No. S219811

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

ALWIN CARL LEWIS, M.D.,
Petitioner,

v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY,
Respondent;

MEDICAL BOARD OF CALIFORNIA,
Real Party in Interest.

On Review From the Court of Appeal
Second Appellate District, Division Three, Case No. B252032
After an Appeal From the Superior Court of Los Angeles County,
Hon. Joanne B. O'Donnell, Case No. BS139289

APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF; *AMICUS CURIAE* BRIEF OF CALIFORNIA MEDICAL ASS'N, AMERICAN MEDICAL ASS'N, CALIFORNIA PSYCHIATRIC ASS'N, CALIFORNIA DENTAL ASS'N, AND AMERICAN DENTAL ASS'N IN SUPPORT OF PETITIONER ALWIN CARL LEWIS, M.D.

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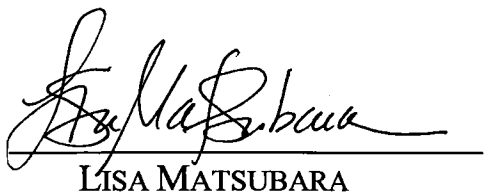
Certificate of Interested Entities or Persons

Pursuant to California Rules of Court, rule 8.208, the undersigned, counsel for California Medical Association, American Medical Association, California Psychiatric Association, California Dental Association, and American Dental Association, certifies that there are no disclosures to be made.

DATED: October 26, 2015.

By: 

LISA MATSUBARA

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CALIFORNIA STATUTES

OTHER STATUTES

REGULATIONS

CONSTITUTIONAL PROVISIONS

RULES

OTHER AUTHORITIES

LEGISLATIVE HISTORY

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APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

Pursuant to rule 8.520(f) of the California Rules of Court, California Medical Association (CMA), American Medical Association (AMA), California Psychiatric Association (CPA), California Dental Association (CDA), and American Dental Association (ADA) (collectively, "*Amici*") hereby request leave to file the attached *amicus curiae* brief in support of the petitioner, Alwin Carl Lewis, M.D. (Lewis).

There are no persons or entities to be identified under rule 8.520(f)(4) of the California Rules of Court.

INTERESTS OF THE *AMICUS CURIAE* APPLICANTS

CMA is a non-profit, incorporated professional association for physicians with approximately 40,000 members practicing in the State of

California. CMA's membership includes California physicians engaged in the practice of medicine in all specialties and settings. For more than 150 years, CMA has promoted the science and art of medicine, the care and well-being of patients, the protection of public health, and the betterment of the medical profession. CMA and its physician members are committed to the protection of a patient's right to medical privacy and confidentiality, which is the foundation of the patient-physician relationship and essential to the ability of a physician to provide quality and effective care.

The AMA is a private, voluntary, non-profit organization of physicians and medical students. It is the largest such organization in the United States. Additionally, through state and specialty medical societies and other groups seated in its House of Delegates, substantially all U.S. physicians, residents and medical students are represented in the AMA policy making process. The AMA was founded in 1847 to promote the science and art of medicine and the betterment of public health. Today, its members practice in all fields of medical specialization and in all states. The AMA submits this application and the accompanying *amicus curiae* brief as a member of the Litigation Center of the American Medical Association and the State Medical Societies (Litigation Center). The Litigation Center was formed in 1995 as a coalition of the AMA and private, voluntary, nonprofit state medical societies to represent the views of organized medicine in the courts. Fifty state medical societies and the

Medical Society of the District of Columbia join the AMA as members of the Litigation Center.

CPA is a non-profit corporation responsible for carrying out judicial, legislative, regulatory, educational, advocacy, and public affairs activities on behalf of organized psychiatry in California. CPA works to ensure that patients with psychiatric disorders will have access to high quality, medically necessary treatment. CPA has over 3,000 members, is the largest professional association of psychiatrists in California and is affiliated with the American Psychiatric Association. Psychiatric treatment is a form of psychotherapy which is based on the confidentiality of treatment information, including what medications, if any, are prescribed as a part of that treatment.

CDA is a non-profit, membership-based corporation comprised of nearly 25,000 California dentists. CDA promotes oral health and the profession of dentistry throughout California through education, practice support and advocacy.

The ADA represents the interests of its 157,000 member dentists, advocates for the public's oral health, and promotes the dental health profession in all 50 states, the District of Columbia, and Puerto Rico.

Amici have a strong interest in ensuring that prescription drug monitoring databases, including California's Controlled Substance Utilization Review and Evaluation System (CURES), are governed by

strong confidentiality safeguards. Moreover, on behalf of their members – licensed professionals whose prescription history is captured in CURES – *Amici* seek to ensure that the disclosure of patient data in CURES to third-party government agencies be subject to clear and consistent regulations and procedures that properly balance patient privacy with the governmental interest. Such interests are at issue in this case, where the California Department of Justice (DOJ) and the Medical Board of California (Medical Board) has staked a position that *Amici* believe directly undermines patient privacy and confidentiality safeguards over prescription information.

HOW THE PROPOSED *AMICUS CURIAE* BRIEF CAN HELP

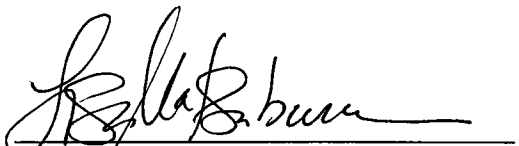
The *Amici* applicants believe their brief can assist the Court by providing a broader, more practical context to the issues of the case. Namely, as professional associations dedicated to fostering safe and high quality health care, the *Amici* can explain the practical impact that unfettered government access to confidential prescription information in CURES will have on patients, the practice of medicine, psychiatry and dentistry. Failing to provide adequate checks and balances over CURES will undermine patient privacy and consequently interfere with the relationship between patients and their health care providers, and will negatively impact effective treatment. The Medical Board has not articulated an adequate governmental interest to justify the broad and serious incursions on privacy and confidentiality.

For the foregoing reasons, the *Amici* respectfully request that the Court accept and file their attached *amicus curiae* brief.

DATED: October 26, 2015.

Respectfully,

CENTER FOR LEGAL AFFAIRS
CALIFORNIA MEDICAL ASS'N

By: 
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I. INTRODUCTION

Physicians, psychotherapists, dentists and other licensed, professional health care providers have a great responsibility when prescribing drugs. Not only must they accurately diagnose the need for such drugs, they also must closely monitor their patients' intake of prescribed controlled substances and make adjustments as necessary, to ensure the effective and safe use of those drugs. The providers' relationship with their patient – founded on confidentiality and utmost

candor – is the key to this scheme. The case before the Court has potential to substantially undermine that relationship and consequently negatively change the way providers practice and care for their patients.

