CASE NO. S224472

CALIFORNIA SUPREME COURT

JATINDER DHILLON,

Petitioner and Respondent,

vs.

JOHN MUIR HEALTH, BOARD OF DIRECTORS OF JOHN MUIR HEALTH

Respondents and Appellants.

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

ANSWER BRIEF ON THE MERITS

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CERTIFICATE OF INTERESTED PARTIES

Pursuant to California Rule of Court 8.208, real party in interest and his counsel certify that apart from the attorneys representing the real party in interest in this proceeding, as disclosed on the cover of this Answer, real party in interest and his counsel know of no other person or entity that has a financial or other interest in the outcome of the proceeding that real party in interest and this counsel reasonably believe the Justices of this Court should consider in determining whether to disqualify themselves under canon 3E of the Code of Judicial Ethics.

Dated: July 9, 2015

CARLA V. MINNARD
SHARON J. ARKIN

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INTRODUCTION

Reading the Opening Brief on the Merits of John Muir Health Board of Directors and John Muir Health ("JMH") gives the impression that JMH is seeking to litigate the merits of the trial court's determination that JMH was required to provide Jatinder Dhillon, M.D. ("Dr. Dhillon") with a Judicial Review Committee hearing. But that is not the issue. Rather, the issue, as articulated by this Court in granting review – and which was nowhere referenced by JMH in its Opening Brief – is this: "Is a trial court order granting in part and denying in part a physician's petition for writ of administrative mandate regarding a hospital's disciplinary action and remanding the matter to the hospital for further administrative proceedings an appealable order?"

The issue identified by this Court has nothing to do with the underlying merits of the unfair discipline imposed on Dr. Dhillon, the unreasonable refusal of JMH to provide Dr. Dhillon with the administrative review rights expressly afforded to him under JMH's own bylaws, or the correctness of the trial court's order compelling JMH to provide those administrative review protections. Yet the bulk of JMH's Opening Brief is directed to precisely those issues. Thus, JMH's brief violates this Court's mandate that case and fact specific issues should not be addressed in

deciding a general legal question, especially when not raised in the petition for review. (*Voices of the Wetlands v. State Water Resources Control Board* (2011) 52 Cal.4th 499, 508-509.) However, because JMH has elected to focus its argument on those irrelevant issues, Dr. Dhillon is forced to respond to JMH's incomplete and erroneous factual presentations and its erroneous legal assertions regarding Dr. Dhillon's right to a Judicial Review Committee hearing.

Beyond that, however, the answer to the issue this Court actually granted review on – i.e., whether an order merely remanding an issue for further administrative proceedings by an administrative body is appealable – is straightforward: It is not.

Code of Civil Procedure section 1094.5, subdivision (f) empowers a court considering a mandamus petition only three options for entering a judgment: "The court shall enter judgment *either* commanding respondent to *set aside the order or decision,* ***or*** *denying the writ.*" (Emphasis added.) The judgment commanding the respondent to set aside its order or decision may *also* "order the reconsideration of the case in light of the court's opinion and judgment and may order respondent to take such further action as is specially enjoined upon it by law."

But the trial court's order remanding the issues in this case for further proceedings did not comport with what is defined as a final

judgment under section 1094.5: It did not command JMH to set aside any order or decision, it did not require that JMH *reconsider* its decision and it did not deny the writ, at least to the extent the writ sought to require JMH to provide Dr. Dhillon with his administrative appeal rights. Thus, under the express mandates of the administrative mandamus statute itself, the order at issue in this case was not a final judgment as to which an appeal could lie.

As even JMH concedes, where a court remands an issue to an administrative body for further proceedings and expressly reserves jurisdiction, the order is not final. (OBM, p. 25.) This Court reached the same conclusion, finding that an interlocutory remand for further consideration in an administrative mandamus proceeding was proper. (*Voices of the Wetlands, supra,* at 526.)

