

JEAN F. MATULIS (SBN 139615)
 Attorney at Law
 P.O. Box 1237
 Cambria, California, 93428
 (805) 927-1990
 Attorney for Appellant
 RAMIRO GONZALES

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,)	No. S191240
)	
Plaintiff and Respondent)	Court of Appeal
)	No. H032866
v.)	Santa Clara Court Superior
)	Court No. PS020616
)	
RAMIRO GONZALES,)	Request for Judicial Notice
)	Evid. Code §§ 452, 459
Defendant and Appellant)	Rule 8.252
_____)	

Appellant Ramiro Gonzales hereby respectfully requests that this Honorable Court take judicial notice of the following pursuant to Evidence Code section 452, subdivision (c):

**Sex Offender Treatment Program Certification Requirements,
 Promulgated by the California Sex Offender Management
 Board, June 2011**

The California Sex Offender Board, is an entity created through the passage of Assembly Bill 1015 in 2006, who “has been charged with providing the Governor and the California State Legislature with an assessment of current sex offender management practices, a progress report on the Board's work, and a final report with recommendations.” Pursuant to Penal Code section 9003, the

Management Board has developed standards for sex offender management programs which are detailed in a publication entitled “Sex Offender Treatment Program Certification Requirements” which include standards pertaining to confidentiality and waiver within the context of the psychotherapist-patient relationship of sex offenders on parole. (Please see Attachment.)¹ No previous request for judicial notice of this matter has been made.

**MEMORANDUM OF POINTS AND AUTHORITIES
JUDICIAL NOTICE IS PROPER IN THIS CASE**

Evidence Code section 452, subdivision (c) authorizes the court as necessary to take judicial notice of “[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.” The California Sex Offender Management Board has been charged by the Legislature and appointed by the Governor for the purpose of developing recommendations to improve management and practices of adult sex offenders under supervision in the community, with the goal of improving community safety. (Penal Code §§ sections 9001, 9002, subd. (a)(2).) The Board consists of seventeen members including the Attorney General or designee, Secretary of the Department of Corrections or designee, the Director of Adult Parole Services or designee, the Director of the Department of Mental Health or designee, a California state judge, three members of law enforcement, a member who represents prosecuting attorneys, a member who represents probation officers, a member who represents criminal defense attorneys, a member who is a county administrator, a member who is a city manager or designee, two members who are licensed mental health professionals, and two members who are recognized experts


¹This document can also be located at http://www.casomb.org/docs/Certification_Standards/Certification-Program.pdf.

in the field of sexual assault. (Penal Code § 9001, subd. (b).) Judicial notice of the above-described document is necessary because it contains recognized professional standards of treatment and confidentiality within the psychotherapist-patient relationship in the context of treatment of sex offenders on parole, including whether a knowing and intelligent waiver is required prior to disclosure of confidential communications. (Attachment at p. 6.)

One of the issues involved in this case is whether there is a need for a judicially-created exception to the psychotherapist-patient privilege contained within Evidence Code section 1012, that would obviate the need for a waiver of confidentiality by a person receiving sex offender treatment on parole. The standards recognized by the Management Board tasked with assessment of current sex offender management practices and developing standards is relevant in determining whether such a judicially created exception is necessary for the purpose of protecting public safety. Appellant respectfully submits that judicial notice of the attached document is therefore necessary for full assessment of the issues raised in this case.

Dated: October 24, 2011

Respectfully submitted,



JEAN MATULIS
Attorney for Appellant

[PROPOSED] ORDER

GOOD CAUSE APPEARING, the request for judicial notice is granted.

Dated: _____

Chief Justice

ATTACHMENT

CALIFORNIA SEX OFFENDER MANAGEMENT BOARD

SEX OFFENDER TREATMENT PROGRAM CERTIFICATION REQUIREMENTS

CALIFORNIA SEX OFFENDER MANAGEMENT BOARD

Sex Offender Treatment Program Certification Requirements

June 2011



<u>REQUIREMENTS FOR CERTIFICATION OF PROGRAMS</u>	1
Introduction	1
Definitions	2
<u>Requirements for Treatment Programs</u>	3
Requirement 1: The Containment Model	3
Requirement 2: Treatment Program Manual	4
Requirement 3: Informed Consent.....	5
Requirement 4: Waiver of Confidentiality.....	6
Requirement 5: Treatment and Supervision Planning	6
Requirement 6: Treatment Contract	7
Requirement 7: Treatment Goals	8
Requirement 8: Written Treatment Plan	9
Requirement 9: Treatment Modalities.....	9
Requirement 10: Documentation	10
Requirement 11: Certified Treatment Providers	10
Requirement 12: Use of Polygraphy	10

