In the Supreme Court of the State of California

ALWIN LEWIS, M.D., Petitioner, v. **SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES,** Respondent, **MEDICAL BOARD OF CALIFORNIA,** Real Party in Interest.	Case No. S219811

Second Appellate District, Division Three, Case No. B252032
Los Angeles County Superior Court, Case No. BS139289
The Honorable Joanne O'Donnell, Superior Court Judge

MEDICAL BOARD OF CALIFORNIA'S ANSWER TO AMICUS CURIAE BRIEFS

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INTRODUCTION

Petitioner Alwin Lewis, M.D., seeks to avoid professional discipline by suppressing evidence derived from California's Controlled Substance Utilization Review and Evaluation System (CURES). Neither Lewis nor his supporting amici dispute that the Department of Justice may lawfully collect and maintain records of controlled substances dispensed to patients. Lewis and his amici contend only that the Board is precluded by both article I, section 1 of the California Constitution and the Fourth Amendment from receiving this lawfully collected information without a warrant or subpoena. Neither the state nor federal Constitution imposes such a requirement.

As a threshold matter, Lewis lacks standing to assert his patients' privacy interests in the Board's review of CURES data. In California, constitutional rights are personal and cannot be vicariously asserted. The cases cited by amici all concern inapposite situations where, unlike here, the interests of doctors and patients are closely aligned. Lewis should not be able to assert his patients' right to privacy to insulate himself from discipline designed to protect patients from substandard care.

Even if the claim is properly presented, Lewis has not shown an actionable invasion of privacy under the state right to privacy. To begin with, patients lack a reasonable expectation of privacy that would prevent lawfully collected CURES data from being provided on a confidential basis to the Board. Controlled substances have been subject to pervasive regulation—including a requirement that controlled substance prescriptions be reported to the State—for decades. In light of this history of government regulation, courts, including the United States Supreme Court, have concluded there is no violation of patients' reasonable expectation of privacy when controlled substance records are used by regulators as provided by state law. Amici's contrary arguments rest on the mistaken

premise that CURES records are the same as complete medical records for purpose of a privacy analysis. They are not. While complete medical records may include intimate details of a patient's life as well as personal communications between a doctor and patient in a private medical office setting, the CURES reports at issue here include only the type and quantity of a controlled substance dispensed to a patient. Patients reasonably understand that these more limited records will be accessed by regulatory agencies, like the Board, that are responsible for supervising medical practice in the State.

Amici are also incorrect that the Board's receipt of CURES data from the Department of Justice reflects a serious intrusion of patients' privacy. Information sharing between state agencies is well established in state law, and the Board's receipt of CURES data is subject to comprehensive privacy protections. Amici's claim that the Board's access to CURES data somehow reflects a "misuse" of CURES lacks any merit, as the Legislature established CURES, in part, for this very purpose.

Even if Lewis and his amici have shown an actionable invasion-of-privacy claim, it still would fail because, as the Court of Appeal held, the Board's need for real-time access to CURES outweighs any incremental intrusion of privacy arising from the Board's receipt of CURES data so that it may carry out its regulatory duties. The Board's ability to promptly investigate physicians' prescriptions of highly regulated controlled substances is an integral part of its statutorily conferred responsibility to protect the public from doctors who are delivering unsafe medical care. Amici speculate that Board access to CURES will chill patients' willingness to obtain needed medical care, but cite no evidence that such chilling has occurred over the many decades that prescribers have been required to report controlled substances prescriptions to the State.

Amici ask the Court to impose a requirement that the Board obtain a warrant supported by probable cause or a subpoena supported by "good cause" each time it reviews CURES records. There is no legal basis to require these alternatives, and their implementation would compromise the Board's ability to promptly identify and halt unsafe medical practices that can jeopardize patients' health and even lives.

A challenge based on patients' asserted Fourth Amendment rights also lacks merit. It is black-letter law that Fourth Amendment rights are personal and cannot be asserted by someone else. Amici do not cite any cases in which the high court has deviated from this longstanding principle, relying almost entirely on cases addressing the unrelated question of federal court jurisdiction over claims brought on behalf of absent parties. Amici's additional argument that the Fourth Amendment requires the Board to obtain a warrant each time it seeks to review CURES data is inconsistent with numerous cases that make clear that one government entity does not need a warrant to obtain information lawfully collected by another.

The judgment of the Court of Appeal should be affirmed.

ARGUMENT

I. THE BOARD'S USE OF CURES DATA IN PHYSICIAN DISCIPLINARY INVESTIGATIONS IS CONSISTENT WITH THE CALIFORNIA RIGHT TO PRIVACY

A. The Right to Privacy Is Personal and Cannot Be Asserted Vicariously by Lewis

California constitutional rights, like their federal counterparts, are "generally personal" and cannot be asserted on behalf of others except according to well-defined exceptions. (*People v. Hazelton* (1996) 14 Cal.4th 101, 109.) One such exception applies when a physician seeks to assert his or her patients' autonomy interests in obtaining medical care. (See, e.g., *American Academy of Pediatrics v. Lungren* (1997) 16 Cal.4th

307, 322, fn. 8, 332 (lead opn. of George, C.J.).) A second exception may lie where a custodian of records seeks to assert a third party's privacy interests in those records. (See, e.g., *In re Search Warrant (Sealed)* (3d Cir. 1987) 810 F.2d 67, 70-72.) In these cases, there is a close alignment of interests between the physicians' and patients' interests, and the physician has a custodial duty to maintain the confidentiality of records held in his or her possession. (Answer Br. 17-18.) Each of the right-to-privacy cases cited by amicus ACLU falls within one of these two exceptions. (ACLU 9-10, 11-12.)[1]

Neither exception applies here. Unlike those cases in which a physician has custody over a patient's medical file, Lewis purports to represent his patients' asserted informational-privacy interest in records that were created and maintained by the Department of Justice. The ACLU presents no authority permitting a non-custodial third party to assert a constitutional informational-privacy claim.[2]

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[1] See *United States v. Westinghouse Elec. Corp.* (3d Cir. 1980) 638 F.2d 570, 573-574 [employers as custodians have standing to assert employee's privacy interests in their employee files]; *Sterner v. U.S. Drug Enforcement Agency* (S.D. Cal. 2006) 467 F.Supp.2d 1017, 1026 [physician, as custodian of his patients' records, has standing to assert privacy rights on behalf of his patients where such records were taken from his office via search warrant]; *Pagano v. Oroville Hosp.* (E.D. Cal. 1993) 145 F.R.D. 683, 696 [similar], overruled on other grounds by *Jaffee v. Redmond* (1996) 518 U.S. 1; see also *Tucson Woman's Clinic v. Eden* (9th Cir. 2004) 379 F.3d 531, 551-554 [considering informational privacy claim brought by physicians on behalf of their patients in patient medical records without addressing question of standing]; *In re Subpoenas Duces Tecum* (W.D. Va. 1999) 51 F.Supp.2d 726, 734-736, 738 & fn.6, aff'd 228 F.3d 341 (4th Cir. 2000) [similar].