There is no rational basis for distinguishing between an order remanding for further proceedings which does expressly retain jurisdiction and one which does not. Rather, because an order remanding for further proceedings does not comport with the mandates for a final judgment under section 1094.5, subdivision (f), an order remanding for further proceedings necessarily *implies* continuing jurisdiction of the court and does not result in a final, appealable judgment unless and until the parties return to court to further litigate and resolve any remaining controversy. Thus, a remand

order in the administrative mandate context is not final unless and until the parties complete the underlying administrative review process, and an administrative mandate review of the outcome of that process is concluded.

Nor does this conclusion impair JMH's right to have the matter reviewed by an appellate court. Like many interlocutory orders, JMH had the right to – and did – seek interim appellate review. In this case, the appellate court did not abrogate JMH's appellate review rights. Rather, the appellate court requested that JMH and Dr. Dhillon fully brief the issues on JMH's writ petition and, presumably after consideration of the merits, denied the writ petition, thereby protecting both parties' rights and avoiding a further delay in a process that has already consumed nearly *four years* – four years during which Dr. Dhillon has been forced to disclose on credentialing applications the discipline that JMH imposed on him without providing him his right to a Judicial Review Committee hearing as mandated by the hospital's bylaws.

The fact that the appellate court did not elect to grant the writ petition and reverse the trial court's determination – despite requesting and obtaining full appellate briefing on the issues – does not mean JMH was unfairly deprived of appellate review; it likely means the appellate court simply did not agree with JMH's position.

The bottom line here is that in a case such as this, where the court

does not enter a judgment meeting the strict mandates of section 1094.5, subdivision (f) but instead remands the matter for further proceedings by the administrative body, the order does not constitute a final judgment and the right of appeal does not attach.

STATEMENT OF THE CASE

As noted above, JMH has improperly argued the facts underlying the controversy between the parties, despite the fact that the substantive merits of that controversy are not in issue and are not relevant to the legal issue being addressed by this Court. That being said, however, JMH's inclusion of an extensive discussion of those facts requires response.

Initially, JMH tries to portray Dr. Dhillon as a combative physician with a bad temper and a history of problems. These derogatory characterizations are false, and if JMH felt that Dr. Dhillon was in fact such a combative and problematic physician, it is difficult to understand why they would have appointed him as Co-Director of Cardiac Surgery and why they would ask him to serve in numerous leadership roles the past 5 years. Dr. Dhillon has been a physician for more than 35 years and he has worked with *hundreds* of fellow surgeons, nurses, surgical staff and hospital administrators. [4 AA 746:24-25.] He has *never* been the subject of any

complaint about his behavior apart from the single complaint involved here which JMH's own documents state "could not be confirmed" and was "exaggerated" and made by a fellow physician with a history of filing inappropriate complaints. [3 AA 446, 448, 495.] In its concluding memo, the Ad Hoc Committee ("AHC") which investigated the complaint, noted that it had "*not found anyone to confirm*" the complaint against Dr. Dhillon and found that the complaint "*is exaggerated.*" [3 AA 557.]

Contrary to JMH's assertion in its brief, the investigation performed by the AHC was not "comprehensive." (OBM, p. 5.) In fact, although the AHC interviewed Dr. Dhillon and the complainant, it only interviewed two of the eight attendees at the meeting out of which the complaint arose, despite Dr. Dhillon's specific request that it interview all the witnesses. [3 AA 544-565.]

In addition, the entire AHC investigation was tainted from the start by the Chief of Staff, Dr. Lin, who injected his own personal agenda and bias into the process. First, Dr. Lin approached Dr. Dhillon claiming that a complaint had been made and he indicated that he was willing to "throw it in the trash" if Dr. Dhillon would just apologize to the alleged complainant. [3 AA 554.] Because the accusations relayed to him were so inflammatory and so false, however, Dr. Dhillon refused to permit them to go unanswered and insisted that they be investigated. [3 AA 566-567.] Because Dr.