STATE OF CALIFORNIA SEX OFFENDER TREATMENT PROGRAM CERTIFICATION REQUIREMENTS



By
CALIFORNIA SEX OFFENDER MANAGEMENT BOARD
(CASOMB)

Introduction:

For the safety and well-being of California's citizens, especially those most vulnerable to sexual assault, it is essential to manage known sex offenders living in the state's communities in ways that most effectively reduce the likelihood that they will commit another offense, both while they are under the formal supervision of the criminal justice system as well as after that period of supervision comes to an end. Comprehensive interventions and systemic responses tailored to meet the individual levels of risk and needs of offenders are required.

Successful therapeutic outcomes require clinicians and sex offender management specialists to be knowledgeable about the characteristics of different types of sexual offenders, the models of treatment that have proven successful and to have experience in addressing the wide range of criminogenic issues that are common to adult sex offenders. Some offenders will remain at high risk of sex-offending despite the efforts of the treatment providers and the criminal justice system to intervene. Nonetheless, current research suggests that treatment and management efforts driven by the offender's level of risk, what his/her particular criminogenic needs are, and individualized strategies to elicit the engagement of the offender are the best practices in the field.

Sex Offender-Specific Treatment is an important component of the Containment Model of sexual offender management. Collaboration and communication between treatment providers, parole agents, probation officers, polygraph examiners, and victim advocates are key elements necessary for the successful re-entry and effective management of sex offenders. Sex offender treatment has historically utilized different methods to train the individual to regulate and manage him or herself, with victim safety and reduction of recidivism being primary treatment goals. Current research has identified that cognitive-behavioral therapy methodologies applied with consideration of the risk, needs and responsivity of participants are the most effective in reducing risk of re-offense.

A provider who treats *PC 290 registered sexual offenders* under the jurisdiction of the criminal justice system pursuant PC sections 1203.067 and 3008 must use sexual offender-specific treatment as described in the following requirements.

CASOMB reserves the right to revise these standards and requirements at any time. These criteria are for those mental health practitioners who provide treatment and evaluation of all sex offenders pursuant to Penal Code section 290.09.

Definitions:

Containment Team: The expression "Containment Team" refers to the collaborators who work together to provide various specialized functions and services to "contain" each identified sex offender living in the community under direct criminal justice system supervision. Although there is no specified theoretical upper limit to the number and roles of Containment Team members, the model views the minimum essential membership as consisting of three specialists: (1) the supervising probation officer or parole agent or similar representative of judicial authority; (2) provider or specialized sex offender treatment services; (3) polygraph examiner. Among the sources available for further information about the Containment Model is a statement available at <http://ccoso.org/containment.php>.

Relapse prevention: The expression "relapse-prevention," as it has been used over many years in the field of sex offender treatment, has taken on many meanings, some quite specific. In this document the expression is not intended to describe any specific techniques, strategies or interventions but is being used in its broadest sense and can be thought of as synonymous with recidivism prevention. Any recognized intervention which attempts to lessen the risk of re-offense may legitimately be termed relapse prevention in this broad sense. The use of this expression is not intended to lend support to any particular technique used in the past or currently to accomplish the goal of reducing re-offending.

Risk, Needs, and Responsivity: The expression "risk, needs and responsivity" is used in this document to refer to a general set of perspectives and established principles in the field of offender rehabilitation and recidivism prevention. The expression is sometimes shortened to RNR. It was developed primarily by researchers and authors Don Andrews and James Bonta. The principles represented by the shorthand expression "risk, needs and responsivity" or RNR cannot be deduced from the everyday meaning of the words themselves. Information about RNR is available from many sources, among them an excellent review available at http://www.publicsafety.gc.ca/res/cor/rep/risk_need_200706-eng.aspx.