[2] Statutory cases in which Congress specifically authorized certain third-party standing are inapplicable. (*Fair Employment Council of Greater Wash., Inc. v. BMC Marketing Corp.* (D.C. Cir. 1994) 28 F.3d 1268, 1278 [Title VII claim]; ACLU 10.) Similarly, the First Amendment

(continued...)

Lewis's interests also diverge from those of his patients, as he seeks to avoid scrutiny into the safety of the care he provided them. (Answer Br. 17-18.) In cases involving alleged government intrusions into patients' autonomy interests, both physicians and their patients are directly affected by the government's actions. (See, e.g., *Griswold v. Connecticut* (1965) 381 U.S. 479, 480-481].)[3] By contrast, here, the injury Lewis alleges—discipline imposed by the Board—is the result of his own negligence toward his patients, not any alleged intrusion into his patients' asserted privacy interests. Lewis therefore cannot advance his patients' asserted privacy interests to avoid Board discipline.

B. The Board's Use of CURES in this Disciplinary Investigation Was Not an Actionable Invasion of a Protected Interest

Even if Lewis has standing to assert his patients' state constitutional privacy rights, his claim fails. As explained in the Board's answering brief, Lewis has not established an actionable invasion-of-privacy claim because he has not shown that patients may reasonably expect that the Department of Justice will deny the Board access to CURES or that the Board's review of CURES data represents a serious invasion of privacy. (Answer Br. 19-25.)

(...continued)
overbreadth doctrine permits third-party claims in order to prevent chilling of constitutionally protected speech—a concern that has not been extended to the right to privacy. (*Sec'y of State of Md v. Joseph H Munson Co.* (1984) 467 U.S. 947, 956-957; ACLU 9.)

[3] *Caplin & Drysdale, Chartered v. United States* (1989) 491 U.S. 617, 623, fn. 3, is to the same effect. There, a lawyer was permitted to assert his clients' Sixth Amendment interests in a claim against forfeited assets necessary to pay his legal fees.

1. Patients Lack a Reasonable Expectation of Privacy that CURES Data Will Not Be Confidentially Provided to the Board

California's right to privacy protects an individual's *reasonable* expectation of privacy, defined as "an objective entitlement founded on broadly based and widely accepted community norms." (*Hill v. Nat. Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 37; Answer Br. 20.) Custom and practice, including background legal rules, "may create or inhibit reasonable expectations of privacy." (*Hill*, at p. 36.) In this case, more than 70 years of practice in California and the near-universal adoption of prescription drug monitoring programs across the United States demonstrate that patients cannot reasonably expect CURES records will not be made available to state medical regulators in the course of a physician disciplinary investigation.[4] The ACLU suggests this legal backdrop is irrelevant (ACLU 22-23), but the Court has explained that a history of regulation and government practice are relevant to determining society's reasonable expectations of privacy. (*Internat. Federation of Prof. & Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319, 331-332.)

California has closely regulated controlled substance prescriptions since well before CURES. As explained in the Board's answering brief, the State has required pharmacists to maintain records for certain controlled substances since 1929 and to make them available "at all times" for

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[4] The Prescription Drug Monitoring Program Training and Technical Assistance Center maintained by Brandeis University reports that 49 States (excluding Missouri and the District of Columbia) have operational prescription drug monitoring programs, and all but five currently provide reports by request to regulatory agencies. (PDMPs Authorized and Engaged in Sending Solicited and Unsolicited Reports to Regulatory Agencies (July 2015) <http://bit.ly/1O7MwfI> [as of Dec. 22, 2015].)

inspection by regulators and law enforcement. (Stats. 1929, ch. 216, p. 381, § 1; Answer Br. 4.) Since 1939, the State has required pharmacists to transmit a record of controlled substance sales to the Department of Justice, first as part of the "triplicate program" and now as a requirement of CURES. (Answer Br. 5-6.) Federal privacy regulations promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), too, recognize the special need for access by licensing bodies. (See 45 C.F.R. § 164.512, subd. (d) [permitting covered entities to provide protected health information to oversight agencies as authorized by law, including licensure and disciplinary actions, in cases in which the individual patient is not the subject of the investigation].)

Contrary to amici's assertions (CMA 25-26; EFF 25), patients filling controlled substances prescriptions are on notice of this pervasive regulation. For example, prescriptions for controlled substances are written on special forms obtained from the printers approved by the Department of Justice. (Health & Saf. Code, §§ 11161.5, subd. (a); see also *id.*, § 11162.1, subds. (a), (c) [requiring form to carry watermark "California Security Prescription" and to state the prescriber's licensing number and federal controlled substance registration number].) Federal law requires physicians and pharmacists to inform patients that their records may be provided to government agencies overseeing the health care system, including physician care. (See, e.g., 45 C.F.R. § 164.520 [HIPAA notice requirements].) At one major pharmacy, for example, patients are informed, "[W]e may disclose information about you (i) if we are required to do so by law or legal process, (ii) to law enforcement authorities or other government officials based on a lawful disclosure request . . . ." (Rite Aid, Privacy Policy <https://www.riteaid.com/legal/privacy-policy> [as of Dec. 22, 2015].)