Dhillon would not simply let it go, from that point on, Dr. Lin apparently decided to punish Dr. Dhillon and took it upon himself to control the proceedings and the outcome and not only usurped the MEC's responsibilities but he went even further and improperly acted as the initial investigator.

As reflected in his e-mail to the "Leadership Team" on October 24, 2011, Dr. Lin forwarded the complaint to other medical staff. Although he was not in attendance at "The Meeting," he reported to "the Team" his conclusion that "Dr. Dhillon got somewhat riled up during this meeting." [3 AA 513.] He also began – improperly – to investigate the issue by interviewing witnesses and reported that witnesses he had interviewed "felt [that Dr. Dhillon] had acted unprofessional to a certain degree." [*Ibid.*] His e-mail also demonstrates that he threatened Dr. Dhillon when he approached him about the issue: "Jat is insisting that I move this forward to a formal MEC investigation. I told him that he has nothing to gain *and everything to lose* if we move in that direction." [*Ibid.*, emphasis added.] He also confirmed that he had communicated another threat by telling Dr. Dhillon that "in fact, *his reputation could be affected if he insisted on the official MEC investigation.*" [*Ibid.*, emphasis added] Dr. Lin also asserted once again that "other people in the meeting also felt his behavior was inappropriate thereby somewhat validating the complaint." [*Ibid.*]

Dr. Lin even acknowledged in that e-mail that *he was not supposed to be involved and that the matter should be handled through the Walnut Creek MEC.* [*Ibid.*, last paragraph.] Despite that acknowledgement, the remainder of the proceedings were managed by Dr. Lin every step of the way.

For example, Dr. Lin provided the "background" for the AHC at its first meeting. [3 AA 544-546.] As part of his "background" presentation, Dr. Lin informed the AHC that "there has been a history of friction between the groups . . . including flammatory [sic] behavior from both sides." [3 AA 544.] He also described "disrespect in meetings" that had occurred. [3 AA 544-545.] Even though he was not present at the meeting, Dr. Lin informed the AHC that at the meeting, the "discussion became very controversial" and described Dr. Dhillon's insistence on an investigation. [3 AA 545-546.]

Given that Dr. Lin had already conducted his own "investigation," had interviewed witnesses and had obviously decided to punish Dr. Dhillon for insisting on the investigation, he was anything but impartial and should not have been involved in any way in the AHC proceeding. Certainly, his comments to the AHC, as Chief of Staff, would be sufficient to taint their investigation from the start.

Also contrary to JMH's brief, the AHC did not recommend that Dr.

Dhillon and the complainant attend anger management classes. (OBM, p. 6.) The recommendations Dr. Lin actually presented were *not* the recommendations that the AHC had made. [Compare 3 AA 600 with 3 AA 602.] For example, the AHC believed that, as a first effort, the parties should be required to sit with a mediator to try to facilitate resolution of their issues. [3 AA 600.] *But that recommendation appeared nowhere in the recommendations presented by Dr. Lin to the MEC.* [3 AA 602.] Similarly, although the AHC recommended some kind of follow up, *perhaps* with the Well Being Committee [3 AA 600], Dr. Lin presented his own recommendation to the MEC which *required* periodic follow-ups with the Well Being Committee for an entire *year*. [3 AA 602.]

Dr. Lin presented *his own* recommendations, i.e., that both doctors be ordered to attend a PACE anger management program, and that Dr. Dhillon be forced to report to the Physician Wellbeing Committee for one

year.[1] [3 AA 601-602.] The MEC approved Dr. Lin's recommendations, which were not the actual recommendations of the AHC. Dr. Dhillon demanded a hearing, which JMH adamantly refused to provide, and he was ultimately suspended for refusing to attend the PACE program and for refusing to report to the Physician Wellbeing Committee.

