S224472

IN THE SUPREME COURT OF CALIFORNIA

JATINDER DHILLON,
Plaintiff and Respondent,

v.

JOHN MUIR HEALTH et al.,
Defendants and Appellants.

AFTER A DECISION BY THE COURT OF APPEAL, FIRST APPELLATE DISTRICT, DIVISION THREE
CASE NO. A143195

OPENING BRIEF ON THE MERITS

HORVITZ & LEVY LLP
*DAVID S. ETTINGER (BAR NO. 93800)
H. THOMAS WATSON (BAR NO. 160277)
15760 VENTURA BOULEVARD, 18TH FLOOR
ENCINO, CALIFORNIA 91436-3000
(818) 995-0800 • FAX: (818) 995-3157
dettinger@horvitzlevy.com
htwatson@horvitzlevy.com

DiCARO, COPPO & POPCKE
CARLO COPPO (BAR NO. 34226)
MICHAEL R. POPCKE (BAR NO. 122215)
SHELLEY A. CARDER (BAR NO. 137755)
2780 GATEWAY ROAD
CARLSBAD, CALIFORNIA 92009-1730
(760) 918-0500 • FAX: (760) 918-0008
carlo.coppo@dcp-law.com
michael.popcke@dcp-law.com
shelley.carder@dcp-law.com

HOOPER, LUNDY & BOOKMAN, PC
ROSS E. CAMPBELL (BAR NO. 75998)
575 MARKET STREET, SUITE 2300
SAN FRANCISCO, CALIFORNIA 94105
(415) 875-8492 • FAX: (415) 875-8519
rcampbell@health-law.com

ATTORNEYS FOR DEFENDANTS AND APPELLANTS
JOHN MUIR HEALTH, BOARD OF DIRECTORS OF JOHN MUIR HEALTH

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Constitutions

Statutes

Rules of Court

Miscellaneous

IN THE
SUPREME COURT OF CALIFORNIA

JATINDER DHILLON,
Plaintiff and Respondent,

v.

JOHN MUIR HEALTH et al.,
Defendants and Appellants.

OPENING BRIEF ON THE MERITS

ISSUE PRESENTED

[Cal. Rules of Court, rule 8.520(b)(2)(B)]

The petition for review's statement of the issue presented is: "Whether the Court of Appeal erroneously dismissed an appeal as taken from a nonappealable superior court order and judgment, where the order and judgment finally determined a petition for administrative mandamus (so additional superior court proceedings were neither contemplated nor mandated) but required further administrative proceedings." (PFR 1.)

INTRODUCTION

A hospital colleague of Dr. Jatinder Dhillon lodged a complaint that Dr. Dhillon had been abusive toward her at a physicians' meeting. After an investigative committee of physicians found merit to the complaint, the hospital medical staff directed both physicians to attend an anger management class. The other physician went to the class, but Dr. Dhillon refused. Instead, he asserted that the committee's investigation was inadequate, and he demanded the hospital initiate a formal Judicial Review Committee (JRC) hearing process, which is review by "an independent panel when certain actions are taken against [a physician]." (*El-Attar v. Hollywood Presbyterian Medical Center* (2013) 56 Cal.4th 976, 994.) The medical staff declined to convene a JRC and, when Dr. Dhillon continued to refuse to attend the class, suspended his hospital privileges for 14 days.

Dr. Dhillon went to court, petitioning for a writ of mandate to challenge the anger management class requirement and the 14-day suspension and, alternatively, the lack of a JRC process. The superior court entered a judgment granting the petition in part — it ordered the hospital to hold a JRC proceeding to review the medical staff action — and denying the petition in all other respects.

The hospital, John Muir Health, believes the elaborate and burdensome JRC process is not required by statute or hospital bylaws and is particularly ill-suited for the minor disciplinary action taken against Dr. Dhillon. It thus appealed the superior

court's judgment. Because case law is unclear whether the judgment is appealable, John Muir also filed a writ petition.

The Court of Appeal summarily denied the writ petition and then dismissed the instant appeal as having been taken from a nonappealable order. The court concluded that "[t]he superior court's order remanding the matter to John Muir Health is not a final, appealable order" (1/19/15 order), relying on a line of cases which hold that "[a] remand order is not an appealable order" (*Board of Dental Examiners v. Superior Court* (1998) 66 Cal.App.4th 1424, 1431). This court granted review and should now reverse.

Doubtful cases should be resolved in favor of the right of appeal (see *In re S.B.* (2009) 46 Cal.4th 529, 537), but this should not even be considered a doubtful case. The superior court's judgment here finally determined Dr. Dhillon's mandate petition, the type of ruling that has historically been deemed appealable.

The judgment ended the litigation in the superior court, which is the hallmark of an appealable decision. The judgment's requirement of subsequent administrative proceedings does not change that key jurisdictional fact, because those proceedings will occur outside the judicial system. It is when " ' "anything further in the nature of *judicial action on the part of the court* is essential to a final determination of the rights of the parties, [that] the decree is interlocutory" ' " and therefore nonappealable. (*Dana Point Safe Harbor Collective v. Superior Court* (2010) 51 Cal.4th 1, 5, emphasis added.) There will be no further superior court action on Dr. Dhillon's mandate petition.

Moreover, this court has been "understandably reluctant to recognize a category of orders effectively immunized by circumstance from appellate review." (*In re Baycol Cases I & II* (2011) 51 Cal.4th 751, 758.) Yet the superior court's ruling here and others like it would fall into such a category unless the dismissal of the appeal is reversed. Without the right to appeal, John Muir will be forced to initiate a JRC proceeding as required by the superior court's judgment without the possibility of that judgment ever being reviewed by an appellate court. Once John Muir conducts the JRC proceeding, it will become moot whether John Muir should have been burdened with that proceeding.

"A reviewing court's obligation to exercise the appellate jurisdiction with which it is vested, once that jurisdiction has been properly invoked, is established and not open to question." (*Leone v. Medical Board* (2000) 22 Cal.4th 660, 669.) The Court of Appeal here should have exercised its jurisdiction to hear John Muir's appeal on the merits.

STATEMENT OF THE CASE

A. After investigating another physician's harassment complaint against Dr. Dhillon, the medical staffs at John Muir Medical Center require both physicians to attend an anger management class.

John Muir Health runs John Muir Medical Center. There are two medical centers, or campuses, one at Walnut Creek and one at Concord. (See, e.g., 1 AA 37; 2 AA 194, 304.) Each campus has its own medical staff and medical staff leadership, the Medical Executive Committee (MEC). Each medical staff also has its own bylaws, but both sets of bylaws are the same as relevant here. (See 2 AA 186, 296.)