In light of this history of government regulation, courts, including the United States Supreme Court, have concluded there is no violation of patients' reasonable expectation of privacy when controlled substance records are used by regulators as provided by state law. (See, e.g., *Whalen v. Roe* (1977) 429 U.S. 589, 601-602 & fn. 32 [similar controlled substance monitoring program does not violate the Fourth Amendment or federal right to privacy]; *Williams v. Com.* (Ky. 2006) 213 S.W.3d 671, 682 [citizens have no reasonable expectation of privacy as to examination of State's controlled substance database by personnel authorized by statute]; *State v. Myers* (Oh. Ct. App. 2015) 27 N.E.3d 895, 900-901 [patient cannot reasonably expect that records stored in State's prescription drug monitoring program would not be disclosed to law enforcement].)[5]

The principles set forth in *Whalen* do not, as amici suggest, extend only to the collection of controlled substance records and not the review of those records by state officials. (ACLU 12, fn. 5; EFF 24.) In *Whalen*, the controlled substances records at issue were accessible to 17 New York Department of Health employees, made available to 24 investigators, and had been used in two investigations concerning alleged overuse by individual patients. (*Whalen, supra*, 429 U.S. at p. 595.) Yet the high court found no violation of patients' right to privacy (*id.* at p. 602) or Fourth

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[5] *State v. Skinner* (La. 2009) 10 So.3d 1212, held that a warrant was required to seize pharmacy and hospital records "for criminal investigative purposes." (*Id.* at p. 1218.) *Skinner* does not concern either regulatory use or controlled substance records maintained by a governmental agency. The ACLU also relies on *Douglas v. Dobbs* (10th Cir. 2005) 419 F.3d 1097, in which the Tenth Circuit recognized that the plaintiff had a general privacy interest in her prescription record as maintained by her pharmacist but held plaintiff did not establish a clear violation of the Fourteenth Amendment by the assistant district attorney's role in obtaining a court order for those records.

Amendment rights (*id.* at p. 604, fn. 32). *Whalen* explains, "[D]isclosures of private medical information to doctors, to hospital personnel, to insurance companies, and to public health agencies are often an essential part of modern medical practice even when the disclosure may reflect unfavorably on the character of the patient. Requiring such disclosures to representatives of the State having responsibility for the health of the community, does not automatically amount to an impermissible invasion of privacy." (*Whalen*, *supra*, at p. 602, fn. omitted.) Amici's distinction between the collection and review of controlled substances records, moreover, makes little sense in this context, because, unlike with certain containers or physical objects, the collection of information itself reveals the content. (Cf. *United States v. Hearst* (9th Cir. 1977) 563 F.2d 1331, 1347 [where content of a conversation had already been "seized" by one agency, its subsequent transfer does not further intrude on reasonable expectations of privacy].) And here Lewis does not dispute that the State may lawfully collect controlled substances records as part of the CURES system. (Answer Br. 14.)

Amici additionally claim that patients have the same reasonable expectation of privacy in CURES records as they do in their complete medical files maintained by their doctors. (ACLU 20-23; EFF 13-18; CMA 9-14.) This is incorrect. Information in a patient's medical file may include highly personal details of a patient's life, including family history, causes of medical conditions, and the patient's expressions of fears or concerns to his or her doctor in the private setting of a medical office, among other things. (See *Wood v. Superior Court* (1985) 166 Cal.App.3d 1138, 1147 ["information that may be recorded in a doctor's files is broadranging" and may include "highly personal details of lifestyle and information concerning sources of stress and anxiety"]; *Tucson Woman's Clinic*, *supra*, 379 F.3d at pp. 536-537 [holding Arizona statute's provision

for warrantless clinic searches and mandatory disclosure of patients' unredacted medical records to the government and ultrasound pictures to a third-party vendor violated patients' right to privacy].) The data contained in CURES, in contrast, includes only limited information such as the type and quantity of a controlled substance dispensed to a patient. (See, e.g., AR0116 [redacted].) While the identity of a particular drug could, in some circumstances, suggest the nature of the patient's underlying condition (ACLU 3-5; CMA 11-13), the name of the drug alone would not rule out off-label usage without the diagnostic code. (Stafford, *Regulating Off-Label Drug Use—Rethinking the Role of the FDA* (2008) 358 N. Engl. J. Med. 1427–1429 [up to one-fifth of all drug prescriptions are off-label].) Further, while diagnostic codes are reported to the Department of Justice (Health & Saf. Code, § 11165, subd. (d)(6)), they are not transmitted to the Board. (See AR0116-AR0320 [redacted]; AR0321-AR0369 [redacted].) Patients have no reasonable expectation of privacy that the limited controlled substance information maintained in CURES will not be provided to the Board during a physician disciplinary investigation.

2. The Board's Confidential Receipt of CURES Data Is Not an Actionable Invasion of Privacy

The incremental intrusion alleged in this case—a disclosure from the Department to a regulatory agency acting within the scope of its authority and subject to continued confidentiality requirements—is also not a serious invasion of privacy, the last of the *Hill* threshold factors. (ACLU 33-35; see *Hill*, *supra*, 7 Cal.4th at p. 37.) This is not a collection-challenge case, as was *Ferguson v. City of Charleston* (2001) 532 U.S. 67, 76-77, 80, in which the United States Supreme Court held patients' *Fourth Amendment* rights were violated when medical personnel collected and analyzed urine samples without patients' consent pursuant to a joint criminal prosecution scheme. (See ACLU 16-17.) There is no claim here that California's

database—or any of the 48 other similar state prescription drug monitoring programs in the United States—is itself unconstitutional.

The California right to privacy is particularly concerned with the misuse of information collected for one purpose but then used for another. (*White v. Davis* (1975) 13 Cal.3d 757, 774 [discussing the ballot arguments favoring the constitutional amendment].) But the Board in this case used CURES records exactly as the Legislature intended. As explained in the Answering Brief, under the CURES statute, the Board receives CURES data only for the purpose of discharging its statutory responsibility to enforce the Medical Practice Act. (Health & Saf. Code, § 11165, subd. (a); Answer Br. 23-25.) The information provided, moreover, is subject to all applicable federal and state privacy and security laws and regulations and to all "existing provisions of law to safeguard the privacy and confidentiality of patients." (Health & Saf. Code, § 11165, subd. (c)(1), (2).) For example, information provided to a regulatory agency pursuant to section 11165 may not be disclosed to any third party. (*Id.*, subd. (c)(2); see also Bus. & Prof. Code, §§ 800, 2225 [confidentiality of the Board's files]; Civ. Code, §§ 1798.45, 1798.48, 1798.57 [attaching civil and criminal penalties for wrongful disclosures of personal information, including CURES records].) Accordingly, amici's arguments that the Board's receipt of CURES data in the course of investigating a doctor's alleged negligence is "improper" or somehow "misuses" the information (ACLU 37-39; EFF 5-6), and that the system lacks privacy protections (CMA 31-33), are wrong. The CMA likewise is wrong to suggest that Board review of CURES data is inconsistent with Business and Professions Code section 2225 (CMA 24), which limits the Board's review of certain patient records to patients who have complained to the Board. That limitation applies only to the Board's examination of records "in the office of a physician and

surgeon"—traditional medical records—not data created and maintained by a state agency. (Bus. & Prof. Code, § 2225, subd. (a).)[6]

The Board's use of CURES data also cannot be viewed as a serious, and therefore actionable, intrusion because information sharing among state agencies is well-established under state law. For example, under the state Information Privacy Act, one agency may communicate information—even personal information—to other state agencies in confidence when necessary for the recipient-agency "to perform its constitutional or statutory duties, and the use is compatible with a purpose for which the information was collected," or if "the information requested is needed in an investigation of unlawful activity under the jurisdiction of the requesting agency or for licensing, certification, or regulatory purposes by that agency." (Civ. Code, § 1798.24, subd. (e); see also *Reynaud v. Superior Court* (1982) 138 Cal.App.3d 1, 6 [Department of Justice's receipt of Medi-Cal claim information from State's agent for processing claims for use in state investigation cannot "be deemed an *unreasonable* governmental intrusion"]; *Haskins v. San Diego County Dept. of Public Welfare* (1980) 100 Cal.App.3d 961, 971 [disclosures from one government employee to another under statutory authority to investigate "is not the stuff out of which a cause of action for [a] violation of [the] right of privacy grows"].)