The Controlled Substance Utilization Review and Evaluation System (CURES) is a statewide database of Schedule II through IV controlled substances dispensed in the State of California that is maintained and administered by the Office of the Attorney General in the California Department of Justice (DOJ).[1] Originally established in 1997 to support efforts to prevent, investigate and prosecute the abuse of Schedule II prescriptions drugs, the Legislature has expanded the breadth of information contained in the CURES database by adding prescription records for Schedule III and Schedule IV controlled substances. *See* A.B. 3042, 1996 Stats., ch. 738; S.B. 151, 2003 Stats., ch. 406; A.B. 2986, 2006 Stats., ch. 286.

In 2002, A.B. 2655, 2002 Stats., ch. 345, allowed health care professionals and pharmacists to submit a written request to the DOJ for a record of controlled substances dispensed to a patient. The DOJ subsequently developed a searchable, online prescription drug monitoring program (PDMP) that made the CURES database available to registered

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[1] CURES/PDMP website, State of California, Department of Justice, Office of the Attorney General, *available at* http://oag.ca.gov/cures-pdmp (Last visited October 22, 2015).

health care provider users and pharmacies through a client-facing web interface in 2009.[2] The PDMP allows registered health care professionals, including physicians and dentists, that prescribe, order, administer, furnish or dispense controlled substances, to access controlled substance history information in the CURES database at the point of care so they can properly evaluate their patients and prevent the abuse of controlled substances.[3] Today, CURES is a massive government database that contains over 100 million individually identifiable entries of controlled substances dispensed to patients in California.[4]

Despite the large amount of sensitive medical information maintained by the DOJ, the law governing how the DOJ discloses the CURES data allows broad and indiscriminate disclosures to government

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[2] *Controlled Substance Utilization Review & Evaluation System: Feasibility Study Report*, State of California, Department of Justice, Office of the Attorney General (April 2014) at 1-2, *available at* http://www.cio.ca.gov/Government/IT_Policy/IT_Projects/pdf/0820%20-%20218_0820%20-%20218%20DOJ%20CURES%202_0%20FSR%20Final.pdf (hereinafter *CURES Feasibility Study Report*).

[3] *Id.*

[4] *Brown Unveils Real-Time Statewide Prescription Drug-Monitoring System*, State of California, Department of Justice, Office of the Attorney General (September 15, 2009), *available at* http://ag.ca.gov/newsalerts/print_release.php?id=1806.

agencies and fail to adequately protect patient privacy.[5] Health & Safety Code section 11165 allows the DOJ to provide confidential, identifiable patient prescription data to any "state, local, and federal public agencies for disciplinary, civil or criminal purposes" including regulatory agencies such as the Medical Board of California (Medical Board) and law enforcement. Although the law does not explicitly allow the DOJ to provide government agencies with direct access to search the data in CURES, the DOJ provides investigators at the Medical Board with rights to directly log in to and search the CURES database. As such, it is the Medical Board's routine practice to obtain years of prescription records that identify individual patients and their prescriptions every time it receives any type of complaint against a physician, even if that complaint does not concern prescribing practices and even if the involved patients do not authorize the release of their prescription records to the Medical Board. DOJ Answering Brief at 10.

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[5] The language of Health & Safety Code section 11165 has remained virtually unchanged since 1997 when the electronic CURES system was established as a pilot program containing information only on Schedule II controlled substances and prior to the establishment of the searchable client-facing component of the PDMP. *See* A.B. 3042, 1996 Stats., ch. 738.

The recent technological upgrade to CURES 2.0[6] underscores the importance of establishing clear protections for data in CURES. According to the DOJ's Feasibility Study Report, the upgraded CURES 2.0 system "increased data collection capabilities and increased analytical tools for investigative purposes."[7] It aims to provide the DOJ, law enforcement, the regulatory and criminal justice community, and prosecutorial users with "dynamic, parameter-based inquiry capabilities," "reports and crime analytics," "a robust (up to 500,000 patient or prescriber or dispenser records each) reports on patients, prescribers and dispenser based on time and geographic parameters," and "geo-spatial reports by date parameters, of the physical dispersion of prescriber type, specialty type, dispenser, prescription fillings by schedule(s) and patient distance to prescriber."[8] The increased technical capability for investigators and law enforcement highlights the important question of law before the Court in this case that can have broad negative consequences on patients and the provision of health care throughout California.

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[6] The DOJ began a phased roll-out of the upgraded system, CURES 2.0, in July 2015. In 2013, the California Legislature passed Senate Bill 809 which provided approximately $1.5 million in funding annually to maintain CURES and provided additional funding in the 2013 budget to upgrade the system. *See* S.B. 809, 2013 Stats., ch. 400.

[7] *CURES Feasibility Study Report, supra* n.2 at 6.

[8] *CURES Feasibility Study Report, supra* n.2 at 11-13.

The Court of Appeal erred when it refused to impose constitutional limitations on the DOJ's unfettered discretion to grant access to CURES data to any and all government agencies. Consequently, the privacy rights of patients are left to the whims of DOJ employees who have absolute control on who has access to the data in CURES. The DOJ permits regulatory boards, law enforcement, and other government agencies to indiscriminately search through individually identifiable confidential prescription records without a warrant, any showing of reasonable cause, restrictions as to the scope of the accessible data, or limits on the discretion of the inspecting officers. There must be clear guidelines on the DOJ's disclosure of CURES data to government agencies to adequately protect patient privacy.

Amici California Medical Association (CMA), American Medical Association (AMA), California Psychiatric Association (CPA), California Dental Association (CDA), and the American Dental Association (ADA) detail the practical consequences on patient care that will result from the Court of Appeal's refusal to place limits on the DOJ. That is, while patient privacy will suffer, the ability of health care providers to provide effective and safe care also will be hampered due to serious damage to the relationship between providers and their patients. For these reasons, *Amici* accordingly urge the Court to reverse the judgment of the Court of Appeal.

II. INTERESTS OF *AMICI CURIAE*

CMA is a non-profit, incorporated professional association of approximately 40,000 physicians practicing in the State of California. CMA's membership includes California physicians engaged in the practice of medicine in all specialties and settings. CMA's primary purposes are "to promote the science and art of medicine, the care and well-being of patients, the protection of public health, and the betterment of the medical profession." CMA and its physician members are committed to the protection of a patient's right to medical privacy and confidentiality, which is the foundation of the patient-physician relationship and essential to the ability of a physician to provide quality and effective care.

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CDA is a non-profit, membership-based corporation comprised of nearly 25,000 California dentists. CDA promotes oral health and the profession of dentistry throughout California through education, practice support and advocacy.

The ADA represents the interests of its 157,000 member dentists, advocates for the public's oral health, and promotes the dental health profession in all 50 states, the District of Columbia, and Puerto Rico.