A physician on the medical staff filed a complaint against her hospital colleague, Dr. Jatinder Dhillon, claiming Dr. Dhillon had acted toward her in a verbally abusive and physically aggressive manner during a physicians' administrative meeting. Dr. Dhillon "categorically den[ied] her allegations" (3 AA 566) and demanded an investigation. John Muir responded by forming an ad hoc investigative committee of physicians from both campuses. (3 AA 466-467, 487, 543-565, 568, 599-600, 601-602, 606, 617, 620-621.)

After a comprehensive investigation, the ad hoc committee concluded in a written report that the physician's complaint had merit, that Dr. Dhillon's behavior at the meeting "was not an isolated incident," and that Dr. Dhillon had violated a medical staff code of conduct. (3 AA 568, 599, 601; see 3 AA 600 [report citing

Dr. Dhillon's "combative tone, emotional outbursts, and poorly hidden frustration with the negotiation process"].) An overriding purpose of the code of conduct is "to maintain a workplace that is free from harassment or discrimination in compliance with state and federal laws." (2 AA 404.) The committee further found that the other physician had also violated the code. (3 AA 600, 602.)

Based on the committee's investigation and report, both campuses' MEC's unanimously determined the complaint against Dr. Dhillon was valid and they required him and the other physician to attend an anger management class for healthcare professionals at the University of California San Diego. (3 AA 568, 572, 602, 606, 617, 620-621.) The MEC's additionally said that, after he completed the program, Dr. Dhillon would be required for one year to "follow up with the Physician Well Being Committee." (3 AA 568, 572, 602.) The chiefs of staff at both campuses warned Dr. Dhillon that "any future violation [of the code of conduct] may result in disciplinary action." (3 AA 568.)

B. When Dr. Dhillon refuses — for over a year — to attend the anger management class, the medical staffs suspend his clinical privileges for 14 days.

The other physician completed an anger management class without complaint (3 AA 579, 588, 620-621), but Dr. Dhillon did not. The MEC's initially gave Dr. Dhillon eight months to complete the anger management class. (3 AA 568, 602, 606, 617, 620-621.) Dr. Dhillon repeatedly refused, and he continued to refuse after the

compliance period was extended by six months. (3 AA 577, 579, 588, 607, 615, 620-621.) He also turned down an invitation to propose an equivalent alternative to attending the class. (3 AA 575, 607, 611, 615, 617, 620-621.)

The chiefs of staff warned Dr. Dhillon that failing to complete the anger management class would lead to a limited suspension — "just under 14 full days" — of his clinical privileges. (3 AA 589.) When the extended period for compliance expired, Dr. Dhillon had still not attended the required anger management class. (3 AA 620-621.) Because of this noncompliance, the MEC's suspended his clinical privileges at the Medical Centers for 14 days. (3 AA 596, 620-621, 701.) The short suspension was not reportable to the Medical Board of California. (See Bus. & Prof. Code, § 805, subd. (e) [reporting is required "following the imposition of summary suspension of staff privileges, . . . if the summary suspension remains in effect for a period *in excess* of 14 days" (emphasis added)].)

C. After John Muir denies Dr. Dhillon's demand for a Judicial Review Committee proceeding about the anger management class requirement and the 14-day suspension, Dr. Dhillon takes the matter to court, petitioning for a writ of administrative mandamus.

Throughout the handling of the harassment claim against him, Dr. Dhillon continually demanded more — and increasingly more elaborate — review procedures.

When the other physician originally filed her complaint against Dr. Dhillon, he rejected the Concord Chief of Staff's efforts to discuss the complaint and resolve the conflict collegially, and instead demanded a formal investigation. (3 AA 513, 599, 601.) When that comprehensive investigation — by the ad hoc committee of John Muir physicians — led to the anger management class requirement, Dr. Dhillon hired a lawyer who "demand[ed] that a neutral outside investigator be brought in to conduct a full, fair, impartial investigation." (3 AA 571.)[1] The medical staffs denied that demand. (3 AA 574; see also 3 AA 587.)

Finally, when the chiefs of staff warned Dr. Dhillon of the impending 14-day suspension, his lawyer — and also Dr. Dhillon himself — demanded that John Muir initiate a Judicial Review Committee (JRC) proceeding. (3 AA 592, 594.) The chiefs of staff explained that no additional hearing was available. (3 AA 595; see 3 AA 593.) Additionally, the MEC's reported to the medical centers' single governing body that, because of its short duration, the suspension was not reportable to the Medical Board of California and it did not give Dr. Dhillon any hearing rights under the medical staff bylaws. (3 AA 620-621.)

---

[1] Dr. Dhillon's counsel also tried to convince John Muir to rescind the requirement that he attend the anger management class. (3 AA 586.) In one letter, his lawyer defended Dr. Dhillon's conduct toward the other physician (3 AA 581-582), favorably referencing Soviet Premier Nikita Khrushchev's banging of his shoe on the table at the United Nations, and calling Khrushchev's action one that demonstrated "theatrical flair [and that] was a success" (3 AA 583).

On the same day that his 14-day suspension began, Dr. Dhillon filed in the superior court a petition for a writ of administrative mandamus. (1 AA 1.) A month later, he filed an amended petition. (1 AA 7.) In the petition, Dr. Dhillon claimed that the ad hoc committee investigation (which John Muir had conducted at Dr. Dhillon's insistence) "was a sham, from start to finish" (1 AA 11) and that "[t]he grossly excessive penalties imposed on [him] were a manifest abuse of discretion" (1 AA 18). The superior court would later reject these allegations.

Dr. Dhillon's amended petition requested a variety of remedies, including (1) vacating the (already concluded) 14-day suspension of his clinical privileges, (2) requiring a JRC hearing on the underlying complaint against him and on the limited (already concluded) suspension, (3) a finding that the ad hoc committee's conclusions were not supported by the evidence, (4) an order restraining the medical centers from communicating to anyone that Dr. Dhillon has had " 'communication/professional conduct' " issues, and (5) an order allowing Dr. Dhillon to proceed with "an immediate tort suit for damages." (1 AA 19.)

D. The superior court grants Dr. Dhillon's petition in part and denies it in part, ordering John Muir to conduct a judicial review proceeding to review both the underlying complaint against Dr. Dhillon and the subsequent (already completed) 14-day suspension.

Dr. Dhillon moved the superior court to grant the relief requested in his petition. (1 AA 52.) After a hearing (RT 1-16), the superior court granted Dr. Dhillon's motion in part and denied it in part (4 AA 776-779). The court entered an order on August 6, 2014, and then a judgment on September 8. (4 AA 782, 797.)