Amici suggest that the Board's use of CURES in this instance violated the state Constitution because the original patient complaint against Lewis to the Board did not concern his prescribing practices. (CMA 23-24; ACLU 35.) But the Legislature created CURES as an alternative to relying

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[6] CMA also asserts that Board access to CURES infringes the psychotherapist-patient privilege. (CMA 28-31, citing Evid. Code, § 1012.) Lewis is not a psychotherapist. While there is a similar doctor-patient privilege, CMA acknowledges it does not apply to disciplinary proceedings. (CMA 30, fn. 13.)

on "random complaints and occasional licensee arrests for indicators of abuse." (Assem. Com. on Public Safety, Analysis of Assem. Bill. No. 3042 (1995-1996 Reg. Sess.) as amended Aug. 12, 1996, p. 2 <http://bit.ly/1QV9qYt> [as of Dec. 22, 2015].)[7] And where a patient complaint raises questions about a physician's general competence, it is reasonable for the Board to ensure that the physician is not putting other patients at risk by irresponsible prescribing practices. Amici offer no explanation why patients' reasonable expectations of privacy would differ based on the nature of the instigating complaint.

Because Lewis has not made the threshold showing that patients have a reasonable expectation of privacy that CURES data will not be shared in confidence with the Board, and that the Board's use of CURES data for regulatory purposes reflects a serious intrusion (*Hill*, *supra*, 7 Cal.4th at p. 37), the Court should affirm the judgment below on that basis. (See *County of Los Angeles v. Los Angeles County Employee Relations Com.* (2013) 56 Cal.4th 905, 926 [if threshold factors not satisfied, no need to proceed to balancing].)

C. The Board's Use of CURES Satisfies the *Hill* Balancing Test

Even if Lewis satisfied *Hill*'s threshold factors, his claim based on California's right to privacy fails, as the Board's vital, indeed compelling, interest in the use of CURES records in physician disciplinary matters outweighs patients' asserted privacy interests. The Legislature created CURES as a tool to respond to the public health crisis caused by prescription drug diversion and abuse. (See Stats. 1996, ch. 738, p. 3976, § 1 ["the ability to closely monitor the prescribing and dispensing of

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[7] In any event, the Board may initiate complaints and generate investigations on its own authority. (Bus. & Prof. Code, § 2220, subd. (a).)

Schedule II controlled substances" "is essential to effectively control the abuse and diversion of these controlled substances."].) Public health and patient safety concerns have only grown more acute over time, with opioid analgesics involved in more than 16,235 deaths in 2013 alone—more than any other drug, licit or illicit. (Johns Hopkins Bloomberg School of Public Health, The Prescription Opioid Epidemic: An Evidence-Based Approach (Nov. 2015) at p. 21 <http://bit.ly/1PMHNA5> [as of Dec. 22, 2015].) Providing medical regulators with the means to ensure careful prescribing practices is critical, as "[n]early all prescription drugs involved in overdoses are originally prescribed by a physician." (Congressional Research Service, Prescription Drug Monitoring Reports (Mar. 24, 2014) at p. 2.) By providing physicians and licensing agencies with access to controlled substance prescription records, prescription drug monitoring programs are a critical tool to address this threat. (Johns Hopkins, at pp. 28-29.) The Board's vital patient and public-safety concerns outweigh any minimal intrusion incurred by its use of CURES in this context. (Answer Br. 29-30; cf. *Doe v. Southeastern Pennsylvania Transp. Authority (SEPTA)* (3d Cir. 1995) 72 F.3d 1133, 1143 [self-insured employer's need to monitor its prescription plan coverage outweighs its employee's interest in keeping prescription drug purchases confidential].)

Amici argue that patients may opt out of receiving necessary treatment rather than expose their prescription records to government oversight. (ACLU 12-13 & fn. 5; CMA 19-21; see also *Whalen*, *supra*, 429 U.S. at p. 878 [noting same concern].) By design, prescription drug monitoring programs affect prescribing practices by helping practitioners to identify patterns of substance abuse in their patients and providing the opportunity to dissuade individuals from drug-seeking or diversionary behaviors. (Congressional Research Service, *supra*, at p. 2.) Neither amici nor Lewis offer any evidence that use of prescription drug monitoring

programs by regulators in the course of physician disciplinary investigations has a chilling effect on legitimate prescribing practices, or demonstrate that any such incremental effect would outweigh the Board's important interests. (Cf. *Whalen*, at p. 878.)

Amici disagree with the balance the Legislature struck between patient privacy and the need to protect the public against incompetent, impaired, or negligent physicians. Two amici urge the Court to impose a requirement that the Board obtain a warrant supported by probable cause. (ACLU 26-32; EFF 9-11.) The CMA proposes a subpoena substantiated by "good cause." (CMA 24-25.) As explained in the Board's answering brief, there is no legal basis to require either a warrant or subpoena, and these alternatives make little sense in the context of a non-criminal disciplinary matter. (Answer Br. 31-34.) Amici cite no authority holding that the right to privacy requires a regulatory agency to marshal probable cause and obtain a warrant to review another agency's records in the course of an administrative investigation. Likewise, amici never explain how the concept of "probable cause"—a test generally applied in the context of criminal investigations—would operate in the very different setting of Board disciplinary investigations. (See *Illinois v. Gates* (1983) 462 U.S. 213, 238 [probable cause means "a fair probability that contraband or evidence of a crime will be found in a particular place"]; *Bill v. Brewer* (9th Cir. 2015) 799 F.3d 1295, 1301 ["probable cause to search...concerns the connection of the items sought with crime"].) Amici's arguments also ignore that the Board's "power to make administrative inquiry" is like that of the grand jury, which can "investigate 'merely on suspicion that the law is being violated, or even just because it wants assurance that it is not.'" (*Arnett v. Dal Cielo* (1996) 14 Cal.4th 4, 8, quoting *Brovelli v. Superior Ct.* (1961) 56 Cal.2d 524, 529. Effective exercise of the Board's inquiry prerogative is not consistent with a warrant system.