But even if the AHC investigation were not tainted from the start by

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1 JMH's Opening Brief also downplays the seriousness of being ordered to attend a PACE course by generically referring to it as a simple anger management class. The Physician Assessment and Clinical Education ("PACE") program referenced by the AHC is operated by the University of California, San Diego. As reflected on its website (www.paceprogram.usd.edu) and in other publications, PACE is a remediation program for physicians who have serious competency and/or substance abuse issues and whose ability to practice medicine is in jeopardy. (See Norcross, Henzel, Milner-Mares, Toward Meeting the Challenge of Physician Competence Assessment: The University of California, San Diego Physician Assessment and Clinical Education (PACE) Program, Academic Medicine, August 2009, Volume 84, Issue 8, pp 1008-1014, available at http://journals.lww.com/ academicmedicine/Fulltext/2009/08000/ Toward_Meeting_the_Challenge_of_Physician.12.aspx.) Indeed, Dr Dhillon served on JMH's Concord facility MEC for 12 years and in all of that time, only one physician was ordered to attend PACE – for a various serious issue. [1 AA 19:4-10.]

Even the three-day anger management program provided by PACE (available at http://www.paceprogram.ucsd.edu/Documents/anger brochure.pdf), is obviously designed to address extremely serious behaviors – such as those discussed in the article written by Laura Sweet, Supervising Investigator II for the California Medical Board, "Preventative Medicine and the Seven Deadly Sins: Avoiding Discipline Against your Medical License," available at http://www.mbc.ca.gov/Licensees/Seven_Deadly_ Sins/Anger.aspx.

PACE is known amongst physicians to be a program of "last resort" where physicians who are seen as a danger to their patients are sent. [1 AA 119:12-14.]

Dr. Lin's comments to the committee, and even if Dr. Lin had not made up his own recommendations and communicated those recommendations to the MEC instead of the actual recommendations of the AHC, Dr. Dhillon was still entitled to a hearing under JMH's Bylaws.

JMH's Bylaws state:

> "7.1-6 Grounds for Hearing.
>
> In *any case* in which any Practitioner receives notice of a specific recommendation of the Medical Executive Committee . . . *which would adversely affect Practitioner's exercise of Clinical Privileges*, or if a Practitioner is otherwise entitled by these Bylaws to a hearing and review . . . the Practitioner *shall be entitled* to a hearing before a Judicial Review Committee." [2 AA 246, emphasis added.]

It is axiomatic that the suspension of Dr. Dhillon's Clinical Privileges adversely affected those privileges. Therefore, he was entitled to a hearing before the JRC *prior* to being suspended. There is simply no way around this very clear, mandatory requirement and it is undisputed that JMH failed to provide Dr. Dhillon a hearing before the JRC prior to suspending him, which is why the trial court remanded the matter and ordered that JMH convene one.

The Bylaws – drafted by JMH – are not ambiguous and there is no

condition on the right to a hearing, which is *mandatory* when clinical privileges are adversely affected. JMH could have drafted Bylaws that conditioned Dr. Dhillon's right to a hearing on something other than when the recommendation adversely affected a physician's clinical privileges. They did not. Instead, they drafted bylaws that made the entitlement to a hearing under such circumstances *mandatory.*

In addition, the bylaws also provide a second "trigger" that activates a physician's right to a hearing before a Judicial Review Committee:

> ". . . any one or more of the following actions, if taken for medical disciplinary cause or reason . . . *shall be deemed adverse and shall constitute grounds for a hearing:*
>
> * * *
>
> *(g) Suspension of Clinical Privileges."*

[2 AA 246, emphasis added.]

JMH attempted in the trial court to dodge this mandate and make an end-run around its own bylaws by arguing that it was not disciplining Dr. Dhillon for a "medical disciplinary cause or reason." And a "medical disciplinary cause or reason" is defined by law as conduct "reasonably likely to be detrimental to patient safety or to the delivery of patient care." (Bus. & Prof. Code § 805, subd. (a)(6).)