The court's August 6 order, and its September 8 judgment, granted "[a] peremptory writ ordering a hearing before the Judicial Review Committee or other appropriate body," stating that, under the medical staff bylaws, John Muir "must provide [Dr. Dhillon] with Judicial Committee Review [*sic*] and appellate rights." (4 AA 783, 797.) The court found that Dr. Dhillon was entitled to a JRC proceeding "on both the initial and underlying complaint as well as the subsequent suspension." (*Ibid.*) It also found that Dr. Dhillon "was deprived of a due process when [the medical centers] suspended his clinical privileges for less than 13 days [*sic*] without providing him a [JRC] hearing." (4 AA 783, 797-798.)

The superior court denied all other writ relief sought by Dr. Dhillon, including his requests to set aside the suspension of his privileges and for a ruling that the ad hoc committee's findings were not supported by substantial evidence. (4 AA 782-783.) The court's

judgment[2] resolved Dr. Dhillon's entire petition, leaving nothing more for the court to decide.

E. John Muir files this appeal and also a writ petition, because case law is unclear whether the superior court's judgment is appealable. The Court of Appeal summarily denies the writ petition and then dismisses the instant appeal as not having been taken from an appealable judgment.

John Muir filed both a notice of appeal (4 AA 799) and a writ petition (*John Muir Health v. Superior Court*, Court of Appeal case number A143256) to challenge the superior court's judgment requiring initiation of a JRC proceeding. John Muir explained it was doing both because there is conflicting case law about whether the superior court's judgment is appealable or reviewable only by writ petition. (PWM 1-2, 17-18.)

Dr. Dhillon opposed John Muir's writ petition on the ground the superior court's judgment was appealable. (Return to Petition for Peremptory Writ of Mandate 26-27, 43-44 (Return) [*John Muir Health v. Superior Court*, Court of Appeal case number A143256].) The Court of Appeal summarily denied John Muir's writ petition.[3]

---

[2] The superior court's August 6 order and September 8 judgment are essentially the same. Therefore, we will collectively refer to them as the "judgment."

[3] John Muir petitioned this court for review of the summary denial. (*John Muir Health v. Superior Court*, S223382.) The petition was denied.

At the same time, in this appeal, the court ordered briefing "solely addressing the issue of whether the appeal should be dismissed because the Contra Costa County Superior Court order . . . is or is not an appealable order." (12/11/14 Order.)

John Muir explained in its brief that the superior court's judgment is appealable, either as a final judgment or as a final determination of a collateral matter. In his brief, Dr. Dhillon did an unabashed about-face. After having opposed the writ petition by telling the Court of Appeal that "[t]he issues presented in [the] writ proceeding . . . should be addressed on appeal, after full briefing and oral argument" (Return 26-27), Dr. Dhillon argued the appeal should be dismissed as having been taken from a nonappealable order.

The Court of Appeal dismissed John Muir's appeal. The court stated, "The superior court's order remanding the matter to John Muir Health is not a final, appealable order. (See *Board of Dental Examiners v. Superior Court* (1998) 66 Cal.App.4th 1424; see also *Gillis v. Dental Board of California* (2012) 206 Cal.App.4th 311, 318.) Furthermore, the order and judgment at issue here are not appealable as a final determination of a collateral matter." (1/9/15 order.)

This court granted John Muir's petition for review.

LEGAL ARGUMENT

I. IT IS NOW OR NEVER FOR APPELLATE REVIEW OF THE FINAL SUPERIOR COURT JUDGMENT MANDATING AN EXTENSIVE HOSPITAL ADMINISTRATIVE PROCEEDING THAT IS NOT DESIGNED OR INTENDED FOR THE MINOR DISPUTE DR. DHILLON HAS WITH THE JOHN MUIR MEDICAL STAFFS.

Dr. Dhillon demanded, and the superior court has ordered, initiation of the Judicial Review Committee (JRC) hearing process at John Muir Medical Center. This is no small thing. Rather, it is a major undertaking that consumes substantial resources. And it is a procedure — as John Muir would explain if it has the opportunity to brief the substantive merits of this appeal — that is unnecessary and unsuited for the type of minor complaint Dr. Dhillon has with the medical staffs at John Muir, and that is not required by either statute, case law, or hospital bylaws.

A JRC hearing process is not meant to resolve every dispute that a physician has with a hospital medical staff. Rather, "a physician is entitled to [such] a hearing before an independent panel when *certain actions* are taken against him." (*El-Attar v. Hollywood Presbyterian Medical Center* (2013) 56 Cal.4th 976, 994 (*El-Attar*), emphasis added.) If this appeal is allowed to proceed, John Muir would show that requiring a physician to go to an anger

management class, and suspending the physician for 14 days when he refuses to attend, are not among those "certain actions."

However, John Muir can never obtain appellate review of the superior court judgment mandating a JRC process unless this court reverses the Court of Appeal's dismissal of John Muir's appeal from the judgment. This appeal is about the JRC procedure, not the result of the procedure. If the dispute about the minor corrective action taken against Dr. Dhillon ever returns to the superior court, it will be by way of an entirely new administrative mandate petition after the JRC proceeding has already been conducted, and it will then be pointless to adjudicate whether the proceeding should have occurred in the first place.

Although this case is now only about the appealability of the superior court's judgment, it is important to understand and consider the process that the judgment, if left undisturbed, would set in motion.

The JRC hearing process is best understood in the context of the hospital medical staff peer review system of which it is a part. "Hospitals in this state have a dual structure, consisting of an administrative governing body, which oversees the operations of the hospital, and a medical staff, which provides medical services and is generally responsible for ensuring that its members provide adequate medical care to patients at the hospital. In order to practice at a hospital, a physician must be granted staff privileges." (*El-Attar, supra*, 56 Cal.4th at p. 983.)

California law imposes important responsibilities on a hospital medical staff. The medical staff, which normally operates

through various peer review committees, is required to "evaluate physicians applying for staff privileges, establish standards and procedures for patient care, assess the performance of physicians currently on staff, and review such matters as the need for and results of each surgery performed in the hospital, the functioning of the patient records system, the control of in-hospital infections, and the use and handling of drugs within the hospital." (*Arnett v. Dal Cielo* (1996) 14 Cal.4th 4, 10.)