The CMA's suggestion that the Board may not obtain CURES records without issuing a subpoena (CMA 24-25) likewise fails. Board requests for CURES prescriber records undoubtedly satisfy the minimal relevance standard applicable to subpoenas, and there is no rationale for adopting a system contemplating pre-enforcement judicial review here, where there would be no occasion for the Department (the presumed recipient of the proposed subpoena) to object to Board requests for CURES data when the Board's requests comply with the CURES statute and any discretionary access protocols. (Answer Br. 32-33.) There is no basis, moreover, to import the "good cause" standard applied by some Courts of Appeal in the context of subpoenas for medical records. (CMA 24-25; see Answer Br. 33-34.) As explained above, CURES data do not include the kind of highly personal information that may be included in a doctor's medical records. (*Supra*, 9-10.) In addition, controlled substances information has long been available for regulatory review (subject to confidentiality requirements) without a subpoena, and is collected, in part, for that very purpose. (Answer Br. 4-6; *supra*, 12 [discussing Information Privacy Act's express allowance of agency-to-agency communication of confidential information].)

Amici's proposed alternatives, moreover, would compromise the Board's ability to investigate unprofessional and unsafe medical care. (Answer Br. 34.) Under the ACLU and EFF's proposed process, the Board would not be able to view CURES data until it had developed enough evidence of physician misconduct to meet the probable cause standard. This could stall or halt a substantial number of the approximately 1,500 investigations the Board pursues annually (representing just a fraction of

the complaints received).[8] To obtain a warrant, moreover, the Board could have to employ potentially more intrusive investigative means up front. This additional process could prevent the Board's prompt intervention to stop dangerous drug prescription practices—which can have severe and sometimes fatal consequences for patients. (Answer Br. 34.) As the Court of Appeal here concluded, "[r]eal-time access to CURES...protects patients from incompetent and unprofessional doctors." (Opn. 23.)

Amici cite a number of state laws and suggest that those States impose subpoena or warrant requirements before controlled substances data may be reviewed by a medical regulatory agency. (ACLU 1, 42-43; CMA 33-35.) This is incorrect. The majority of state prescription drug monitoring programs referenced by amici, like California, make controlled substance records available to regulatory agencies without resort to a warrant or subpoena. (E.g., 35 Pa. Stat. & Cons. Stat. Ann. § 872.9, subd. (b)(6); Fla. Stat. § 893.055, subd. (c)(1) [permitting regulatory access via written request]; see also Mass. Gen. Laws ch. 94C § 24A, subd. (f)(3) [requiring only that inquiries pertain to a "bona fide specific controlled substance or additional drug-related investigation"].) None of the jurisdictions cited by amici requires medical regulators to obtain a warrant supported by probable cause. And only five of the twenty-two States mentioned by amici require regulators to proceed by way of subpoena or court order, while one prohibits use by medical regulators. (Alaska Stat. § 17.30.200, subd. (d)(1) [search warrant, subpoena, or order issued by administrative law judge or court]; Colo. Rev. Stat. § 12-42.5-404, subd. (g) [court order or subpoena]; Ga. Code Ann. § 16-13-60, subd. (c)(4) [administrative subpoena issued by an administrative law judge]; Iowa

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[8] See Medical Board of California, 2013-2014 Annual Report, at p. vi <http://bit.ly/1PXH9jG> [as of Dec. 22, 2015].)

Admin. Code r. 657-37.4, subd. (2) [court order, subpoena, "or other means of legal compulsion" supported by a determination of probable cause]; Md. Code Ann. Health-Gen. § 21-2A-06, subd. (b)(4) [administrative subpoena]; Minn. Stat. Ann. § 152.126, subd. (5)(c) [prohibiting use of the database in disciplinary proceedings against a prescriber].)

As a matter of discretion rather than Fourth Amendment mandate, some States require some higher showing for criminal investigators but maintain access for regulatory use without a warrant or subpoena. (See, e.g., N.H. Rev. Stat. § 318-B:35, subd. (b); N.Y. Pub. Health Law § 3371, subds. (1)(b), (c); Or. Rev. Stat. § 431.966, subds. (2)(a)(D), (E).) Within the past year, the Department of Justice, in its discretion, began to require criminal investigators using the new CURES 2.0 system to provide either a warrant or court order before querying patient records. (See Attachment A: Dept. of Justice, Bulletin to All CURES Law Enforcement Users (June 11, 2015 [announcing practice to take effect with CURES 2.0 system release]; Dept. of Justice, Bulletin to All CURES Law Enforcement Users (Sept. 11, 2015) [announcing exception when patient information is sought for deceased persons]; Dept. of Justice, Attorney General Kamala D. Harris Launches New Prescription Drug Monitoring Program, CURES 2.0 (Dec. 22, 2015) [press release announcing systemwide launch of CURES 2.0 effective January 8, 2016].)

While a State may voluntarily elect to impose a warrant or subpoena requirement or its equivalent for regulatory investigations, that is not the choice that California has made. Rather, the state Legislature struck a balance that respects patients' interests in confidentiality, but allows the Board to promptly investigate and address the very real patient and public-safety threats posed by controlled substance abuse and diversion. Amici cite no authority for the proposition that an individual's right to privacy compels the Board to establish probable cause or any other heightened

showing to access the government's own controlled substance records to investigate physician misconduct where such use is explicitly authorized by statute.

