

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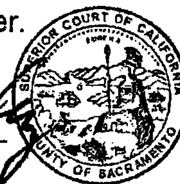
[6] Repeals by implication are not favored. (*Consumers Union of U.S., Inc. v. California Milk Producers Advisory Bd.* (1978) 82 Cal.App.3d 433, 446.)
[7] In this sense, this proceeding properly could be construed as a petition to enforce DPH's statutory duties under the Long Term Care Act, rather than the CPRA.

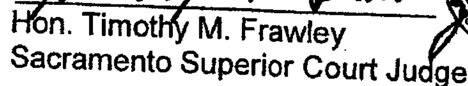
Disposition

The petition and complaint for declaratory relief are granted. The Court shall grant declaratory relief in favor of Petitioner CIR clarifying that citations issued to the Developmental Centers are public records subject to disclosure in accordance with the provisions of sections 1423, 1424, 1429, and 1439 of the California Health & Safety Code. The Court shall issue a peremptory writ of mandate commanding Respondent DPH to produce the requested citations without redaction, except as to the names of individuals other than investigating officers, which can and must be withheld.

Respondent DPH to make and file a return within 90 days after issuance of the writ setting forth what Respondent has done to comply with the writ.

Petitioner shall be entitled to recover its costs of suit upon appropriate application. The Court reserves jurisdiction to determine the amount of the award of attorney fees pursuant to a proper and timely motion by Petitioner.



Dated: September 13, 2012 Signed: 

Hon. Timothy M. Frawley
Sacramento Superior Court Judge

PROOF OF SERVICE

I, Janis Wooley, declare as follows:

I am employed in the City and County of San Francisco, State of California, in the office of a member of the bar of this court, at whose direction the service was made. I am over the age of eighteen (18) years, and not a party to or interested in the within-entitled action. I am an employee of DAVIS WRIGHT TREMAINE LLP, and my business address is 505 Montgomery Street, Suite 800, San Francisco, California 94111.

On November 18, 2013, I caused to be served the following document:

PETITION FOR REVIEW

I caused the above document to be served on the interested parties at the addresses listed below by the following means:

☒ **I enclosed a true and correct copy of said document in an envelope and placed it for collection and mailing with the United States Post Office on November 18, 2013, following the ordinary business practice.**

☐ I enclosed a true and correct copy of said document in an envelope, and placed it for collection and mailing via Federal Express on ______, for guaranteed delivery on ______, following the ordinary business practice.

☒ **A true and correct copy of said document was emailed on November 18, 2013.**

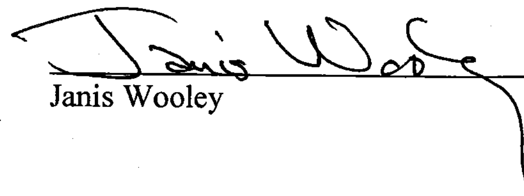
California Court of Appeal
Third Appellate District
914 Capital Mall, 4th Floor
Sacramento, CA 95814
(Via U.S. Mail)

The Honorable Timothy M. Frawley
Sacramento County Superior Court
720 Ninth Street
Sacramento, CA 95814
(Via U.S. Mail)

Niromi W. Pfeiffer
Supervising Deputy Attorney General
Grant Lien
Deputy Attorney General
1300 "I" Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Email: Niromi.Pfeiffer@doj.ca.gov
Grant.Lien@doj.ca.gov
(Via Email and U.S. Mail)

I am readily familiar with my firm's practice for collection and processing of correspondence for delivery in the manner indicated above, to wit, that correspondence will be deposited for collection in the above-described manner this same day in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on November 18, 2013, at San Francisco, California.



Janis Wooley