The " 'overriding goal of the state-mandated peer review process is protection of the public and . . . while important, physicians' due process rights are subordinate to the needs of public safety.' " (*Ellison v. Sequoia Health Services* (2010) 183 Cal.App.4th 1486, 1498; see Bus. & Prof. Code, § 809, subd. (a)(6) ["To protect the health and welfare of the people of California, it is the policy of the State of California to exclude, through the peer review mechanism as provided for by California law, those healing arts practitioners who provide substandard care or who engage in professional misconduct, regardless of the effect of that exclusion on competition"]; all undesignated statutory references in section I are to the Business and Professions Code.) The Legislature has stated that peer review should "be done efficiently, on an ongoing basis, and with an emphasis on early detection of potential quality problems and resolutions through informal educational interventions." (§ 809, subd. (a)(7).)

A JRC hearing is the opposite of an "informal educational intervention[ ]." It is a major adversarial proceeding pitting a physician against a peer review body — typically a hospital medical

staff's executive committee — that, after a comprehensive evaluation, has recommended certain adverse actions be taken against the physician. It is "a hearing before a neutral arbitrator or an unbiased panel." (*El-Attar, supra*, 56 Cal.4th at p. 988.) A JRC hearing has many of the trappings of a superior court trial, except the JRC is generally comprised of physicians who must call upon their own medical expertise to evaluate medical issues — such as the appropriateness and quality of patient care, and the charting of information in patient medical records — to determine whether the adverse action taken against the physician was warranted.

By statute, the JRC consists of "an arbitrator or arbitrators selected by a process mutually acceptable to the licentiate [e.g., a physician] and the peer review body, or . . . a panel of unbiased individuals . . . , includ[ing], where feasible, an individual practicing the same specialty as the licentiate." (§ 809.2, subd. (a).) The JRC is "a second body of peers [that] independently determine[s] [the reasonableness of] a peer review committee's recommendation." (*Mileikowsky v. West Hills Hospital & Medical Center* (2009) 45 Cal.4th 1259, 1269 (*Mileikowsky*).) A hearing officer can be selected to preside. (§ 809.2, subd. (b).)

The physician and the peer review body have pre-hearing discovery rights (§ 809.2, subd. (d) [both "have the right to inspect and copy . . . any documentary information relevant to the charges" in the other's possession]) and the JRC presiding officer is to rule on any discovery disputes (§ 809.2, subds. (d) & (e)).

At the hearing, the physician has "the right to a reasonable opportunity to voir dire the panel members and any hearing officer,

and the right to challenge the impartiality of any member or hearing officer." (§ 809.2, subd. (c).) Additionally, both the physician and the peer review body have the right "[t]o call, examine, and cross-examine witnesses," "[t]o present and rebut evidence determined by the arbitrator or presiding officer to be relevant," "[t]o be provided with all of the information made available to the trier of fact," "[t]o have a record made of the proceedings," and "[t]o submit a written statement at the close of the hearing." (§ 809.3, subds. (a)(1)-(5).)

When the hearing ends, the JRC panel members must prepare "[a] written decision of the trier of fact, including findings of fact and a conclusion articulating the connection between the evidence produced at the hearing and the decision reached." (§ 809.4, subd. (a)(1).)

A medical staff's bylaws can mandate additional requirements for the JRC hearing process (§ 809.6, subd. (a); see *El-Attar*, *supra*, 56 Cal.4th at pp. 988-989), which John Muir's medical staffs bylaws have done. For example, under the bylaws, either side can require the exchange of witness lists and documents at least 10 days before the hearing starts (2 AA 249 [§§ 7.2-6, 7.2-7]), and, if a JRC panel member misses a part of the proceeding, "he or she shall not be permitted to participate in the deliberations or the decision unless and until he or she has read the entire transcript of the portion of the hearing from which he or she was absent" (2 AA 254 [§ 7.4-9]). Also, the bylaws give the physician "a right to representation by an attorney in any phase of the hearing" (2 AA 251 [§ 7.4-2]) even though the law does not require giving that right (§ 809.3, subd. (c)).

Significantly, John Muir's bylaws also provide that the JRC hearing is not necessarily the end of the process. Either the physician or the peer review body can appeal the JRC's decision to an appeal board made up of all or part of the hospital's governing body. (2 AA 255 [§ 7.5]; see § 809.4, subd. (b) [allowing for the provision of an "appellate mechanism"].) The appeal board proceedings are "in the nature of an appellate hearing based upon the record of the hearing before the Judicial Review Committee," but with the possibility of additional evidence. (2 AA 256 [§ 7.5-5].) Both sides can be represented by counsel (*ibid*) and the appeal board itself can retain counsel to assist it, but that attorney cannot have been involved in the JRC hearing (2 AA 255 [§ 7.5-4]).

As is apparent, a JRC hearing process is cumbersome by design. Moreover, empirical evidence establishes that the process is onerous in practice.

A legislatively mandated, independent study of hospital peer review (see § 805.2) concluded that "the process is inefficient, costly and legalistic, requiring many hours of physician and entity staff time, thousands of dollars, and extensive services of attorneys." (Seago, et al., *Comprehensive Study of Peer Review in California: Final Report* (July 31, 2008) Lumetra <http://www.mbc.ca.gov/publications/peer_review.pdf> p. 108 [as of June 9, 2015]; see *id.* at p. 107 [calling it a "lengthy, contentious process[ ]" with "prohibitive" costs].) The study reported: "focus group participants estimated that a[ ] [section] 809 hearing [i.e., a JRC proceeding] would never cost less than $100,000, excluding estimates of physician costs in time and legal representation for the

person being reviewed, and could cost upwards of several million dollars. One individual stated that an 809 hearing took months to complete because of scheduling problems, hundreds of thousands of dollars, and that one notorious hearing lasted for 17 years!" (*Id.* at p. 90; see *Fahlen v. Sutter Central Valley Hospitals* (2014) 58 Cal.4th 655, 663 [JRC proceeding included 13 sessions over a seven-month period]; *El-Attar, supra,* 56 Cal.4th at p. 985 [JRC proceedings took "nearly two years and approximately 30 sessions"]; *Sadeghi v. Sharp Memorial Medical Center Chula Vista* (2013) 221 Cal.App.4th 598, 608-611 [JRC proceeding took almost three years].)

This court thus has aptly recognized "the burdens the hearing process imposes on busy practitioners who voluntarily serve on a reviewing panel." (*Mileikowsky, supra,* 45 Cal.4th at p. 1272.)

All of this is what Dr. Dhillon demands, and the superior court has ordered, to review whether he should go to an anger management class, and whether it was appropriate to suspend his privileges for two weeks when he refused.