II. LEWIS CANNOT VICARIOUSLY ASSERT A FOURTH AMENDMENT CLAIM ON BEHALF OF THIRD PARTIES AND ANY SUCH CLAIM LACKS MERIT

A. Fourth Amendment Rights Are Personal and Cannot Be Asserted Vicariously

"It has been clear for a generation that 'Fourth Amendment rights are personal rights ... [that] may not be vicariously asserted.'" (*United States v. Haqq* (2d Cir. 2002) 278 F.3d 44, 47, quoting *Rakas v. Illinois,* 439 U.S. 128, 133-34 (1978) (alteration in the original); see also *People v. Bryant* (2014) 60 Cal.4th 335, 365.) Amici do not cite a single case in which the United States Supreme Court has deviated from this basic principle. Instead, they cite Article III standing cases in which federal courts *outside of the Fourth Amendment context* have grappled with the unrelated question of when federal court jurisdiction extends to claims brought on behalf of absent parties. (ACLU 9-11, 15.)[9] The high court, however, has made clear that the personal nature of the Fourth Amendment is a matter of substantive constitutional law, which is distinct from questions of Article III standing. (*Rakas*, at p. 133 ["We decline to extend the rule of standing

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[9] The only case cited by the ACLU (pp. 9, 12) addressing the Fourth Amendment is *In re Subpoenas Duces Tecum* (W.D. Va. 1999) 51 F.Supp.2d 726, 738, aff'd 228 F.3d 341 (4th Cir. 2000), in which the Fourth Amendment claim was personal to the movant. (*Id.* at p. 729.) The government did not contest the physician's standing to assert a separate claim as to his patients' right to privacy in the subpoenaed records (*id.* at p. 738, fn. 6), and neither the district court nor court of appeal addressed the question of third-party standing before rejecting the merits of that argument. (*Id.* at p. 738; 228 F.3d at p. 351.)

in Fourth Amendment cases in the manner suggested by petitioners"]; see also *Bryant*, at p. 365; *People v. Ayala* (2000) 23 Cal.4th 225, 255.)

Amici err in claiming that the *Rakas* rule barring third-party assertion of Fourth Amendment rights applies only when the owner of the property at issue was present and "aware of the search." (ACLU 10.) The cases cited in the Board's answer brief are not consent cases and do not turn on whether the owner was aware of the search or had an opportunity to pursue his or her own claims. (Answer Br. 35-36; see, e.g., *Ayala*, at p. 255.)[10] In any event, the high court has applied *Rakas*'s rule outside the context where the owner of the property was present for the search. (See, e.g., *United States v. Payner* (1980) 447 U.S. 727, 730 [agent entered the empty house of defendant's banker and removed the banker's briefcase containing the documents at issue].) Amici's attempt to limit *Rakas* fails, and, applying its rule, Lewis's Fourth Amendment claims are barred.

B. Lewis's Fourth Amendment Claim Fails on the Merits

Even if Lewis could assert his patients' Fourth Amendment rights, those claims would fail. In *Whalen*, the United States Supreme Court rejected a similar Fourth Amendment claim, saying "We have never carried the Fourth Amendment's interest in privacy" that far and "[w]e decline to do so now." (*Whalen*, *supra*, 429 U.S. at p. 604, fn. 32.) The ACLU argues that *Whalen*'s Fourth Amendment holding extends only to the

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[10] While the ACLU characterizes the property at issue in *People v. Bryant* as "the co-defendant's residence" (ACLU 10), this argument appears to confuse the name of one of the co-defendants (Leroy Wheeler) with the location of the property (Wheeler Avenue). (60 Cal.4th 335, 353-355, 364-365.) Similarly, it seems a stretch to assume the owner of the automobile shop at issue in *People v. Ayala* was "aware of the search." (ACLU 10.) Though his body was present at the time the police entered the premises, it appears he was dead. (23 Cal.4th at p. 242, 244.)

collection of prescription information (ACLU 16), which is not challenged here, but this is incorrect for the reasons explained above. (*Supra*, 8-9.) The ACLU is also wrong to suggest that the Board's review of CURES data "involve[s] affirmative, unannounced, narrowly focused intrusions into individual privacy during the course of a criminal investigation" that *Whalen* distinguished from the regulatory review of controlled substances information involved in that case. (*Whalen*, at p. 602, fn. 32.) The "intrusions" to which *Whalen* referred were police pat down searches (*Terry v. Ohio* (1968) 392 U.S. 1, 9), tapped telephone conversations (*Katz v. United States* (1967) 389 U.S. 347, 348), and warrantless arrests (*Beck v. State of Ohio* (1964) 379 U.S. 89, 89-90). (See *Whalen*, at p. 602, fn. 32. The Board's action, in contrast, is limited to reviewing information already provided to the Department of Justice pursuant to statute.

Amici further argue that the Fourth Amendment requires the Board to obtain a warrant (supported by probable cause) before it can review CURES data. (ACLU 26-32; EFF 9-11.) This is wrong for all the reasons explained above (*supra*, 15) and is inconsistent with established case law providing that, under the Fourth Amendment, one government agency does not need a warrant to receive information from another one. (*United States v. Hassanshahi* (D.D.C. 2015) ___ F.Supp.3d ___, 2015 WL 7303515, *13) ["well-established precedent" provides no warrant needed when one government entity seeks information from another]; *Jabara v. Webster* (6th Cir. 1982) 691 F.2d 272, 278-279 [even if individual maintains subjective belief that information would not be shared with another government agency when authorized by law, that is not "an expectation that society is prepared to recognize as reasonable"]; *United States v. Joseph* (9th Cir. 1987) 829 F.2d 724, 728 [no Fourth Amendment violation where IRS obtained defendant's business records held in the lawful possession of a state licensing board].) In such circumstances, there is no reasonable

expectation of privacy that information lawfully obtained by one governmental entity will not be provided in confidence to another governmental entity. (See *Jabara*, at pp. 278-279.)[11]

The only case cited by amici to have held that a government agency needs a warrant before obtaining controlled substances information lawfully collected by another government agency is the district court's decision in *Oregon Prescription Drug Monitoring Program v. U.S. Drug Enforcement Admin.* (D. Or. 2014) 998 F.Supp.2d 957 (*Oregon PDMP*), which is now pending on appeal before the Ninth Circuit. That court's reasoning is not persuasive, and the case is, in any event, inapposite. There, the district court misread *Whalen* as leaving open the Fourth Amendment question when, in fact, the United States Supreme Court specifically considered and rejected any Fourth Amendment violation. (Compare *Oregon PDMP*, at p. 964 with *Whalen*, *supra*, 429 U.S. at p. 604, fn. 32.) In addition, the district court recognized that patients' reasonable expectations of privacy were informed by the specific statutory provision

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[11] Neither *United States v. Ganias* (2d Cir. 2014) 755 F.3d 125, rehg. en banc granted June 29, 2105, nor *United States v. Comprehensive Drug Testing, Inc.* (9th Cir. 2010) 621 F.3d 1162 (per curiam, en banc) applies, as both concern records obtained by the government without any legal authority. (EFF 18, 26; ACLU 25, 40-41). In *Ganias*, the government seized the defendant's personal business records without a warrant and then retained them long after such files had been segregated from the business records covered by the warrant. (*Ganias*, at p. 128-129.) In *Comprehensive Drug Testing*, the government seized electronic records not covered by its search warrant and then failed to follow the specific segregation procedure set forth in the warrant. (*Comprehensive Drug Testing*, at p. 1167.) The court concluded suppression was warranted in "an obvious case of deliberate overreaching by the government in an effort to seize data as to which it lacked probable cause." (*Id.* at p. 1172.) In contrast, the records maintained in CURES were transmitted by dispensers as directed by Health and Safety Code section 11165, subdivision (d).

requiring a court order for criminal investigators. (*Oregon PDMP*, at p. 966, citing Or. Rev. Stat. § 431.966, subd. (2)(a)(D).) California law does not impose such a requirement. (Health & Saf. Code, § 11165.) Third, the case concerned only criminal investigations. (*Oregon PDMP*, at p. 961.) While the Oregon statute permits regulatory use of the database (Or. Rev. Stat. § 431.966, subd. (2)(a)(E), that use was not at issue in the case.