Amici have a strong interest in ensuring that prescription drug monitoring databases, including CURES, are governed by strong confidentiality safeguards. Moreover, on behalf of their members – licensed professionals whose prescription history is captured in CURES – *Amici* seek to ensure that the disclosure of patient data in CURES to third-party government agencies be subject to clear and consistent regulations and procedures that properly balance patient privacy with the governmental interest. Such interests are at issue in this case, where the DOJ and the Medical Board have staked a position that *Amici* believe directly undermines patient privacy and confidentiality safeguards over prescription information.

III. DISCUSSION

A. Prescription Records In CURES Are Medical Records And Are Subject To The Full Scope of Privacy Protections Under The Law.

Existing state and federal laws defining medical information and protecting the confidentiality of such information squarely repudiate the Court of Appeal's conclusion that "[t]here is a diminished expectation of privacy in controlled substances prescription records maintained in CURES" and the Medical Board's claim that a patient's prescription information must be given lesser protection than the rest of the medical

record. *Lewis v. Superior Court*, 226 Cal.App.4th 933, 948 (2014); DOJ Answering Brief at 20-23.

Both California's Confidentiality of Medical Information Act (CMIA) and the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) define medical information broadly. "Medical information" is defined under the CMIA as "any individually identifiable information, in electronic or physical form, in possession of *or derived from* a provider of health care, health care service plan, pharmaceutical company, or contractor regarding a patient's medical history, mental or physical condition, or treatment." Civil Code §56.05(j) (emphasis added). Health & Safety Code §11165.1(d) specifically states that data from the CURES system released to a health care practitioner or pharmacist is considered medical information subject to the CMIA.

HIPAA defines "protected health information" (PHI) as individually identifiable health information that is transmitted or maintained in electronic media or any other form or medium. 45 C.F.R. §160.103. Health information means any information that is created or received by a health care provider and relates to the past, present or future physical or mental health or condition of an individual, the provision of health care or payments for the provision of health care to an individual. *Id.* In certain circumstances, the disclosure of the patient's name can trigger privacy

protections. *See Scull v. Superior Court*, 206 Cal.App.3d 784, 789 (1988) ("mere disclosure of the patient's identity violates the psychotherapist-patient privilege").

There is good reason why federal and state laws treat prescription information with the same level of protection as any other health information. The DOJ has not adequately addressed these reasons, much less offered an acceptable justification for ignoring the governing laws.

1. Prescription Records in the CURES Database Can Reveal Confidential Information About a Patient's Medical Condition.

Health & Safety Code section 11165(d) requires dispensing pharmacies to report identifying patient information including the patient's name, address, and date of birth as well as sensitive information that identifies the patient's medical condition, including identifying information for the prescriber and dispensing pharmacy, the National Drug Code number of the dispensed drug, quantity, International Classification of Diseases (ICD) diagnostic code if available, number of refills, whether the drug was dispensed as a refill or first time request, date the drug was prescribed, and date the prescription was dispensed. Such information clearly falls within the definitions of "medical information" under CMIA and "protected health information" under HIPAA.

The patient's name tied to a particular physician can reveal sensitive information about their medical condition. For example, for certain health

care providers that specialize in the treatment of specific medical conditions such as oncology, HIV/AIDS, eating disorders, and gender identity disorders, even the mere disclosure that an individual is a patient at a certain physician practice can reveal their underlying medical condition and violate the patient's right to privacy.

Even absent a diagnostic code, information about what prescription drugs are dispensed to an individual patient can reveal medical information that society deems entitled to privacy protections. Prescription records can reveal sensitive, intimate and potentially stigmatizing details about a patient's health. Controlled substances are prescribed for a wide range of serious medical conditions including testosterone deficiency, seizure disorders, chronic pain, narcolepsy, obesity, weight loss and nausea associated with AIDS and patients undergoing chemotherapy, attention deficit hyperactivity disorder, anxiety and panic disorders, post-traumatic stress disorder, gender identity disorder, and heroin addiction treatment.[9] Since many medications are approved for use to treat specific medical conditions, prescription information for Schedule II, III and IV controlled

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[9] For a list of controlled substances, *see Controlled Substances by CSA Schedule*, Office of Diversion Control, Drug Enforcement Administration (December 2, 2013), *available at* http://www.deadiversion.usdoj.gov/schedules/orangebook/e_cs_sched.pdf. For information on drug specific information and medication guides, see U.S. Food and Drug Administration website at http://www.fda.gov/Drugs.

substances as reported to CURES can divulge sensitive medical information about an individual.

2. Prescription Records Obtained From CVS Pharmacy Reveal Sensitive Confidential Medical Information About Patients.

Further, the Medical Board in this case requested a copy of Dr. Lewis's complete prescription history from CVS pharmacy for a period of three years. DOJ Answering Brief at 11. CVS provided the Medical Board with all prescriptions written by Dr. Lewis during that period, including both controlled and non-controlled substances, that contained information on patients' names and addresses, the name, form, and quantity of the prescriptions filled, dates the prescriptions were filled, and information identifying the prescriber and the pharmacist for each prescription. *Id.*

The disclosure of additional identifiable prescription records from CVS Pharmacy to the Medical Board exacerbates the lack of protections for patient privacy. It expands the scope of the intrusion by the Medical Board to implicate sensitive medical information related to mental health, developmental disabilities, psychotherapy, drug or alcohol abuse and HIV/AIDS that are subject to heightened confidentiality protections under the law.[10] While many of the prescription drugs used to treat these

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[10] *See* Welfare & Institutions Code §§5000 *et seq.* (Lanterman-Petris-Short Act); Evidence Code §§1010 *et seq.* (psychotherapist-patient privilege); Civil Code §56.10, 56.104 (Confidentiality of Medical Information Act –

conditions are not Schedule II through IV controlled substances tracked in CURES, the Medical Board's acquisition of pharmacy records that include non-controlled substances, reveals information on identifiable patients who are prescribed medications for sensitive medical conditions such as antiretroviral medication used to manage HIV/AIDS, antidepressants, antipsychotics, birth control, and drugs used to treat erectile dysfunction.[11] Such information is hardly a "minor intrusion upon a patient's informational privacy" as characterized by the Court of Appeal opinion. *Lewis*, 226 Cal.App.4th at 955.

The Medical Board in this case acquired the complete prescribing history of all of Dr. Lewis's patients over a period of three years from the pharmacy as part of its "routine practice." DOJ Answering Brief at 11. In doing so, the Medical Board circumvented the laws protecting sensitive medical information and accessed potentially stigmatizing and highly sensitive information without patients' authorization or even knowledge, probable cause, or judicial review.