JMH admitted – and in fact repeatedly urged as justification for its

actions – that Dr. Dhillon's alleged conduct was *likely to be detrimental to patient care*. Indeed, the very Code of Conduct on which JMH claims to have based this discipline makes reference to "patient care," "patient safety" and/or "protection of patients" more than *ten times* in a 3-½ page document. [2 AA 604-607] Moreover, JMH made the same admissions in the trial court, claiming that Dr. Dhillon's alleged behavior directly affected patient care and "risk[ed] harm to patients." [1 AA 159: 22-23] JMH's Opposition to Petitioner's Writ was replete with other repeated references to patient care and how Dr. Dhillon's alleged conduct posed a serious risk to patient care:

> ". . . this is not only within the purview of the MEC it is also our responsibility as the medical staff body *who is charged to ensure the safety and quality of care delivered to our patients* . . ." [1 AA 160: 19-21, emphasis added.]

> "The education requirement was mandated precisely to improve the interactions in *meetings necessary to enhance and protect patient care.*" [1 AA 162:6-7, emphasis added.]

> " . . which includes the provision that [Petitioner] work cooperatively with others *so as not to adversely affect patient care* . .

." [1 AA 165:10, emphasis added.]

Finally, JMH emphasized that its discipline of Dr. Dhillon was part of the peer review process. As this Court has stated, the "primary purpose" of the peer review process is to "protect the health and welfare of the people of California . . ." (*Mileikowsky v. West Hills Hosp. & Med. Ctr.* (2009) 45 Cal.4th 1259, 1267.)

Conduct that is "reasonably likely to be detrimental to patient safety or to the delivery of patient care" qualifies as a medical disciplinary cause or reason. (Bus. & Prof. Code § 805, subd. (a)(6).) Having adopted the position that Dr. Dhillon's alleged disruptive behavior affected patient care, John Muir cannot credibly argue the exact opposite to avoid the mandated hearing set forth in its own bylaws.

Dr. Dhillon was also entitled to a hearing under 42 U.S.C. §11112. A professional review action against a physician may only be taken "after adequate notice and hearing procedures are afforded to the physician involved . . ." (42 U.S.C. §11112.) The term "professional review action" means an action or recommendation which is based on the competence or professional conduct of an individual physician, which conduct affects *or could affect* adversely the health or welfare of patients and which affects or which may affect adversely the physician's clinical privileges. (42 U.S.C.

§11151.)

Section 11112 defines adequate notice and hearing to *minimally* include: 30 day advance notice of any recommended action, the notice of the physician's right to request a hearing, a list of witnesses expected to testify at the hearing on behalf of the hospital, which hearing shall be conducted by a mutually agreed upon Arbitrator, a neutral hearing officer, or a panel of neutral individuals. (42 U.S.C. §11112 (b)(1)-(3).)

JMH never provided Dr. Dhillon with any hearing, and in failing to do so acted without and in excess of its jurisdiction, in violation of both its own bylaws as well as federal law, and the trial court properly remanded the matter.

JMH also failed to obtain board approval prior to imposing discipline, in violation of its own bylaws. JMH's bylaws are clear: No suspension may be imposed on any physician without prior Board approval. This is true even if the discipline is allegedly taking place under Article VI – Corrective Action. Article VI makes it clear that the MEC may only *recommend* suspension of a physician's clinical privileges. The bylaws at 6.1-6(b) specifically state that if a physician is to be suspended – summarily, conditionally, or in any way whatsoever – the MEC "*shall transmit" that "recommendation to the Governing Body.*" [2 AA 239:54, emphasis added.] Here, JM's own documents confirm that the MEC took

disciplinary action against Dr. Dhillon and *then* simply reported that discipline to the Board *after* it suspended him:

> "Given the physicians [sic] continued refusal to meet the reasonable requirements imposed by the MEC's, *a suspension of his clinical privileges has been invoked.*"

[3 AA 620 – MEC's September 19, 2013 report to the JM Board of Directors; emphasis added.]