Were the Court nevertheless to conclude that the Board would otherwise require a warrant to access controlled substance records lawfully held by the Department of Justice in CURES, the administrative inspection exception for closely regulated industries set forth in *New York v. Burger* (1987) 482 U.S. 691, 702-703, would apply. Contrary to amici's view (ACLU 28-29; EFF 20-21), pharmaceuticals are closely regulated. (Answer Br. 39.) Amici correctly note that in *City of Los Angeles, Calif. v. Patel* (2015) ___ U.S. ___, 135 S.Ct. 2443, the high court observed that it had identified only four industries as closely regulated (liquor sales, firearms dealing, mining, and running an automobile junkyard), all of which "inherent[ly]" pose a "clear and significant risk to the public welfare." (*Id.* at pp. 2454-2455.) But that was not intended to be an exhaustive list. That description applies equally to prescription drugs in general and controlled substances in particular, which are defined by law as "dangerous" and pose significant risks to human health and lives that require close regulatory scrutiny. (Answer Br. 4-5, 29-30.) Consistent with this commonsense conclusion, multiple circuit courts have held that pharmaceuticals are "closely regulated" within the meaning of *Burger*. (E.g., *United States v. Gonsalves* (1st Cir. 2006) 435 F.3d 64, 67 [drugs seized from physician's office]; *United States v. Argent Chemical Laboratories, Inc.* (9th Cir. 1996) 93 F.3d 572, 575-576 [drug manufacturer]; *United States v. Acklen* (6th Cir. 1982) 690 F.2d 70, 74-75 [pharmacist's records].)

Amici suggest the closely regulated doctrine applies only to the interests of business owners (ACLU 29-30; EFF 23), but the case law does not make such a distinction, and the doctrine has been applied to other market participants. (See *Skinner v. Ry. Labor Executives' Assn.* (1989) 489 U.S. 602, 630 [railway employees know they are subject to warrantless drug testing following an accident]; *People v. Maikhio* (2011) 51 Cal.4th 1074, 1092-1093 & fn. 8 ["we consider the effect of the state's close regulation of fishing and hunting upon an angler's or hunter's reasonable expectation of privacy"]; cf. e.g., *Vernonia School Dist. 47J v. Acton* (1995) 515 U.S. 646, 657 [analogizing student athletes to participants in closely regulated industries].) Patients are on notice that the State closely regulates the prescription and dispensation of controlled substances. (*Supra*, 7; Answer Br. 21-22.) As the Court has confirmed, it is the regulatory context, rather than an assessment of voluntariness or "implied consent," that is the relevant touchstone in the high court's closely regulated doctrine. (*Maikhio*, at p. 1083, fn. 8.)

EFF argues the CURES statute does not satisfy the third *Burger* factor. (EFF 25-26.) But the statutory scheme informs patients, physicians, and pharmacists that the Board's use of CURES to investigate physician misconduct "do[es] not constitute discretionary acts by a government official but [is] conducted pursuant to statute." (*Burger*, *supra*, 482 U.S. at p. 711.) In particular, the scope of the Board's investigatory power is narrowly defined by statute to enforcement of the Medical Practice Act against licensees. (Bus. & Prof. Code, § 2004; Answer Br. 8-9.) Additional limits on time and place of inspection would provide no meaningful advantage to patients or physicians as the information at issue is already held by the government, and administrative review of that information effects no further intrusion into the premises or property of any individual.

For all of the reasons set forth above, patients cannot reasonably expect the Board will not confidentially review CURES records in the course of investigating physician misconduct. (*Supra*, 6-10.) This is especially true because the information at issue concerns controlled substances, which have long been closely regulated by the government. (Answer Br. 4-8.) Whether it is because Lewis cannot vicariously assert his patients' Fourth Amendment interests, or because the Fourth Amendment is not implicated when the Board uses records already disclosed to and maintained by the government for this very purpose, the Fourth Amendment provides Lewis with no basis to exclude evidence derived from CURES in this administrative proceeding.

CONCLUSION

The judgment of the Court of Appeal should be affirmed.

Dated: December 23, 2015 Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached MEDICAL BOARD OF CALIFORNIA'S ANSWER TO AMICUS CURIAE BRIEFS uses a 13 point Times New Roman font and contains 7,483 words.

Dated: December 23, 2015

KAMALA D. HARRIS
Attorney General of California

Kathleen Vermazen Radez /jak

KATHLEEN VERMAZEN RADEZ
Deputy Solicitor General
Attorneys for Real Parties in Interest
Medical Board of California

ATTACHMENT A

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE

BUREAU OF CRIMINAL IDENTIFICATION
& INVESTIGATIVE SERVICES
CURES PROGRAM
P.O. BOX 160447
SACRAMENTO, CA 95816-1089

June 11, 2015

TO: ALL CURES LAW ENFORCEMENT USERS

RE: Controlled Substance Utilization Review and Evaluation System (CURES 2.0) Access by Law Enforcement

The California Department of Justice (DOJ), in conjunction with the Department of Consumer Affairs, will release the CURES 2.0 system on July 1, 2015. The CURES 2.0 features include a vastly improved user interface, ease of use, and robustness.

New DOJ CURES information access policy will implement with the release of CURES 2.0. Law enforcement users will be required to provide additional information and documentation for searching the CURES 2.0 system, as follows:

Prescriber and Pharmacy Prescription History (PPH) Search
Law enforcement subscribers requesting a PPH must enter a Case Number and Violation/Crime Code when submitting a query.