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outpatient psychotherapy treatment records); 45 C.F.R. §164.501 (HIPAA); 42 U.S.C. §290dd-2; 42 C.F.R. §2.1 (substance abuse records); Health & Safety Code §§11812 and 11845.5 (alcohol and drug program records); Health & Safety Code §§120975, 120980, 121010, 121020, 121025 (HIVAIDS records).

[11] *See* U.S. Food and Drug Administration Guide, *supra* n.9.

B. Confidentiality Of Medical Information Is An Essential Component of Quality Medical Care And Vital To The Patient-Physician Relationship.

Patients have a high expectation of privacy in the provision of medical services. *Tucson Woman's Clinic v. Eden*, 379 F.3d 531, 550 (9th Cir. 2004); *see also Board of Medical Quality Assurance v. Gherardini*, 93 Cal.App.3d 669, 678 (1979) ("A person's medical profile is an area of privacy infinitely more intimate, more personal in quality and nature"). The duty of physicians to protect patient privacy lies at the very core of the medical profession. Confidentiality is one of the most enduring ethical tenets in the practice of medicine, and is essential to the patient-physician relationship. *See Privacy in the Context of Health Care Report 2-I-01*, American Medical Association, Council on Ethical and Judicial Affairs at 2, *available at* www.ama-assn.org/ama1/pub/upload/mm/369/ceja_2i01.pdf ("Confidentiality is one of the oldest medical ethical precepts, dating back to the Hippocratic Oath"). It is the cornerstone of the "patient's trust, successful medical information gathering for accurate diagnosis and treatment, an effective physician-patient relationship, good medicine and quality care." California Medical Association, *CMA Policy: Medical Privacy Rights*, Resolution HOD 503-99 (1999).[12]

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[12] *See also* American Medical Association, *Opinion 5.059 – Privacy in the Context of Health Care*, AMA Code of Medical Ethics, *available at*

1. Confidentiality Is a Core Tenet of Quality Medical Care.

The quality of health care delivery is intimately linked to the quality of information gathered by the health care professional. Confidentiality is a necessary precondition for any patient to willingly share sensitive personal information with a physician or health care provider. Patients are routinely asked to disclose private and even embarrassing information to their health care providers who are entrusted to protect this information from unwarranted disclosures. *See In re Estate of Flint*, 100 Cal 391, 396-397 (1893) (Physician-patient privilege enables "the patient to make a full statement of his physical infirmities to his physician, with the knowledge that the law recognizes the communications as confidential, and guard against the possibility of his feelings being shocked or his reputation tarnished by their subsequent disclosure"); *Green v. Superior Court of San Joaquin County*, 220 Cal. App. 2d 121, 125 (1963) (The purpose of the physician-patient privilege is "(1) to encourage free disclosure of facts by the patient to the doctor which otherwise might be withheld and which may aid the doctor in diagnosis and treatment [and] ...(2) to prevent the humiliation of the patient which might occur by disclosure of his ailments"

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http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion5059; California Dental Association, *CDA Code of Ethics 1E: Patient Confidentiality* (2012), *available at* http://www.cda.org/about-cda/cda-code-of-ethics ("Dentists are obliged to safeguard the confidentiality of patient records").

(citations omitted)). Only within this trusting relationship can physicians provide effective treatment and preserve the basic human dignity and privacy rights of the patient.

Medicine is popularly characterized as an art and a science because it involves a physician listening to the patient's subjective complaints and concerns, performing objective physical examinations and testing, and finally diagnosing the problem relying on the physician's expert training and professional judgment. Thus, medical care requires the patient to be completely open and candid with the physician in order for the physician to gain an accurate understanding of the patient's medical problem, medical history, and preferences to determine the best course of treatment. Physicians rely on a certain level of candor to effectively exercise sound medical judgment and recommend an optimal course of treatment that takes into account important factors like patient desires, lifestyle, their living and working environment, and family and medical history. Similarly, dentists have an ethical duty to "involve patients in treatment decisions in a meaningful way, with due consideration being given to the patient's needs, desires and abilities, and safeguarding the patient's privacy." American Dental Association, *ADA Principles of Ethics and Code of Professional Conduct: Patient Autonomy* (2012), *available at* http://www.ada.org/en/about-the-ada/principles-of-ethics-code-of-professional-conduct/patient-autonomy.

The knowledge that their medical information, including their prescription information, is subject to open searches by government agencies can affect a patient's trust in the health care provider and lead to a loss of trust. Studies show that trust in the physician and patient satisfaction with care are directly correlated and a breakdown in trust leads to patients who are less satisfied with their care and less likely to select appropriate practitioners and comply with a physician's course of treatment. Ngaire Kerse and Stephen Buetow, et. al., *Physician-Patient Relationship and Medication Compliance: A Primary Care Investigation*, 2 ANNALS OF FAMILY MEDICINE 455 (2004).

If patients are not completely open and frank with their health care provider, the result could be the "improper diagnosis and treatment of important health conditions." Chari J. Young, *Telemedicine: Patient Privacy Rights of Electronic Medical Records*, 66 UMKC. L. REV. 921, 930 (1998). A patient will fully and candidly disclose his or her full medical history only if the patient believes that the health care provider will assertively guard the privacy of such information. By contrast, if a patient believes that such information cannot or will not be protected, he or she may withhold important facts from the provider. This is particularly important in the context of mental health. *See United States v. Chase*, 340 F.3d 978, 990 (9th Cir. 2003) (explaining that candor is essential to the psychotherapist-patient relationship "because patients will be more

reluctant to divulge unsavory thoughts or urges" if they know that their information will not be kept confidential and may be disclosed without their consent); *Jaffe v. Redmond*, 518 U.S. 1, 10 (1996) ("Effective psychotherapy ... depends upon an atmosphere of confidence and trust in which the patient is willing to make a frank and complete disclosure of facts, emotions, memories and fears").

Candor and confidentiality must be maintained throughout the health care provider-patient relationship, as the patient's condition and health history evolves or as a course of treatment adapts to changes. Physicians regularly switch treatments or modify diagnoses, and to do so effectively, there must be open communication with the patient. At any point in a course of treatment, patients depend on the trust of their physician. *See Truman v. Thomas*, 27 Cal.3d 285, 299 (1980) ("[t]he physician-patient relationship is based on trust").

Patients who lack assurances that the information disclosed to their health care provider would remain confidential, may self-select the information they share with their physicians and self-diagnose their medical conditions to determine what information is pertinent to disclose based on what is palatable to them. Such actions act as a barrier to proper diagnoses and can divert the health care provider from recommending the most effective and appropriate course of treatment. Worse, the patient may also decline to seek medical care at all, thereby allowing a potentially reversible

condition to deteriorate or communicable diseases to go unrecognized and untreated, leading to negative health outcomes and increased costs. *See* Kristin Finklea, Lisa N. Sacco and Erin Bagalman, *Prescription Drug Monitoring Programs*, Congressional Research Service (March 24, 2014) at 11-12, *available at* http://www.fas.org/sgp/crs/misc/R42593.pdf (hereinafter *Congressional Research Service Report*).