SARATSO: The acronym "SARATSO" stands for State Authorized Risk Assessment Tool for Sex Offenders. The acronym may be used to refer to the statutorily established three-member committee tasked with supporting and guiding California's risk assessment systems. It may also refer to the various risk assessment instruments authorized by the committee. More information can be found at www.cdcr.ca.gov/Parole/SARATSO_Committee/SARATSO.html

Sex Offender or Sexual Offender: The expression "sex offender" or "sexual offender" as used in the present document, means an individual who has been adjudicated or convicted of a crime that requires registration under California Penal Code 290-290.023. The list of offenses can be found at the Department of Justice website - www.meganslaw.ca.gov.

Sex Offender Management Program: The expression “sex offender management program” as used in this document is based upon the language used in the various parts of the California Penal Code created by Assembly Bill 1844 (2010). The expression means exactly the same as a similar phrase used in this document: “sex offender treatment program.” A “program” is an identifiable business entity with a taxpayer identification number or is a program operated directly by a governmental agency. Such a “program” may only be designated as a “certified sex offender management program” when it has demonstrated that it meets the criteria set forth in this document and has been certified by CASOMB. As long as the criteria have been met, a program, in the sense used here, may have multiple sites and many staff or may consist of one individual provider.

REQUIREMENTS FOR TREATMENT PROGRAMS

Requirement 1: Implementation of the Containment Model

The most widely recognized approach to sex offender management is the *containment model*, a comprehensive strategy to manage offenders in a systematic and thorough manner. The central goal of the containment model is community and victim safety which is accomplished by holding the sex offenders responsible for the harm they inflict and helping sex offenders recognize and redirect the inappropriate thoughts and feelings that form the pathways to their crimes. The model recognizes that multiple entities play important roles in the community management of sex offenders and stresses the importance of open collaboration between these key players. Four elements describe the containment model:

- *Sex offender-specific treatment* based on evidence-based principles is utilized to help offenders learn to develop internal control, and to understand and interrupt their individual offense cycles.
- *Official supervision and monitoring* is needed to exert external control over offenders. Probation and parole agencies apply pressure through clear expectations and through the use or threatened use of sanctions to ensure that the offender complies with specialized treatment and supervision conditions.
- *Polygraph examinations and other surveillance tools* are used to enhance the assessment process and to help monitor the sex offender's deviant fantasies and external behaviors, including access to victims. Surveillance tools such as Global Positioning Systems may help monitor the location of offenders and provide information during the investigation of new sexual offenses.
- *Victim advocacy* brings a realistic community safety perspective to the entire effort and works to support victims who may have questions and concerns about a sex offender's re-entry into the community.

Containment team members are encouraged to work with law enforcement personnel to provide community education as well as, when indicated, to build meaningful connections with victims and their support networks during an offender's period of community supervision.

Treatment program providers shall have a written policy delineating cooperative and collaborative relationships and accountability with the supervising officer of each sex offender and with other relevant Containment Team members. At minimum, the policy shall include:

1. Timely reports of non-compliance with the treatment program requirements.
2. Timely reports of any evidence that an offender has an increased risk to reoffend or is likely to reoffend.
3. Reports, not less than monthly, on the offender's attendance and participation in the treatment program.

Requirement 2: Treatment Program Manual

All approved treatment programs shall have clearly articulated, written statements regarding their theories of change and rehabilitation as well as methods of intervention that facilitate change. The program manual will be made available for CASOMB audit or review, upon request. The program manual will also be made available by the program for Probation or Parole agencies to review upon request. Each program will have a program manual or instructional guide for treatment program staff members that articulates the following:

- treatment and management philosophy
- strategies for collaboration with parole agents and/or probation officers using the Containment Model approach
- assessment and treatment planning protocols and methods
- psychotherapeutic treatment approaches and methods
- sequence of interventions to be used
- differential treatment strategies for different types or subtypes of offenders
- modifications to treatment for individuals with low cognitive functioning
- accessibility for non-English speaking individuals
- therapeutic contract and informed consent with clients
- perspective on resolution of harm to victim
- documentation and quarterly reports to referring agencies
- use of polygraph examiners and examinations
- handling of confidential file information, release forms
- policies on use of file information for research
- criteria for graduation, release, and/or termination from treatment
- how the program will ensure use of appropriate clinical staff persons
- how the program will ensure staff continuing training

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- how the program will monitor compliance with CASOMB and SARATSO requirements

Requirement 3: Informed Consent

All approved treatment programs shall have clearly articulated, written statements informing clients of their rights and responsibilities, the limitations and boundaries of the therapeutic relationship, and the nature of the therapeutic relationship.