II. THE SUPERIOR COURT'S JUDGMENT IS APPEALABLE.

A. The judgment is appealable as a final judgment because it finally disposes of all issues in this special proceeding.

1. Final superior court judgments determining writ of mandate petitions are appealable.

"The right to appeal is wholly statutory." (*Dana Point Safe Harbor Collective v. Superior Court* (2010) 51 Cal.4th 1, 5 (*Dana Point*); see *Teal v. Superior Court* (2014) 60 Cal.4th 595, 598; *In re Baycol Cases I & II* (2011) 51 Cal.4th 751, 759, fn. 5 (*Baycol*) ["Though the rules governing appealability have common law roots, they are now creatures of statute"].)

But reviewing courts must remain true to those statutes. For example, this court has said, "While we safely may assume the Legislature, in codifying the one final judgment rule, did not intend to alter materially the rule's existing common law contours, we likewise *are not at liberty to modify those contours in ways at odds with the statutory language.*" (*Baycol, supra,* 51 Cal.4th at p. 759, fn. 5, emphasis added.)

The Legislature has the power to require that appellate review of certain final orders or judgments be by writ. (See *Leone v. Medical Board* (2000) 22 Cal.4th 660, 668 [state constitution "is properly construed as generally permitting the Legislature to enact

laws . . . specifying that an extraordinary writ petition shall be the method for obtaining appellate review of a superior court judgment in an administrative mandate proceeding"];[4] *Powers v. City of Richmond* (1995) 10 Cal.4th 85.) In the absence of such a legislative command, however, failing to entertain an otherwise generally authorized appeal would violate the "appellate jurisdiction" provision of the state Constitution (Cal. Const., art. VI, § 11 ["courts of appeal have appellate jurisdiction when superior courts have original jurisdiction"]): "A reviewing court's obligation to exercise the appellate jurisdiction with which it is vested, once that jurisdiction has been properly invoked, is established and not open to question." (*Leone*, at p. 669; see also *In re Aaron R.* (2005) 130 Cal.App.4th 697, 704 ["the Judicial Council does not have power to restrict the statutory right of appeal in promulgating rules of court"].)

When interpreting the relevant statutes concerning the scope of appellate jurisdiction, courts apply a settled presumption in favor of appealability. (*In re S.B.* (2009) 46 Cal.4th 529, 537 [" ' "The right of appeal is remedial and in doubtful cases the doubt should be resolved in favor of the right whenever the substantial interests of a party are affected by a judgment" ' "]; see *Silverbrand v. County*

---

[4] The administrative mandate proceeding in *Leone* that the Legislature made reviewable only by writ petition is one following action by the Medical Board of California to revoke, suspend, or restrict a physician's license. (See Bus. & Prof. Code, § 2337.) That type of proceeding is obviously different than the one in the present case. There is no comparable legislative limitation on appellate review here.

of Los Angeles (2009) 46 Cal.4th 106, 113 ["We long have recognized a 'well-established policy, based upon the remedial character of the right of appeal, of according that right in doubtful cases "when such can be accomplished without doing violence to applicable rules" ' "]; accord, *Alan v. American Honda Motor Co., Inc.* (2007) 40 Cal.4th 894, 901.)

Therefore, in determining the appealability of a judgment, a court should look to the applicable statutes and, if the statutes are at all ambiguous, the court should give the benefit of the doubt to finding a valid appeal. Under these basic principles, the superior court judgment here easily fits within the statutory definition of an appealable judgment.

Code of Civil Procedure section 904.1, subdivision (a)(1) (all undesignated statutory references in section II are to the Code of Civil Procedure), generally makes appealable "a judgment, except . . . an interlocutory judgment." This is a codification of the one final judgment rule, under which " ' "an appeal may be taken only from the final judgment in an entire action." ' " (*Baycol, supra,* 51 Cal.4th at p. 756.) Section 577 defines "[a] judgment" as "the final determination of the rights of the parties in an action or proceeding."

Also relevant are statutes specifically concerning special proceedings, because administrative mandate petitions like Dr. Dhillon's petition here are special proceedings. (Writ of mandate provisions (§§ 1067-1110b) are within the Code's Part 3, which concerns "Special Proceedings of a Civil Nature.") Similar to section 577, section 1064 provides that "[a] judgment in a special

proceeding is the final determination of the rights of the parties therein." Further, sections 904.1 and 577 — and many other general statutes — are made applicable to writ proceedings by sections 1109 and 1110.

Given these statutes, it is not surprising that appellate courts have found judgments in special proceedings to be appealable. This court held in *Knoll v. Davidson* (1974) 12 Cal.3d 335, 343, that, "unless the statute creating the special proceeding prohibits an appeal, there is an appeal from a final judgment entered in a special proceeding." (See also *Agricultural Labor Relations Bd. v. Tex-Cal Land Management, Inc.* (1987) 43 Cal.3d 696, 705 (*Tex-Cal*) ["It has long been established that the statutory right of appeal of final judgments and orders extends even to 'special proceedings [including] those intended to be summary in nature' unless the Legislature has expressly prohibited an appeal in the particular case"].)[5]

Likewise, judgments in writ of mandate proceedings have been regularly found to be appealable. (*Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 699 (*Griset*) [finding

---

[5] The predecessor statute to section 904.1 expressly provided for an appeal "[f]rom a final judgment entered in an action, *or special proceeding*, commenced in a superior court." (Former Code Civ. Proc., § 963, subd. (1), emphasis added; Stats. 1961, ch. 1059, § 2, p. 2748; see *Gross v. Superior Court* (1954) 42 Cal.2d 816, 820.) But the absence from section 904.1 of a reference to a "special proceeding" is of no significance. "[T]he meaning is the same: Unless the particular statute provides otherwise, final judgments in special proceedings are appealable." (9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 139, p. 211; see *In re Molz* (2005) 127 Cal.App.4th 836, 841-842.)

appealable the denial of a petition for writ of mandate where the ruling disposed of all issues in the action]; *Tex-Cal, supra*, 43 Cal.3d at p. 702 ["Of course, with limited statutory exceptions, superior court judgments in mandamus are appealable"]; *People v. Karriker* (2007) 149 Cal.App.4th 763, 773 ["A judgment granting a petition for writ of mandate is a final judgment appealable under Code of Civil Procedure section 904.1, subdivision (a)(1)"]; *Public Defenders' Organization v. County of Riverside* (2003) 106 Cal.App.4th 1403, 1409 ["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"]; see 9 Witkin, Cal. Procedure, *supra*, Appeal, § 148, p. 223 ["A petition in the superior court for an extraordinary writ of certiorari, mandamus, or prohibition is a special proceeding [citations], and a judgment in a special proceeding is appealable [citation]. Hence, a superior court order either granting or denying the petition is appealable . . . ."].)