Without full disclosure of the patient's symptoms and medical history, health care providers may not be able to provide the patient with effective care and advice. Thus, maintaining patient privacy is "essential to the effective functioning of the health and public health systems." Lawrence O. Gostin, *Health Information Privacy*, 80 CORNELL L. REV. 451, 490 (1995).

2. Lack of Privacy Protections May Hinder The Way The Health Care Professional Provides Care.

Although PDMPs are a useful clinical tool for health professionals to ensure proper and appropriate prescribing practices, the lack of protections for medical information in the CURES database can result in unintended negative effects on the way a health care professional provides care. With the increased scrutiny on prescribing practices and constant specter of open inspections from regulatory and criminal enforcement, physicians and dentists may be discouraged from providing the most effective and

appropriate course of treatment for their patients. *Congressional Research Service Report* at 11.

The practice of "defensive medicine," often discussed in the context of avoiding medical malpractice lawsuits, is also applicable here where external threats such as fear of getting swept up in an investigation can affect a health care professional's clinical decision-making, negatively affect patient care, and increase costs of care. Defensive medicine refers to a "deviation from sound medical practice" and may take the form of supplementing care with additional testing or treatment, replacing care where the provider refers the patients to another provider or facility, or reduced care or refusal to perform certain procedures, prescribe drugs, or treat particular patients, in an effort to avoid sources of legal risk. David M. Studdert and Michelle M. Mello, et al., *Defensive Medicine Among High-Risk Specialist Physicians in a Volatile Malpractice Environment*, 293 JAMA 2609 (June 1, 2005). Faced with the increased scrutiny on prescribing practices and the possibility of having to defend their prescribing practices, many physicians and dentists may avoid prescribing controlled substances all together, relying instead on unmonitored medications that may be inferior in terms of effectiveness or side effects. *Congressional Research Service Report* at 11. Physicians and dentists faced with patients who are at risk of non-medical opioid use may also choose to refuse to treat such patients, abruptly discontinue long-term narcotic

treatment, or discharge patients without proper referrals for fear of consequences to themselves. *See* Deborah Brauser, *Opioid Prescriber Monitoring May Increase Overdose Deaths*, Medscape Medical News (December 12, 2014). Such practices shift the health care professional's focus away from the patient's well-being to self-preservation.

Allowing regulatory investigators and law enforcement to data mine prescribing data using fixed parameters to target specific patients and physicians lead to out-of-context searches that can result in unfounded investigations against health care providers. Indeed, in this case the Medical Board investigator used CURES to access the prescribing records of all of Dr. Lewis's patients during a three year period even though the single complaint from a patient Dr. Lewis had seen only once that triggered the Medical Board investigation had nothing to do with Dr. Lewis' prescribing practices. DOJ Answering Brief at 10. Such investigations are costly and have devastating effects on a health care provider's personal and professional reputation. Moreover, like in this case, they intrude into the private medical information of unsuspecting patients, which can discourage patients from fully and candidly disclosing their medical history with physicians or seeking medical care at all and compromise the ability of physicians to provide quality care. This legally-permissible expansive scrutiny can force the hand of even well-intentioned physicians and dentists

to avoid prescribing controlled substances, despite a patient's legitimate need, in order to avoid incrimination, and resulting in suboptimal treatment.

C. The Medical Board's Unfettered Access to CURES and Pharmacy Data Circumvents Existing Laws Protecting the Confidentiality of Medical Records.

The Medical Board's routine practice of obtaining vast amounts of patient identifiable prescription data from CURES and the pharmacy circumvents existing laws that protect patient data from government intrusion. In this case, in response to a complaint by a patient who had only seen Dr. Lewis one time for an initial assessment and did not raise any issues with Dr. Lewis's prescribing practices, the Medical Board investigator accessed from CURES the prescribing records of *all* of Dr. Lewis's patients during a three year period. DOJ Answering Brief at 10. The investigator testified that it was "common practice" to obtain CURES data on the subjects of all Medical Board investigations. Medical Board's Return and Memorandum of Points and Authorities in Opposition to Petition for Extraordinary Writ of Mandate at 8. In addition, pursuant to its authority to inspect pharmacy records, the Medical Board obtained confidential prescription records from the corporate headquarters of CVS Pharmacy of all prescriptions written by Dr. Lewis for the previous three years and filled at CVS pharmacies that included both controlled and non-controlled substances. DOJ Answering Brief at 11. Thus, the Medical

Board readily admits that it employs a policy of widespread mining of sensitive prescription drug data in CURES and pharmacy data to the greatest extent possible. DOJ Answering Brief at 10-11.

1. The Medical Board's Practice Does Not Comport With The Existing Scheme To Obtain Patient Records During Its Investigations.

While regulatory boards have authority to investigate matters "under the jurisdiction of the department" and inspect records (Government Code §§11180 and 11181), the authority of regulatory agencies to examine patient records is not without safeguards to protect patient privacy. Under Business & Professions Code §2225, the Medical Board's authority to examine records notwithstanding the physician-patient privilege "is limited to records of patients who have complained to the board ... about that licensee" unless the information is de-identified or obtained with the patient's consent. The Medical Board must accommodate the privacy interests of the patient by taking "reasonable steps to notify the patient of its proposed examination" of the records. *Wood v. Superior Court*, 166 Cal. App. 3d 1138, 1149 (1989). The Medical Board can also obtain medical records by issuing an administrative subpoena even where the patient does not give consent to the release of their records. Government Code §11181(e); *see also* Business & Professions Code §§2225.5 and 1684.1. The Medical Board's requests however, must be limited to records "essential to a focused inquiry" and "be carefully tailored to avoid, if

possible, the securing of improper records." *Bearman v. Superior Court*, 117 Cal.App.4th 463,472 (2004).

The law also accommodates privacy interests with the Medical Board's administrative subpoena power by requiring the Medical Board to take reasonable steps to notify the patient of the examination of his or her record and, if the patient does not waive their privacy interest, requires the Medical Board to provide competent evidence to permit a trial court to make an independent finding of good cause. *Wood*, 166 Cal.App.3d at 1149; Government Code §11187; *see also Bearman*, 117 Cal.App.4th at 469 (the Medical Board "must demonstrate through competent evidence that the particular records it seeks are relevant and material to its inquiry sufficient for a trial court to independently make a finding of good cause" to order the disclosure). This requirement for a showing of good cause is founded in the patient's right of privacy guaranteed by the California Constitution. CAL. CONST. ART. I.