1. Clients shall have the assessment and treatment process thoroughly explained to them prior to the onset of services. Clients participating in treatment are required to give informed consent to assessment and treatment. Under current law treatment may not be rejected without potential legal consequences. Treatment providers must ensure that the client has the capacity to understand and give informed consent.
2. Treatment providers shall define, in written form or another manner which makes it understandable to the client, each of the following:
 - a. A description of the assessment and treatment processes
 - b. A brief statement of the background and experience of the treatment provider
 - c. A statement of the client fees involved for assessment, treatment, and polygraph examinations and other related costs
 - d. A description of the frequency, length of sessions, estimated duration of treatment, and completion requirements of the program
 - e. An explanation of the limitations of and exceptions to confidentiality, which require consent to release information between the treatment provider(s), supervising law enforcement agencies, polygraph examiner, and other members of the Containment Team. Consultants or clinical supervisors involved with the treatment program shall also be listed on the release of information forms.
 - f. A statement regarding mandatory reporting laws and the right to not incriminate oneself in assessment, treatment, or polygraph processes
 - g. A statement regarding the possible benefits and risks of treatment, possible adverse effects from treatment or disclosures made in treatment, and the risks of refusing participation in treatment. Alternative forms of treatment, if any, should also be noted.
 - h. A statement regarding the client's right to review the contents of his or her file and the program's policies for compliance with Health Insurance Portability and Accountability Act (HIPAA) regulations
 - i. A statement regarding the client's responsibility to maintain the privacy and confidentiality of other persons who are in the treatment program

Requirement 4: Waiver of Confidentiality

The effectiveness of the Containment Model of sex offender management depends upon open and ongoing communication between all professionals responsible for assessing, evaluating, treating, supporting, and monitoring sex offenders. The absence of open and ongoing communication compromises the purpose of these containment team members, and may compromise the safety of the community.

Prior to accepting an offender into treatment and as a condition of treatment, the treatment provider shall obtain a signed waiver of the psychotherapist-patient privilege. If the offender has more than one therapist or treatment provider, the waiver of the privilege shall extend to all therapists treating the offender. The waiver should also include the victim's therapist, if appropriate to the case. The waiver shall include the supervising officer and all members of the Containment Team. A provider shall also notify all clients that there are limits of confidentiality imposed on therapists by other laws, such as the mandatory reporting laws.

A waiver of confidentiality will also be required of the offender by the conditions of probation or parole, and by the treatment provider-client contract. Treatment providers shall not disclose confidential client information to those for whom waivers have not been obtained.

Requirement 5: Assessment-Based Treatment and Supervision Planning

Sex offender specific assessments are of great value in developing treatment and supervision strategies to effectively aid offenders in developing their ability for self-regulation. Initial assessments should be completed within 30 days of the offender's entry into the treatment program. In no circumstance shall the evaluation period exceed 120 days. Assessments completed in different settings and circumstances can generate different types of outcomes and degrees of cooperation with clients. Evaluations completed in presentencing or custody situations may or may not have sufficiently addressed sex offender treatment issues. Unless a previous sex offender specific assessment was completed within eighteen (18) months of the beginning date of treatment, the program provider shall complete a sex offender-specific assessment. The assessments shall include an evaluation of:

- Risk for sexual and violent reoffense levels using the SARATSO approved risk assessment instrument(s). Programs shall use the SARATSO combined risk decision matrix for the static and dynamic scores.
- Neurodevelopmental impairments, traumatic brain injuries, or trauma histories
- Cognitive functioning
- Presence of mental health issues
- Drug and alcohol use
- Level of denial
- Degree of coercion and violence in offense(s)

- Presence of sexual deviance, interests and paraphillias
- Antisocial orientation
- Other factors associated with the risk to sexually reoffend
- Motivation and amenability to treatment
- Review of criminal justice information and other collateral information including the details of the current offense, documentation of impact of the offense on the victim (when available), and the scope of the offender's antisocial and sexual behavior, other than the current offense, that may be of concern.
- Offender-specific psychological testing, when indicated. Providers are encouraged to utilize testing instruments that are accepted in the sex offender treatment field, such as those recommended by the Association for the Treatment of Sexual Abusers.
- Details of any prior history of violence, e.g., domestic violence, assaults.
- Pertinent medical history

Requirement 6: Treatment Contract

Written agreements between treatment providers and their clientele are a standard in the sexual offender treatment field. These are particularly useful in establishing the sexual offender's responsibility, accountability, and ownership in committing the offense, and document in writing that the offender is informed of the conditions and requirements of the treatment program, and the consequences of violating these conditions. Highly specific written contracts help diminish the manipulation, minimization and denial that are characteristic of many sexual offenders and other criminals.

