CASE NO. S224472

CALIFORNIA SUPREME COURT

JATINDER DHILLON,

Petitioner and Respondent,

vs.

JOHN MUIR HEALTH, BOARD OF DIRECTORS OF JOHN MUIR HEALTH

Respondents and Appellants.

From an Order of Dismissal, First District Court of Appeal, Div. Three, Case No. A143195
Contra Costa Superior Court, Case No. MSN-13-1353
The Hon. Laurel S. Brady, Judge Presiding

JATINDER DHILLON'S OPPOSITION TO MOTION TO AUGMENT THE RECORD OR COUNTER-MOTION TO AUGMENT

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Attorneys for Petitioner and Respondent Jatinder Dhillon, M.D.

OPPOSITION TO MOTION TO AUGMENT THE RECORD AND COUNTER-MOTION TO AUGMENT THE RECORD

Petitioner and respondent Jatinder Dhillon, M.D. ("Dr. Dhillon") hereby opposes the motion of John Muir Health ("JMH") to augment the record with a document lodged (but never filed) with the Superior Court on the following grounds: (1) The appellate court never had the opportunity to assess the document because it was never presented by JMH to the appellate court; and, (2) The document is irrelevant.

Furthermore, in the event that the motion is granted, Dr. Dhillon hereby moves for an order augmenting the record to include the document attached as Exhibit 1. Exhibit 1 is the letter submitted by JMH to the Superior Court in response to the document that JMH seeks to augment the record with and, for purposes of providing a *complete* record, this document should also be included if the first document is.

MEMORANDUM OF POINTS AND AUTHORITIES

1.

THE MOTION TO AUGMENT SHOULD BE DENIED

The motion of JMH to add to the record before this Court a letter and proposed judgment that was *never* filed in the Superior Court, but which was only lodged with that court and never acted on, should be denied.

The entire focus of the petition in this proceeding is the action of the Court of Appeal. But – as evidenced by JMH's motion to augment – the Court of Appeal never had the subject document before it in the record in that court and it would be untenable to make a determination in this case on a record that was never presented to the appellate court.

Beyond that point, the fact is that the document – and the argument based on it in JMH's reply brief – is irrelevant. The document is a letter from plaintiff's counsel enclosing a proposed judgment. Not only did the Superior Court not file the letter, but only lodged it, the Superior Court never signed the proposed judgment.

JMH argues in its reply brief that the letter and proposed judgment are relevant because: (1) The letter explained that a proposed judgment

was being submitted because "[i]t appears that the law is not entirely clear whether a signed Order is sufficient to trigger the time for filing any appeal," and (2) because the proposed judgment recited that it was rendered pursuant to Code of Civil Procedure section 1094.5(f), thereby confirming that it was, in fact a valid judgment. (Reply Brief, pp. 8-9.)

As to the first issue, counsel's concern was obviously appropriate, i.e., as this proceeding demonstrates, the question of whether the order alone triggered some right to some type of appellate review is the point here.

As to the second issue, there is no need to rely on the recitation in the *proposed* judgment that was never signed to the effect that was entered into pursuant to Code of Civil Procedure section 1094.5 because the *actual judgment* makes the same recitation. [4 AA 781-785.] But, as pointed out in Dr. Dhillon's Answer Brief on the Merits, at page 19, fn. 2, the fact that a judgment *states* that it is issued pursuant to a certain code section does not mean that it is, in fact, *in compliance with* that code section. (*Griset v. Fair Political Practices Commission* (2001) 25 Cal.4th 688, 696 ["It is not the form of the decree but the substance and *effect* of the adjudication which is determinative."].) And that is the whole point of that argument in the Answer Brief, i.e., that the "judgment," despite its boilerplate recitation, does *not* comply with section 1094.5 because the relief afforded is not final

as defined under that statute.

Thus, not only is the requested document not one that was before the appellate court, but it is irrelevant and adds nothing to support the assessment and analysis of the issue in this Court. As such, the motion to augment should be denied outright.

2.

IN THE EVENT THAT JMH'S MOTION T AUGMENT IS GRANTED, DR. DHILLON REQUESTS THAT THE RECORD ALSO BE AUGMENTED WITH THE DOCUMENT ATTACHED AS EXHIBIT 1

In the event that JMH's motion to augment is granted despite the irrelevance of the document sought to be added to the record, Dr. Dhillon respectfully requests that the record also be augmented with the document attached as Exhibit 1. Exhibit 1 is JMH's own letter lodged with the Superior Court in *response* to the document it seeks to augment the record with.

In Exhibit 1, JMH objects to the proposed order and further asserts that *no judgment is necessary at all* because the "[a]n order granting or denying a petition for an extraordinary writ constitutes a final judgment."

(Ex. 1, p. 2, emphasis added.) Thus, even under JMH's own analysis, and contrary to its argument in its Reply Brief on the Merits, a judgment – whether it recites that it is issued in compliance with section 1094.5 or not – is unnecessary.