Under the relevant statutes and this case law, there should be appellate jurisdiction in this case. The superior court issued a judgment resolving all issues raised in Dr. Dhillon's mandate petition, John Muir filed a timely notice of appeal, and the Legislature has not expressly precluded an appeal as a method for seeking review in the Court of Appeal of that type of judgment. The judgment should be appealable under sections 904.1, subdivision (a)(1), 577, and 1064.

2. The judgment here is an appealable final judgment even though it requires further hospital administrative proceedings.

The superior court's judgment left no room for further *judicial* action on Dr. Dhillon's petition, but the Court of Appeal nonetheless dismissed John Muir's appeal because the judgment orders further *administrative* proceedings at the hospital. The court stated, "The superior court's order remanding the matter to John Muir Health is not a final, appealable order," and it cited *Board of Dental Examiners v. Superior Court* (1998) 66 Cal.App.4th 1424, 1430 (*Sedler*), which held that "[a] remand order is not an appealable order" (*id.* at p. 1431). Further administrative proceedings should not affect a judgment's appealability, however, unless, possibly, if the superior court specifically reserves jurisdiction, which did not happen here.

The pertinent statutes themselves indicate that the absence of further action by the superior court, not an administrative body outside the judicial branch, is the appropriate measurement for whether a judgment is final and appealable under section 904.1, subdivision (a)(1). As explained, sections 577 and 1064 define "judgment" similarly, the former providing a judgment is "the final determination of the rights of the parties in an action or proceeding" and the latter stating that a judgment in a special proceeding "is the final determination of the rights of the parties therein."

Here, all of John Muir's and Dr. Dhillon's rights in the writ of mandate proceeding were finally determined by the superior court's

judgment. The judgment is thus a "judgment" in both its title and its actual effect. (See *Griset, supra*, 25 Cal.4th at p. 698 [" 'It is not the form of the decree but the substance and effect of the adjudication which is determinative' "].)

This court's case law about what constitutes a final, appealable order or judgment is to the same effect. The opinion in *Dana Point, supra*, 51 Cal.4th 1, is particularly instructive, because it deals with a court order, like the one in the present case, requiring further action outside the judicial system. The *Dana Point* court found appealable a trial court order compelling compliance with a legislative subpoena. The case did not specifically involve a remand to an administrative body (although the court did find that legislative and administrative subpoenas are analogous (*id.* at p. 7)), but the principles stated make clear that the test of finality is whether *the judiciary* has finished with the case, not whether disputes remain to be resolved in other forums.

To begin with, the court stated the general rule for an appealable final judgment this way: "A judgment is the final determination of the rights of the parties (Code Civ. Proc., § 577) ' " 'when it terminates *the litigation* between the parties on the merits of the case and leaves nothing to be done but to enforce by execution what has been determined.' " ' " (*Dana Point, supra*, 51 Cal.4th at p. 5, emphasis omitted and added; see also *id.* at pp. 6-7 [appealability of orders "turns on whether they terminate *the litigation* between the parties," (emphasis added)].) In the present case, the superior court's judgment terminated the

litigation — i.e., Dr. Dhillon's mandate petition — between the parties.

Similarly, the court also generally stated " ' "that where no issue is left for future consideration except the fact of compliance or noncompliance with the terms of the first decree, that decree is final, but where anything further in the nature of *judicial action on the part of the court* is essential to a final determination of the rights of the parties, the decree is interlocutory." ' " (*Dana Point*, *supra*, 51 Cal.4th at p. 5, emphasis added.) Here, there is no further judicial action to be taken. Indeed, the superior court would likely be quite surprised to be told that Dr. Dhillon's writ petition is still active on its docket.

Additionally pertinent is the *Dana Point* court's approval of a Court of Appeal opinion that rejected an analogy between a court order enforcing an administrative subpoena and a court's discovery order. For appealability purposes, the focus again was, appropriately, on the possibility of future *judicial* action.

This court quoted the appellate court's recognition that, as opposed to orders compelling compliance with administrative subpoenas, discovery orders " 'are made in connection with *pending lawsuits* which have yet to be resolved' " and " 'do[ ] not determine all of the parties' rights and liabilities at issue *in the litigation*.' " (*Dana Point*, *supra*, 51 Cal.4th at p. 10, emphases added.) The appellate court had also concluded that the prospect of a future administrative hearing to impose administrative penalties did not make the order nonappealable because, " 'even if [the hearing] is requested, it will not necessarily end up *in court*,' " unlike " 'pending

civil litigation in which a discovery order occurs *already involves the court and will continue to do so.*' " (*Ibid.*, emphases added.)

Significantly, this court's own comments on the civil discovery analogy further support the conclusions that, in the present case, the court mandate proceeding and hospital administrative proceedings should be viewed as separate and that finality in the *court proceeding* is the key to determining appealability. This court stated, "Even if this [legislative] subpoena were akin to a discovery request, the appropriate analogy would be to discovery orders ancillary to cases pending in other jurisdictions, which have been held to be final judgments for purposes of appealability." (*Dana Point, supra*, 51 Cal.4th at p. 13, fn. 8.) Administrative proceedings occur not just in another jurisdiction, but in another branch of government. (See generally *McHugh v. Santa Monica Rent Control Bd.* (1989) 49 Cal.3d 348.)

Likewise, the *Dana Point* court found unconvincing in the case before it "a number of arguments against finality based on the *potential* for future actions or proceedings." (*Dana Point, supra*, 51 Cal.4th at p. 12.) The court concluded that " 'the question of future compliance . . . is present in every judgment' [citation], and if the potential for the sort of future proceedings described here were the standard for assessing finality, few judgments would ever be final." (*Id.* at p. 13.)

In the present case, the potential for future superior court action or proceedings is no greater than in *Dana Point*. The superior court's judgment does not allow for the possibility of further court action on Dr. Dhillon's mandate petition. If the

dispute about Dr. Dhillon having to attend an anger management class ever returns to the judicial system, it would have to be by a new and separate mandate petition, and it is speculative whether even that will happen. If John Muir overturns the medical staffs' action and rules in Dr. Dhillon's favor after a JRC proceeding and any subsequent appeal to the John Muir governing body, John Muir would not seek judicial review of a decision that John Muir itself has made.

In addition to the general final-judgment principles in cases like *Dana Point*, there is Court of Appeal case law that specifically finds to be appealable those superior court mandate petition rulings that remand for further administrative proceedings.