Prior to treatment and as a condition of enrollment in a certified treatment program, the provider shall develop and utilize a written contract with each sex offender (hereafter called "client" in this section) prior to the commencement of treatment. The treatment contract shall describe the responsibilities of both the provider and the client and client violations of the contract may be the basis of a return to court for revocation of probation or parole, or other community supervision.

The treatment contract shall describe the role of the treatment provider in implementing the treatment plan as well as the responsibility of the provider to:

1. Define and provide timely statements of the costs of the assessment, evaluation, and treatment, including all psychological tests, physiological tests, and consultations;
2. Describe the waivers of confidentiality/release of information which will be required for a provider to treat the client for his/her sexual offending behavior; describe the various parties with whom treatment information will be shared during the treatment; describe any time limits on the waivers of confidentiality; and describe the procedures necessary for the client to revoke the waiver;

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3. Describe the right of the client to refuse treatment and/or to refuse to waive confidentiality, and describe the risks and potential risks and outcomes of that decision;
 4. Describe the type, frequency, and requirements of the treatment and outline how the duration of treatment will be determined;
 5. Describe the limits of confidentiality imposed on the therapist by the mandatory reporting laws.
 6. Explain the terms of the contract to the client in verbiage that the client understands.

The treatment contract shall describe the responsibilities of the client (as applicable) to:

1. Pay for the cost of evaluation and treatment for him or herself, and to his or her family, if applicable;
2. Pay for the cost of evaluation and treatment for the victim(s) and their family(ies), when ordered by the court, including all medical and psychological tests, and consultation;
3. The treatment provider, the client's family, and support system shall be advised of the details of all disclosed past sexual offenses to ensure help and protection for past victims and/or as relevant to the development of the relapse prevention plan. Clinical judgment should be exercised in determining what information is provided to children;
4. Actively involve members of the offender's family and support system, as indicated in the relapse prevention plan;
5. Notify the treatment provider of any changes or events in the lives of the client, the members of the client's family, or support system;
6. Participate in polygraph testing as required, and if indicated, sexual arousal and/or interest testing as adjuncts to assessment and treatment;
7. Comply with the limitations and restrictions placed on the behavior of the client, as described in the terms and conditions of probation, parole, or community corrections and/or in the treatment contract between the provider and the client.

The treatment contract shall describe the responsibility of and restrictions on the client to protect community safety by avoiding risky, aggressive, or re-offending behavior by avoiding high-risk situations, and by reporting any such behavior to the provider and supervising officer as soon as possible.

Requirement 7: Treatment Goals

The program shall utilize an evidence-based program model that is supported by the professional literature in the field of sex offender treatment. The model shall be designed to assist and guide offenders to:

1. Accept responsibility for their behavior and offense(s)
2. Develop accountability for their behavior and relationships with others
3. Develop motivation for change and engagement in the treatment process

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4. Identify and address criminogenic needs
 5. Learn about the impact of sexual offending upon victims, their families, and the community
 6. Understand the relapse prevention model and how it applies to their lives
 7. Modify thinking errors, cognitive distortions, and pro-offending attitudes and schema
 8. Deal with emotions and impulses in positive, prosocial ways
 9. Develop healthy interpersonal and relationship skills, including communication, perspective-taking, and intimacy.
 10. Decrease and manage deviant sexual arousal or interests
 11. Establish, maintain, or expand positive support systems
 12. Develop and practice self-management methods to avoid or deter sexual reoffending
 13. Develop relapse prevention plans
 14. Identify and manage issues of anger, power and control
 15. Address an antisocial orientation to life,
 16. Identify and address any personality traits and deficits that are related to the potential for sexual reoffending.