CONCLUSION

The motion to augment is unnecessary and unwarranted. It should, therefore be denied. In the event it is granted, however, Dr. Dhillon's counter-motion to augment the record should also be granted.

Dated: September 15, 2015

THE MINNARD LAW FIRM

THE ARKIN LAW FIRM

By: _____

CARLA V. MINNARD
SHARON J. ARKIN
Attorneys for Petitioner
and Respondent Jatinder
Dhillon

EXHIBIT 1

DECLARATION OF CARLA MINNARD

I, CARLA MINNARD, DECLARE:

1. I am an attorney admitted to practice before this Court and am the principal of The Minnard Law Firm, one of the attorneys of record for Jatinder Dhillon, M.D.

2. Attached as Exhibit 1 is a true and correct copy of a letter, dated August 15, 2014 sent by Carlo Coppo, counsel for John Muir Health to the Superior Court and which I was copied on as indicated in the "cc:" at the bottom of the letter. Based on the parties' usual procedure, I believe that this letter was lodged with the Superior Court.

3. In the event that the motion of John Muir Health to augment the record with my letter and enclosure of August 14, 2014 is granted, I respectfully request that the record also be augmented with the letter attached as Exhibit, which is a response to that August 14, 2014 letter.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on September 14th, 2015 at Oakland, California.

CARLA V. MINNARD

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Reply to:
SHELLEY A. CARDER
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August 15, 2014

VIA FACSIMILE: (925) 957-5911
The Honorable Laurel Brady
Department 31
Contra Costa Superior Court
725 Court Street
Martinez, California 94553

Re: ***John Dhillon, M.D./John Muir Health***
Case # N13-1353

Dear Honorable Laurel Brady:

Pursuant to our communication with the court clerk on August 15, 2014, please accept this opposition to the proposed Judgment submitted by counsel for Dr. Dhillon on August 14, 2014.

Counsel for Dr. Dhillon failed to previously serve counsel for John Muir Health with the proposed order, as required by both the local rules and California Rules of Court. Local Rule 16(a) requires a written order be prepared and served in accordance with California Rules of Court, Rule 3.1312. The cited Rule of Court requires that the party preparing the proposed order serve it on any other party for approval and to form and content "within five days of the ruling." (CRC 3.1312(a).) This was not done. Therefore, counsel for Dr. Dhillon also failed to comply with subdivision (b) of the same rule, which requires the order be transmitted "to the court together with a summary of any responses of the other parties or a statement that no responses were received."

The proposed Judgment submitted by Counsel for Dr. Dhillon does not accurately reflect this Court's Order, as this Court denied seven of the eight grounds challenging the administrative action.

As the action taken did not require a report to be filed pursuant to Business and Professions Code section 805, John Muir Health contends neither party is to be considered the "prevailing party."

John Muir Health believes this Court's Order filed August 6, 2014 rules on all issues presented. An order granting or denying a petition for an extraordinary writ constitutes a final judgment for purposes of an appeal, *even if the order is not accompanied by a separate formal judgment.* (*Public Defenders' Organization v. County of Riverside* (2003) 106 Cal. App.4th 1403, 1409, emphasis added.) Counsel for Dr. Dhillon provides no authority to support her contention this Court's August 6, 2014 Order is insufficient as a final decision. However, if the Court believes Judgment should be entered, then John Muir Health contends its attached proposed Judgment more accurately reflects the Court's August 6, 2014 decision.

John Muir Health continues to respectfully object to the judgment requiring John Muir Health provide Dr. Dhillon a hearing before a Judicial Review Committee, as the Court "shall not limit or control in any way the discretion legally vested in the respondent." (Code Civ. Proc., § 1094.5(f).)

Respectfully submitted,

DiCARO, COPPO & POPCKE

CARLO COPPO
MICHAEL R. POPCKE
SHELLEY A. CARDER

SAC/lmr
Attachment

cc: Carla V. Minnard, Esq.

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address 225 S. Olive Street, Suite 102, Los Angeles, CA 90012.

On **September 15, 2015**, I served the within document described as:

OPPOSITION TO MOTION TO AUGMENT THE RECORD AND COUNTER-MOTION TO AUGMENT THE RECORD

on the interested parties in this action by electronic mail as follows:

PARTIES	ATTORNEYS
Respondents: **John Muir Health, Board of Directors of John Muir Health**	**David S. Ettinger** **H. Thomas Watson** **Horvitz & Levy LLC** **15760 Ventura Boulevard, 18th Floor** **Encino, CA 91436** **Carlo Coppo** **Michael R. Popcke** **Shelley A. Carder** **DiCaro, Coppo & Popcke** **2780 Gateway Road** **Carlsbad, CA 92009** **Ross E. Campbell** **Hooper Lundy & Bookman, PC** **575 Market Street, Suite 2300** **San Francisco, CA 94105**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 15, 2015 at Brookings, Oregon.

Sharon J. Arkin