The majority of patients whose prescription information is disclosed to a government agency such as the Medical Board through its investigative authority have no notice that their information is being accessed by government enforcement authorities. While the Medical Board contends that patients, by virtue of the existence of Health & Safety Code §11165, are on notice that their prescription information is freely accessible to any government agency, it is unlikely that the average consumer of health care

services is aware that their prescription information is a part of a vast government database and electronically available to any investigatory agency including law enforcement without the usual constitutional and statutory privacy protections.

In addition, patients are afforded no opportunity to consent or object to the disclosure of their sensitive medical information being disclosed to government agencies and freely exchanged between various government entities under the government's authority to investigate matters occurring under its jurisdiction. In fact, other than the five patients who consented to or did not object to the disclosure after given an opportunity to do so, the majority of Dr. Lewis's patients whose records were released to the Medical Board have no idea their information was being reviewed as part of an investigation.

The Medical Board's practice of running routine reports for all of a physician's prescribing history over the course of several years for every investigation can hardly be characterized to be "carefully tailored to avoid ... the securing of improper records" or limited to a "focused inquiry." Rather, the Medical Board is using any complaint against a physician as an opportunity to expand the scope of the initial investigation to a full inquiry into the entirety of the physician's practice. It allows the Medical Board to use the information it obtained from CURES as the basis for a showing of good cause to justify further access to patient records. This undermines the

existing process to protect patient privacy from any intrusions that are not relevant or material to the Medical Board's inquiry.

The Medical Board's widespread data mining of prescription records when conducting investigations sidestep the established safeguards to protect patient privacy. Despite the Medical Board's insistence that patients have a different expectation of privacy in their prescription records than they do in their complete medical records, as discussed herein, the information contained in CURES can reveal sensitive and broad-ranging information about an individual's medical condition. As such, patients should be afforded the same privacy protections before the Medical Board, or any government agency, can access such information.

Further highlighting the unintended effects of allowing the review of CURES and pharmacy data by government agencies outside the established process to obtain patient medical records, the Court of Appeal in *Lewis* and the Medical Board's briefing insinuate that, as part of their licensing duties, the Medical Board and other licensing agencies can access CURES to obtain not just the licensee's prescribing history, but the licensee's personal prescription drug history to make a determination of fitness for licensing purposes. *Lewis*, 226 Cal.App.4th at 955. This broad interpretation of a licensing agency's authority to investigate its licensees would allow regulatory boards to inquire CURES to access what prescription drugs have been prescribed to a physician, dentist, or any other licensed professional to

determine if he or she had a medical condition that would affect their ability to practice even absent any complaint or cause. Such practices would subject any professional licensee to unwarranted government intrusions into their personal medical information as a condition of professional licensing.

2. The Medical Board's Actions Violate the Psychotherapist-Patient Privilege.

The Medical Board's practice of obtaining complete prescribing histories from CURES and the pharmacies of patients whose physicians are subject to an investigation implicates medications prescribed in the course of providing psychotherapy treatment and violates the psychotherapist-patient privilege. Evidence Code §§1010 *et seq.* California law enumerates several special privileges that "are designed to protect personal relationships and other interest where public policy deems them more important than the need for evidence." *Koshman v. Superior Court,* 111 Cal.App.3d 294, 297 (1980). The physician-patient privilege and psychotherapist-patient privilege applies to all proceedings, including Medical Board investigations, which is defined to mean "any action, hearing, investigation, inquest, or inquiry (whether conducted by a court, administrative agency, hearing officer, arbitrator, legislative body, or any other person authorized by law) in which, pursuant to law, testimony can be compelled to be given." Evidence Code §§ 901 and 910.

In particular, the psychotherapist-privilege protects confidential communications that include all information obtained by an examination of the patient, transmitted between the patient and his psychotherapist, information relating to an individual's diagnosis and treatment, and even the mere disclosure of the patient's identity. Evidence Code §1012; *Scull*, 206 Cal App 3d at 789. Acknowledging that the legislative intent behind the psychotherapist-patient privilege is "clearly in accord with the proposition that confidentiality is the essential ingredient for successful psychotherapy[,]" the courts have held that the privilege must be liberally construed in favor of patient privacy. *Id* ; *Grosslight v. Superior Court*, 72 Cal.App.3d 502, 507 (1977); *Roberts v. Superior Court*, 9 Cal.3d 330, 337 (1973). Thus, prescription information that may reveal even the identity of a patient receiving treatment from a psychotherapist would be subject to the privilege.

The privilege prohibits the Medical Board from accessing the information in CURES absent waiver or exception. *Mavroudis v. Superior Court* , 102 Cal App 3d 594, 602 (1980) (A patient's records will not be disclosed unless the privilege was waived or an exception to the privilege applies to the requested records). The current use of CURES by the Medical Board and other government agencies including law enforcement, do not provide an opportunity for patients to waive privilege.

There is no exception to the psychotherapist-patient privilege that would allow for the Medical Board, acting upon its regulatory authority to investigate violations of the Medical Practice Act and protect the public, to access information related to patient information subject to the privilege.[13] "Exceptions to the confidentiality of the privilege and the patient's interest in privacy are found [only] in certain narrowly circumscribed situations." *Scull*, 206 Cal App 3d at 791; *see* Evidence Code §§1016 *et seq.*.

The Medical Board's contentions that patients do not have an expectation of privacy in their prescription data contained in CURES and therefore the law allows it to routinely search the database for any reason related to carrying out its duties is contrary to the broad scope of the psychotherapist-patient privilege and the "obligation to construe narrowly any exception" to the privilege. *People v. Stritzinger*, 34 Cal.3d 505, 513 (1983). Therefore, despite the initial disclosure of the prescription information to the CURES database under Health & Safety Code §11165, there is no exception that would allow a third party, such as the Medical Board or law enforcement, to obtain the confidential information over the patient's objection or without the patient's consent on the theory that such

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[13] While an exception to the physician-patient privilege exists for a "proceeding brought by a public entity to determine whether a right, authority, license, or privilege (including the right or privilege to be employed by the public entity or to hold a public office) should be revoked, suspended, terminated, limited, or conditioned," no such exception exists for the psychotherapist-patient privilege. Evidence Code §1007.

disclosure is necessary to accomplish the purpose for which the information was disclosed. *People v. Gonzales*, 56 Cal 4th 353, 374 (2013). While the CURES database was established to prevent, investigate and prosecute the abuse of controlled substances, "the usefulness or value of such information is not a valid basis" to eliminate the patient's right to protect against the disclosure of sensitive medical information that would otherwise be protected by the psychotherapist-patient privilege. *Id.*

The Medical Board, as well as other regulatory agencies and law enforcement, currently have the ability to access and obtain sensitive medical information in CURES with no notice to patients or health care practitioners or judicial review on whether there is good cause for disclosure. This practice allows government agencies to partake in boundless fishing expeditions through patient prescription records that threaten the patients' protected rights to privacy and confidentiality of their medical records, negatively affects patient care, and compromises the physician-patient relationship and patients' trust in their health care providers.