Requirement 8: Written Treatment Plan

A written treatment plan shall be developed for each sex offender based on the level of risk to sexually reoffend and needs identified in a sex offender specific assessment or evaluation. Level of risk to sexually reoffend and criminogenic needs shall guide treatment planning and supervision strategies. Providers shall make a copy of the treatment plan available to the supervising officer.

The treatment plan shall:

1. Identify the issues to be addressed, including, at a minimum, the goals of treatment, the length of time needed to achieve each goal, and planned therapeutic intervention strategies.
2. Re-evaluate progress toward each goal periodically, based on the estimated time set for achieving each goal.
3. Define expectations of the offender, his or her family (when appropriate) and/or support systems.
4. Address progress toward completion of stages in the program.

Requirement 9: Treatment Modalities

Approved programs shall utilize evidence based and emerging best practices to the greatest extent possible. Programs shall implement these strategies while also considering the individual needs of clients. Programs will document how they will make modifications to strategies when working with individuals who have unique or special needs such as cognitive limitations, mental health issues, language or other barriers that may impede treatment effectiveness.

While group therapy is generally preferred, individual counseling may be used in lieu of group therapy based on the assessment and treatment plan. Group constellation and length of each session shall be based on the individuals' risk levels, cognitive functioning, and criminogenic needs being addressed. Co-therapists are highly recommended for each group.

Groups shall have no more than nine (9) participants assigned per group. A group of four (4) or fewer clients may be a minimum of sixty (60) minutes in length while groups with five (5) to nine (9) clients shall not be less than ninety (90) minutes in length per group session. Groups for individuals with low cognitive functioning or chronic mental health issues shall be limited to six (6) participants may be assigned group as short as sixty (60) minutes in length, if clinically indicated.

Group therapy for moderate and high risk offenders should occur once per week at minimum for their first year of treatment. Subsequently the treatment provider and supervising officer will determine frequency and duration. Justification for frequency and duration shall be clarified in the treatment plan based on individual characteristics including risk level.

Requirement 10: Documentation

1. Clinical notes for each therapeutic contact shall document client participation, progress towards treatment goals, topics discussed, and risk management concerns.
2. Written progress reports shall be completed at a minimum, every six months. The written progress report shall evaluate the offender's participation in the program, progress in achieving the goals identified in the treatment plan and revisions of the treatment plan. The progress report shall be sent to the supervising officer or agent and made available to other members of the Containment Team on request.
3. Upon exit from the treatment program, a written discharge summary shall provide information on the offender's participation in the treatment program, progress on goals identified in the treatment plan, factors associated with the risk to sexually reoffend and strategies to manage that risk. The discharge summary shall be sent to the supervising officer or agent and made available to other members of the Containment Team on request.

Requirement 11: Certified Treatment Providers

All clinical staff providing sex offender specific treatment services in certified treatment programs must be CASOMB certified providers or working under the supervision of a CASOMB certified provider.

Requirement 12: Use of Polygraphy

Certified programs shall use polygraph examiners who meet the CASOMB requirements for polygraph examiners.

PROOF OF SERVICE BY MAIL

People v. Ramiro Gonzales, No. S191240
Santa Clara Superior Court No. 211111
California Court of Appeal, Sixth Appellate District, No. H032866

I am over eighteen years old, not a party to this action, and a member of the State Bar of California. My business address is P.O. Box 1237, Cambria, CA 93428.

On October 24, 2011, I served the following:

Request for Judicial Notice

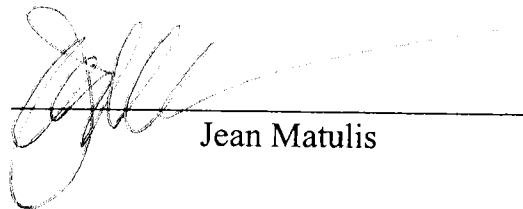
by mailing true and correct copies, postage pre-paid, in United States mail to:

Mr. Ramiro Gonzales
C/O Coalinga State Hospital
P.O. Box 5003
Coalinga, CA 93210

Sixth District Appellate Program.
100 N. Winchester Blvd., Ste. 310
Santa Clara, CA 95050

Office of the Attorney General
Attn: Bridgette Billeter
455 Golden Gate Ave., #11000
San Francisco, CA 94102

I declare under penalty of perjury under the laws of California that the foregoing is true and correct. Executed at Cambria, CA on October 24, 2011.



Jean Matulis