In *Carson Gardens, L.L.C. v. City of Carson Mobilehome Park Rental Review Bd.* (2006) 135 Cal.App.4th 856 (*Carson Gardens*), for example, the superior court had issued a writ that remanded the matter to a rent control board for further proceedings. (*Id.* at p. 862.) The board held a new hearing and then appealed when the superior court ruled the board had not complied with the writ. The Court of Appeal held the board could no longer challenge the superior court's writ because the board could have, but had not, appealed from the writ judgment that had remanded the matter. (*Id.* at p. 866; see *Baycol, supra*, 51 Cal.4th at p. 761, fn. 8 ["California follows a 'one shot' rule under which, if an order is appealable, appeal must be taken or the right to appellate review is forfeited"].)

Cases consistent with *Carson Gardens* include *Quintanar v. County of Riverside* (2014) 230 Cal.App.4th 1226, 1232 (judgment

granting writ of mandate that remanded matter to hearing officer was appealable), *City of Carmel-by-the-Sea v. Board of Supervisors* (1982) 137 Cal.App.3d 964, 970-971 (judgment ordering writ that remanded proceedings was appealable), and *Carroll v. Civil Service Commission* (1970) 11 Cal.App.3d 727, 730, 733 (judgment issuing writ remanding matter for redetermination of penalty was appealable). (See also *Los Angeles Internat. Charter High School v. Los Angeles Unified School Dist.* (2012) 209 Cal.App.4th 1348, 1354 ["When the trial court issues its judgment granting a peremptory writ, the respondent has two choices: to appeal that judgment or to comply with it. If the respondent elects to comply with the writ, it waives its right to appeal from the judgment granting the writ petition"]; accord, *City of Carmel-by-the-Sea*, at p. 970.)

There is, however, also Court of Appeal case law indicating that, because it requires further administrative action, the judgment here is not appealable. The Court of Appeal relied on this case law in dismissing John Muir's appeal. Those authorities should be disapproved. *Sedler*, *supra*, 66 Cal.App.4th 1424, is the seminal opinion in the contrary line of cases (see *Gillis v. Dental Bd. of California* (2012) 206 Cal.App.4th 311, 318; *Village Trailer Park, Inc. v. Santa Monica Rent Control Bd.* (2002) 101 Cal.App.4th 1133, 1139-1140; *Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal.App.4th 493, 501-502),[6] but *Sedler*'s reasoning is faulty and

---

[6] Additional opinions arguably consistent with the *Sedler* line of cases — but not mentioned in *Sedler* — are *Connell v. Superior Court* (1997) 59 Cal.App.4th 382 (writ determining that water districts had right to reimbursement, but requiring Controller to (continued...)

the cases following it did so without any examination of the reasoning or any mention at all of the conflicting authority.

Sedler concerned a superior court mandamus proceeding to review a license revocation by the Board of Dental Examiners. When the superior court ordered the Board to conduct a new hearing, the Board appealed. The Court of Appeal concluded the superior court's order was not appealable. It stated, "While a remand order is not appealable [citation], we find this current action an appropriate case to exercise our discretion to treat the Board's appeal as a petition for writ of mandamus." (*Sedler*, *supra*, 66 Cal.App.4th at p. 1430.)

Other than its citation of one case, *Sedler* gave no explanation for its appealability holding. Moreover, that one case did not involve a remand to an administrative body at all, but an appeal from a partial judgment notwithstanding the verdict that left further issues to be resolved *in the trial court*. (*Cobb v. University of So. California* (1995) 32 Cal.App.4th 798, 803-804.) *Sedler* thus implicitly found no difference between further proceedings in a lawsuit and further proceedings before an administrative body. As

---

(...continued)
determine amounts due, was unappealable interlocutory judgment) and *Kumar v. National Medical Enterprises, Inc.* (1990) 218 Cal.App.3d 1050 (physician could not appeal because he had not exhausted his administrative remedies when, in ruling on the physician's mandate petition, superior court remanded for further administrative appeal hearings). (See also *Garland v. Central Valley Regional Water Quality Control Bd.* (2012) 210 Cal.App.4th 557, 560, fn. 3.)

explained, however, there is a difference, and that difference is critical to an appealability analysis.

The *Sedler* court also said that, in another case, it had, "without articulating the reason, treated a non-appealable remand order as a petition for writ of mandamus." (*Sedler, supra,* 66 Cal.App.4th at p. 1430.) But, there was no suggestion in that earlier case that the court was treating an appeal as a writ petition; instead, the court simply decided the merits of an appeal from an order resolving an administrative mandamus petition. (*Green v. Board of Dental Examiners* (1996) 47 Cal.App.4th 786.) If anything, reaching the merits of an appeal without discussing an order's appealability is support for finding the type of order to be appealable, not the opposite. (See *Millan v. Restaurant Enterprises Group, Inc.* (1993) 14 Cal.App.4th 477, 485.)[7]

There is also authority that a superior court order remanding to an administrative body is not appealable if the court retains jurisdiction of the mandate petition during the remand. (See *City of Los Angeles v. Superior Court* (2015) 234 Cal.App.4th 275, 280 [judgment not appealable where superior court " 'held in abeyance' " application for administrative writ and ordered new hearing]; *Ng v. State Personnel Bd.* (1977) 68 Cal.App.3d 600, 604 [remand order not appealable where superior court had continuing jurisdiction in

---

[7] Other cases have, without discussing appealability, reached the merits of appeals from trial court orders issuing writs that remanded matters for further administrative proceedings. (*Bode v. Los Angeles Metropolitan Medical Center* (2009) 174 Cal.App.4th 1224, 1232; *Hackethal v. Loma Linda Community Hosp. Corp.* (1979) 91 Cal.App.3d 59, 64.)

pending mandate proceeding].) That is not inconsistent with the rule that should apply here — a writ of mandate judgment is final and appealable if the judgment resolves all the issues in the writ petition.

The superior court in the present case made final rulings on everything Dr. Dhillon raised in his mandate petition and it did not reserve its jurisdiction; indeed, there was nothing to reserve jurisdiction over.[8] The court is done with the mandate proceeding, which is a short way of stating that the judgment is appealable under section 904.1, subdivision (a)(1).

B. When appellate review is "now or never," as it is here, finding appealability is warranted.

As discussed, the question of appealability in "doubtful cases . . . should be resolved in favor of the right [to appeal]." (*In re S.B.*, *supra*, 46 Cal.4th at p. 537.) Another factor militating in favor of finding the superior court's judgment to be appealable is that the court's order requiring John Muir to initiate a JRC proceeding would be unreviewable if not reviewed now.