Patient Activity Report (PAR) Search
Law enforcement subscribers requesting a PAR must enter the following when submitting a query:

1. Case Number;
2. Violation/Crime Code; and
3. Attach a PDF copy of either a Search Warrant face page or Court Order.

Coroner and medical examiner (ME) subscribers requesting a PAR must enter the following when submitting a query:

1. Case Number; and
2. Attach a copy of a signed statement from the Coroner/ME certifying the search is related to a Coroner/ME Case.

For questions concerning this new requirement, please contact Leticia Tanner at (916) 227-5589 or Austin Weaver at (916) 227-3858.

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE

BUREAU OF CRIMINAL IDENTIFICATION
& INVESTIGATIVE SERVICES
CURES PROGRAM
P.O. BOX 160447
SACRAMENTO, CA 95816-1089

September 11, 2015

TO: ALL CURES LAW ENFORCEMENT USERS

RE: ACCESSING PATIENT DATA FOR DECEASED PERSONS

This bulletin addresses an exception to the search warrant / court order requirement for law enforcement personnel to obtain CURES patient information.

This exception applies to patient information sought for **deceased** persons. Decedents have a diminished expectation of privacy. Accordingly, neither search warrants nor court orders are required to obtain CURES patient information for decedents.

The attestation form accompanying this bulletin may be used in lieu of a subpoena or court order when law enforcement personnel seek CURES information of a deceased individual. In CURES 2.0, the completed attestation form should be uploaded in place of a search warrant or court order as the "Patient Search Required Documentation" on the CURES Law Enforcement Agency Authorization page.

For questions concerning this matter, please contact Leticia Tanner at (916) 227-5589 or Austin Weaver at (916) 227-3858.

CURES PATIENT QUERY
LAW ENFORCEMENT AGENCY ATTESTATION

This attestation form is used in lieu of a subpoena or court order when a law enforcement agency seeks the CURES information of a person who is deceased.

Once completed, this form should be uploaded in place of a search warrant or court order as the "Patient Search Required Documentation" on the CURES Law Enforcement Agency Authorization page.

ATTESTATION

I, the undersigned, hereby attest that:

1. I am presently a law enforcement agency employee.

2. The below-identified person, on whom I intend to run a PAR, is deceased.

   Decedent Identification (must match PAR search criteria used):

   Name: _____

   DOB: _____

   Address(es): _____

   _____

3. This PAR request, and the information derived therefrom, is justified by and sought in connection with an open investigation by my agency.

I affirm that all information I have given in this document is true, and I understand that the DOJ pursues regulatory and/or criminal sanctions for misuse of CURES information.

_____ _____
LEA Employee Signature Date

_____ _____
Print/Type LEA Employee Name and Title Direct Telephone Number

_____ _____
Supervisor Signature Date

_____ _____
Print/Type Supervisor Name and Title Direct Telephone Number

State of California ~ Department of Justice
OFFICE of the ATTORNEY GENERAL
KAMALA D. HARRIS

Attorney General Kamala D. Harris Launches New Prescription Drug Monitoring Program, CURES 2.0

Tuesday, December 22, 2015
Contact: (415) 703-5837, agpressoffice@doj.ca.gov

SACRAMENTO – Attorney General Kamala D. Harris and the California Department of Consumer Affairs today announced the universal launch of the new Controlled Substance Utilization Review and Evaluation System ("CURES 2.0"), a state-of-the-art overhaul of California's prescription drug monitoring program that will allow health providers and pharmacists to more effectively flag at-risk patients and curb prescription drug abuse.

"This innovative prescription drug database ensures that California continues to lead the fight against our country's prescription drug abuse epidemic," said Attorney General Harris. "Through the use of new technology, CURES 2.0 will save lives and improve public health while also providing a vastly improved user experience for healthcare professionals, regulatory boards, and law enforcement."

Starting January 8, 2016, current CURES users logging in with up-to-date and secure web browsers will be automatically redirected to the new 2.0 system. In anticipation of the launch, Attorney General Harris also sent a letter to members of the medical community urging them to only use secure software to access confidential and sensitive patient information.

"CURES 2.0 will give California's healthcare professionals who prescribe and dispense potent prescription drugs a powerful tool to better access and utilize patient information to help them identify individuals who are abusing these drugs," said Awet Kidane, Director of the California Department of Consumer Affairs. "It is a direct result of the hard work and collaboration between the Department of Justice, the Department of Consumer Affairs, and the regulatory boards funding this project."

The online CURES database enables healthcare providers to review a patient's medication history before prescribing new drugs, storing prescription records for all controlled substances classified as Schedule II, III, and IV. Over 5.5 million such requests have been processed so far in 2015 alone.

In addition to providing users with faster and more reliable access to patient activity reports, the upgraded 2.0 system features cutting-edge analytics for flagging at-risk patients, allowing medical professionals to prescribe wisely and helping to prevent abuse or diversion of controlled medications such as opioids.

"CURES 2.0 is without a doubt the most effective tool for doctors and pharmacists to help curb prescription drug abuse. Many lives will be saved in California," said Bob Pack, a patient safety advocate.

By law, all health practitioners licensed to prescribe or dispense scheduled medications are required to sign up for CURES by July 1, 2016. The launch of the new 2.0 system will also include the release of a new streamlined registration process, which will allow users to apply for access and verify their credentials entirely online using secure web browsers.

CURES 2.0 was implemented through Senate Bill 809, legislation authored by former California State Senator Mark DeSaulnier and sponsored by Attorney General Harris in 2013.

"The U.S. claims less than 5% of the world's population, but consumes roughly 80% of the world's opioid supply. Each day, 44 people in the U.S. die from an overdose of prescription painkillers. By launching CURES 2.0 and requiring all prescribers and pharmacists to enroll, California will be on the cutting edge of addressing this crisis. I am proud to have authored this law in the memory of the countless sons and daughters who were lost to this epidemic. I thank Attorney General Harris and Governor Brown for their years of work to ensure the modernization of CURES is a success," said Congressman Mark DeSaulnier (CA-11).

To learn more about CURES 2.0, visit https://oag.ca.gov/cures-pdmp.

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Attachment	Size
CURES Universal Launch and Streamlined Registration - 12-21-15.pdf	136.37 KB
AG Letter to CA Healthcare Professionals - 12-21-15.pdf	649.41 KB

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: ***Alwin Carl Lewis, M.D. V. Medical Board***
No.: **S219811**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On December 23, 2015, I served the attached **MEDICAL BOARD OF CALIFORNIA'S ANSWER TO AMICUS CURIAE BRIEFS** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

SEE ATTACHED LIST

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 23, 2015, at San Francisco, California.

Elza Moreira
Declarant

Signature

LA2014613696/20733045.doc

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