D. Constitutional Limits Must be Imposed Because the Current Law Lacks Sufficient Safeguards To Protect Patient Privacy From the Government's Unfettered Access to CURES Data.

In eschewing constitutional limits on the DOJ's ability to share CURES data, the Court of Appeal in *Lewis* summarily states that there are

"sufficient safeguards" to protect patient privacy and confidentiality but does not adequately specify any such safeguards. *Lewis*, 226 Cal. App. 4th at 951. To the contrary, Health & Safety Code section 11165 expressly gives the DOJ limitless discretion as to how it shares CURES data and with which other government agencies. Civil Code section 1798.24(e) is equally broad in that it permits the DOJ to share an individual's personal information "[t]o a person, or to another agency where the transfer is necessary for the transferee agency to perform its constitutional or statutory duties, and the use is compatible with a purpose for which the information was collected[.]" Tellingly, the Medical Board contends that there can be inter-agency information sharing of an individual's personal information without resorting to "procedural hurdles" and that it would be unreasonable to require the State to "even perceive a genuine privacy issue" before reviewing its own records for the purposes in which the records were compiled. DOJ Answering Brief at 31. This would allow for the government to compile unrelated pieces of information about an individual from various public agencies without the hassle of "procedural hurdles" that protect personal data from unwarranted search and seizure.

1. CURES Data May Not Be Protected By State and Federal Privacy and Security Laws Specific To Medical Information.

In addition, the laws that ensure that health care providers properly safeguard the confidentiality of patient information are not applicable to

CURES. Many of California's laws protecting patient privacy and security apply only to health care providers, health plans, or contractors. Similarly, HIPAA only applies to health care providers, health plans and health care clearinghouses that use electronic means to transmit health information. Health care providers are subject to steep civil penalties that can reach millions of dollars and, in some cases, criminal liability for violations of CMIA and HIPAA. The Court of Appeal in *Lewis*, however, acknowledges that "there are no penalties in CURES for unwarranted public disclosure" and the Medical Board's position is that these protections in the law do not apply to the DOJ in their maintenance of CURES and allows the Medical Board to access CURES data without restriction and with impunity. *Lewis*, 226 Cal. App. 4th at 951.

2. PDMPs in Other States Have More Protections To Ensure Patient Privacy.

The DOJ operates with broad discretion over the disclosure of CURES data in contrast to other state PDMPs. In contrast to California, PDMPs in other states provide for stronger privacy protections and restrictions on the disclosure of PDMP data. For example, other states do not allow regulatory boards to directly access PDMP data, place limits on the release of prescription data to regulatory boards to requests involving

drug-related investigations,[14] and mandate different standards for disclosures of PDMP data to law enforcement.[15] *See* Joe Palazzolo, *Police Access to Prescription-Drug Records Gets Tougher*, THE WALL STREET

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[14] *See* MASS. GEN. LAWS ch. 94C, §24A (Massachusetts PDMP provides prescription information to regulatory agencies provided that the "data request is in connection with a bona fide specific controlled substance or additional drug-related investigation"); FLA. STAT. ANN. §§893.055 (Florida's PDMP does not provide regulatory boards with direct access to PDMP data but provides prescription information to only health care regulatory boards who request PDMP data for "a specific controlled substance investigation involving a designated person for one or more prescribed controlled substances"); OR. REV. STAT. §431.966 (Oregon provides PDMP data to a "health professional regulatory board that certifies in writing that the requested information is necessary for an investigation related to licensure, renewal or disciplinary action"); N.Y. PUBLIC HEALTH LAW §§3343-a, 3371 (New York's PDMP periodically analyzes data for information that indicates that a "violation of law or breach of professional standards may have occurred and, as warranted, provide any relevant information to the appropriate entities" including regulatory boards).

[15] *See* MASS. GEN. LAWS ch. 94C, §24A (Massachusetts PDMP only provides prescription information to law enforcement "engaged in the administration, investigation or enforcement of the laws governing prescription drugs; provided, however, that the data request is in connection with a bona fide specific controlled substance or additional drug-related investigation"); FLA. STAT. ANN. §§893.055, 893.0551 (Florida's PDMP does not provide law enforcement with direct access to PDMP data but provides prescription information to a law enforcement agency that requests PDMP data after it has "initiated an active investigation involving a specific violation of law regarding prescription drug abuse or diversion of prescribed controlled substances"); OR. REV. STAT. §431.966 (Oregon only provides PDMP data to law enforcement pursuant to "a valid court order based on probable cause and issued at the request of a federal, state or local law enforcement agency engaged in an authorized drug-related investigation involving a person to whom the requested information pertains"); N.Y. PUBLIC HEALTH LAW §§3343-a, 3371 (New York's PDMP provides relevant information to the appropriate law enforcement agencies when there is a "reason to believe that a crime related to the diversion of controlled substances has been committed").

JOURNAL (May 7, 2014), *available at* http://www.wsj.com/articles/SB10001424052702304788404579524253950013192. Some state statutes governing PDMPs specifically state that the PDMP system shall comply with the HIPAA and state privacy laws.[16] Other state PDMPs also provide an express exemption from state public records laws for PDMP data[17] and provide that PDMP data is not discoverable or admissible in any civil or administrative action, except in an investigation and disciplinary proceeding by a regulatory board.[18] Despite these additional restrictions, with the increased sophistication of technological database tools, the protection of patient privacy in PDMPs is an emerging concern and the subject of multiple lawsuits.[19]

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[16] *See* FLA. STAT. ANN. §893.055(2)(a); OR. REV. STAT. §§431.962(2)(d), 431.966.

[17] *See* FLA. STAT. ANN. §893.0551; MASS. GEN. LAWS ch 94C, §24A(d).

[18] *See* FLA. STAT. ANN. §893.055(7)(C)(4).