In *Baycol*, *supra*, 51 Cal.4th 751, this court examined the "death knell" appealability doctrine in class actions, which is applicable when only class claims, not individual claims, are dismissed. The court noted that, in an earlier case, "[w]e

---

[8] "Jurisdiction over a cause or parties after a final judgment . . . is exceptional and limited to special situations." (See 2 Witkin, Cal. Procedure, *supra*, Jurisdiction, § 420, p. 1070.)

emphasized that permitting an appeal was necessary because '[i]f the propriety of [a disposition terminating class claims] could not now be reviewed, it can never be reviewed' [citation], and we were understandably reluctant to recognize a category of orders effectively immunized by circumstance from appellate review." (*Id.* at p. 758.)

Specifically relevant to the present case, this risk of immunity from review has been a significant factor in those federal decisions finding to be appealable district court orders remanding matters to administrative bodies. *AJA Associates v. Army Corps of Engineers* (3d Cir. 1987) 817 F.2d 1070 (*AJA Associates*) is closely analogous.

AJA Associates concerned the denial by the Army Corps of Engineers of a dredging permit application. The disappointed applicant sued, arguing both that the denial should be set aside and, alternatively, that there should have been an adjudicatory hearing. (*AJA Associates*, *supra*, 817 F.2d at p. 1072.) Similar to the superior court here, the district court agreed with the alternative argument and remanded the case for an administrative hearing. (*Ibid.*) The Court of Appeals held the remand order was appealable, even though it said that remands to administrative agencies ordinarily are not appealable under federal law. (*Id.* at p. 1073.)

The remand order was final and appealable, the court concluded, because, "when a district court finally resolves an important legal issue in reviewing an administrative agency action and denial of appellate review before remand to the agency would foreclose appellate review as a practical matter, the remand order is

immediately appealable." (*AJA Associates, supra*, 817 F.2d at p. 1073; see also, e.g., *Montana Wilderness Ass'n v. McAllister* (9th Cir. 2011) 666 F.3d 549, 554; *Rush University Medical Center v. Leavitt* (7th Cir. 2008) 535 F.3d 735, 738; *Bergerco Canada, a Div. of Conagra, Ltd. v. U.S. Treasury Dept., Office of Foreign Assets Control* (D.C. Cir. 1997) 129 F.3d 189, 191-192; *Schuck v. Frank* (6th Cir. 1994) 27 F.3d 194, 196-197; *Chugach Alaska Corp. v. Lujan* (9th Cir. 1990) 915 F.2d 454, 457.)

The *AJA Associates* court explained why there could not be post-remand appellate review: "If on remand the Corps grants AJA a permit, the case will never return to the courts. If the Corps again denies the permit after a hearing, judicial review sought by AJA will not allow consideration of the right-to-hearing issue, because the issue will have become moot." (*AJA Associates, supra*, 817 F.2d at p. 1073.)

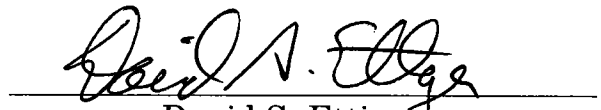
Future appellate review of the right-to-hearing issue in the present case is foreclosed for the same reason it was foreclosed in *AJA Associates*. If the result of the JRC proceeding and any subsequent decision by the John Muir governing body reverses the medical staffs' actions against Dr. Dhillon, John Muir will not seek judicial review of its own decision. If the governing body upholds the medical staffs' actions and Dr. Dhillon challenges that result in court, "the right-to-hearing issue . . . will have become moot," as in *AJA Associates*, because the JRC hearing will have already occurred.

CONCLUSION

For the reasons stated, this court should reverse the order dismissing the appeal and should remand the case to the Court of Appeal to consider the merits of the appeal.

June 12, 2015

HORVITZ & LEVY LLP
DAVID S. ETTINGER
H. THOMAS WATSON
DiCARO, COPPO & POPCKE
CARLO COPPO
MICHAEL R. POPCKE
SHELLEY A. CARDER
HOOPER, LUNDY & BOOKMAN, PC
ROSS E. CAMPBELL

By: 
David S. Ettinger

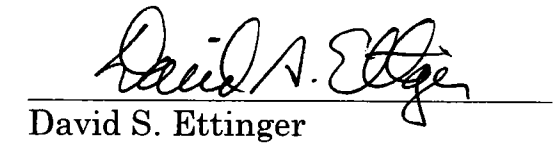
Attorneys for Defendants and Appellants
JOHN MUIR HEALTH,
BOARD OF DIRECTORS OF
JOHN MUIR HEALTH

CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, rule 8.520(c)(1).)

The text of this brief consists of 8,511 words as counted by the Microsoft Word version 2007 word processing program used to generate the brief.

Dated: June 12, 2015



David S. Ettinger

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 15760 Ventura Boulevard, 18th Floor, Encino, California 91436-3000.

On June 12, 2015, I served true copies of the following document(s) described as **OPENING BRIEF ON THE MERITS** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Horvitz & Levy LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

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

Executed on June 12, 2015, at Encino, California.

Victoria Beebe

Victoria Beebe

SERVICE LIST

Dhillon v. John Muir Health et al.
Court of Appeal Case No. A143195 • Supreme Court Case No. S224472

Carla V. Minnard The Minnard Law Firm 4100 Redwood Road, #145 Oakland, CA 94619 Phone: 510.479.1475 Fax: 510.358-5588 Email: caraminnard@minnardlaw.com	Attorneys for Plaintiff and Respondent *Jatinder Dhillon*
Sharon J. Arkin The Arkin Law Firm 225 S. Olive Street, Suite 102 Los Angeles, CA 90012 Telephone: (541) 469-2892 Facsimile: (866) 571-5676 E-mail: sarkin@arkinlawfirm.com	Attorneys for Plaintiff and Respondent *Jatinder Dhillon*
R. Carlo Coppo Michael R. Popcke Shelley A. Carder DiCaro, Coppo & Popcke 2780 Gateway Road Carlsbad, CA 92009-1730 Phone: 760.918.0500 Fax: 760.918.0008 Email: carlo.coppo@dcp-law.com michael.popcke@dcp-law.com shelley.carder@dcp-law.com	Attorneys for Defendants and Appellants *John Muir Health, Board of Directors of John Muir Health*
Ross E. Campbell Hooper, Lundy & Bookman, PC 575 Market Street, Suite 2300 San Francisco, CA 94105 Phone: 415.875.8500 Fax: 415.875.8519 Email: rcampbell@health-law.com	Attorneys for Defendants and Appellants *John Muir Health, Board of Directors of John Muir Health*
Hon. Laurel S. Brady Contra Costa County Superior Court 725 Court Street, Dept. 31 Martinez, CA 94553-1233	Case No. MSN13-1353
Office of the Clerk Court of Appeal First Appellate District, Division Three 350 McAllister Street San Francisco, CA 94102	Service copy via True Filing