[19] *See* Robert Gehrke, *Feds May Sue Utah Over Law Aimed At Protection Prescription Drug Records,* THE SALT LAKE TRIBUNE (July 2, 2015), *available at* http://www.sltrib.com/news/2688175-155/feds-may-sue-utah-over-law; *Michael H. Lambert v. R.J. Larizza, as State Attorney for the Seventh Judicial Circuit of the State of Florida*, No. 2013-31402, Circuit Court, Seventh Judicial Circuit, Volusia County, Florida (June 12, 2013); *Oregon Prescription Drug Monitoring Program v. U.S. Drug Enforcement Administration*, No. 14-35402 (9th Cir.) (pending decision); For more information and briefing, *see Complaint to DHHS Regarding Leak of Prescription Data*, American Civil Liberties Union of Florida (June 22, 2013), *available at* http://aclufl.org/resources/complaint-dhhs-leak-rx-data/ and *Oregon Prescription Drug Monitoring Program v. Drug Enforcement*

E. *Lewis* Can Have Far-Reaching and Long-Lasting Consequences on the Care of Patients and Practice of Medicine.

Finally, this case raises a very contemporary issue facing the courts regarding the right to privacy in the digital age. In *United States v. Jones*, 132 S.Ct. 945 (2012), the U.S. Supreme Court found that the warrantless use of a GPS device to track the plaintiff's vehicle violated his reasonable expectation of privacy. In her concurring opinion, Justice Sotomayor addressed how information and history is preserved electronically and can be easily collected, maintained, and mined by the government in mass quantities for years into the future. *United States v. Jones*, 132 S.Ct. 945, 956 (2012) (Sotomayor, J., concurring). Last year, the Supreme Court unanimously held in *Riley v. California*, 134 S.Ct. 2473 (2014), that while a privacy interest retained by an individual after arrest was significantly diminished, the police must obtain a warrant to search digital information on a cell phone seized from an individual who has been arrested. The Court pointed out that in the past, "a search of a person was limited by physical realities and tended as a general matter to constitute only a narrow intrusion of privacy." *Riley v. California*, 134 S.Ct. 2473, 2478 (2014). The "immense storage capacity" of the modern cell phone, however, removes

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Administration, American Civil Liberties Union website *at* https://www.aclu.org/cases/oregon-prescription-drug-monitoring-program-v-drug-enforcement-administration.

the limitations that come with physical practicability and transforms the possible intrusion on privacy. *Id.* at 2489. The Court also noted that the ability to digitally collect many distinct types of information can "now reveal much more in combination than any isolated record" and allowing police officers the ability to search cell phone data without a warrant would give them "unbridled discretion to rummage at will among a person's private effects." *Id.* While the Court admitted that its decision will impact "the ability of law enforcement to combat crime," it simply stated that "[p]rivacy comes at a cost." *Id.* at 2493. In other words, the Court acknowledged that the public interest to be served by law enforcement does not completely justify its ability to leverage technology at the expense of individual privacy. Rather, as applied to this case, the right to privacy is ever more important and must be vigorously safeguarded against the investigatory incursions of the Medical Board in Dr. Lewis's case, and potentially by untold other regulatory and law enforcement agencies in the future.

Similar to the vast amount of personal information stored in GPS devices and cell phones, CURES technology, particularly in light of CURES 2.0, has also greatly increased the quantity and type of information available to government agencies, including the Medical Board and law enforcement. Medical Board investigators already can easily access over 100 million individually identifiable entries of schedule II, III and IV

controlled substances dispensed to patients in California. Gathering information in CURES is cheaper and easier in comparison to conventional information gathering techniques used in the recent past and enables the government to quickly correlate and aggregate data from different sources and store immense amounts of data. The CURES 2.0 upgrade will make it even easier to scan through and access data allow any other government agency or employee to gain powerful, unfettered access to the confidential prescription information for millions of Californians. Records that once revealed only "a few scattered tiles of information about a person now reveal an entire mosaic" of a person's medical history. Memorandum Opinion at 54, *Klayman et al., v. Obama et al.*, No. 13-0851 (D.D.C. December 16, 2013). This allows for the Medical Board and other government agencies to proceed surreptitiously, evading the ordinary checks that constrain abusive government practices that violate patient privacy. *Jones*, 132 S.Ct. at 956 (Sotomayor, J., concurring).

The current scheme allows the Medical Board and other regulatory and law enforcement agencies to freely data mine CURES for reports containing millions of sensitive prescription records without any cause but with the hope of identifying potential wrongdoing. Such intrusions discourage patients from fully and candidly disclosing their medical history with physicians or seeking medical care at all and compromise the ability of physicians to provide quality care. Given the recent court decisions

protecting the privacy of data in GPS devices and cell phones, prescription records that constitute confidential medical information should be afforded similar protections under the law.

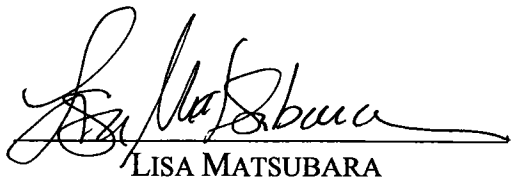
IV. CONCLUSION

Accordingly, based on the discussion above, *Amici* urge the Court to reverse the decision of the Court of Appeal in this case.

DATED: October 26, 2015

Respectfully,

CENTER FOR LEGAL AFFAIRS
CALIFORNIA MEDICAL ASS'N

By: 
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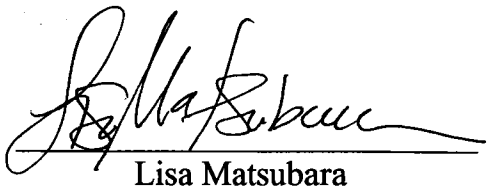
CERTIFICATION OF WORD COUNT

(Cal. R. of Ct., rule 8.520(c))

The text of this brief consists of 8,342 words as counted by the Microsoft Word word-processing computer application used to generate the brief.

DATED: October 26, 2015



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PROOF OF SERVICE

Alwin Lewis, M.D. v. Superior Court of the State of California, County of Los Angeles (Medical Board of California, Real Party in Interest) -
Case No. S219811

I, Farah Kader, hereby declare:

I am employed in Sacramento, California. I am over the age of eighteen years and am not a party to the above-entitled action. My business address is 1201 J Street, Sacramento, California 94814.

On October 26, 2015, I caused the document(s) to be served as indicated below:

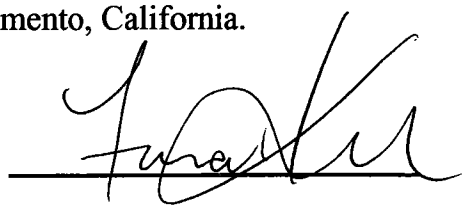
APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF; *AMICUS CURIAE* BRIEF OF CALIFORNIA MEDICAL ASS'N, AMERICAN MEDICAL ASS'N, CALIFORNIA PSYCHIATRIC ASS'N, CALIFORNIA DENTAL ASS'N, AND AMERICAN DENTAL ASS'N IN SUPPORT OF PETITIONER ALWIN CARL LEWIS, M.D.

☒ Electronic Submission and

☒ U.S. Mail: By mailing a true copy thereof via first-class postage through the United States Postal Service, as set forth in the attached Service List.

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

Executed on October 26, 2015, at Sacramento, California.



Farah Kader

SERVICE LIST

Alwin Lewis, M.D. v. Superior Court of the State of California, County of Los Angeles (Medical Board of California, Real Party in Interest) -
Case No. S219811

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