In addition, the same section of the bylaws states that the Board may adopt the MEC's recommendation so long as it is supported by "substantial evidence" but even if there is substantial evidence, *the physician is entitled to request a hearing "in which case the final decision shall be determined as set forth in Article VII.*" [2 AA 239-240, emphasis added].

Article VI also expressly states that if the MEC recommends suspension of the physician's Clinical Privileges, the Chief of Staff "shall give the [physician] Special Notice of the adverse recommendation and of the right to request a hearing. The Governing Body may be informed of the recommendation, but shall take *no action until the [physician] has either waived his or her right to a hearing or completed the hearing.*" [2 AA 240, emphasis added.] Dr. Dhillon was never given any notice – special or otherwise – of his right to a hearing. On the contrary, JMH repeatedly told him that he was not entitled to one and was not getting one:

" . . . there is no Judicial Review Committee right triggered by [your]suspension." [3 AA 589.]

". . . no hearing is required under the Medical Staff Bylaw provisions." [3 AA 593.]

[*See, also,* 3 AA 620, 621, 593.]

Regardless of whether the discipline was being meted out pursuant to Article VI – Corrective Action – or Article VII – all roads involving *any suspension* of Clinical Privileges lead to the right to a hearing by a Judicial Review Committee, which is what the trial court found and why the court remanded the matter for that proceeding to occur.

JMH admitted in the trial court that although it may have failed to comply with its own Bylaws by failing to obtain Board approval *prior to* disciplining Dr. Dhillon, it argued that this was nothing more than a mere "technical violation." [1 AA 168:19-20.] If Dr. Dhillon had been afforded the full hearing he was entitled to before a JRC, there *might* be some argument to be made that the failure to obtain prior Board approval was an unimportant "technical" violation. But in this case, compounded with all of the other substantive failings, the violation was significant. In fact, JMH's failure to comply with its own bylaws – and the law – in failing to provide Dr. Dhillon with a full hearing and in failing to obtain Board approval for its actions *prior to* undertaking them resulted in the exact scenario that both

the bylaws and the statutes are designed to prevent: The imposition of discipline on a physician without any review by a neutral group that is not subject to all of the day-to-day politics and pressures found in an individual hospital filled with individual economic competitors.

The MEC suspended Dr. Dhillon without prior Board approval, despite the clear requirements of its own bylaws which mandate a hearing when a physician requests one. As such, JMH's actions were without jurisdiction and in excess of its jurisdiction and consistent with CCP 1094.5, the trial court correctly remanded the matter for further proceedings (i.e., a hearing before the JRC).

Most significantly, unless JMH's discipline is overturned, which Dr. Dhillon is confident it will be once the issues are reviewed by an independent and objective committee (e.g., the JRC), Dr. Dhillon will be required to disclose this discipline in all future credentialing and re-credentialing applications and malpractice insurance applications. [3 AA 506 (penultimate paragraph), 580, 589, 1 AA 120:10-15, 4 AA 746:3-10, 4 AA 747:19-23.]

JMH ignored the procedural mandates of its own bylaws and acted without authority to impose the discipline the MEC had recommended.

In Dr. Dhillon's administrative mandamus action, the Superior Court agreed that Dr. Dhillon was entitled to a JRC hearing. [4 AA 783.] The

trial court's order however, did *not* "command respondent to set aside the order or decision;" nor did it "deny[ ] the writ," as required under section 1094.5, subdivision (f) for a final judgment under that administrative mandamus statute. Rather, the trial court's order merely denied Dr. Dhillon's substantive challenges and *remanded* the matter to JMH, ordering it to provide a JRC hearing as required under the bylaws.[2] [4 AA 781-785.]

2 In reply, JMH may attempt to point to the fact that the judgment was intended to comply with section 1094.5, subdivision (f) since the trial court specifically referenced that subsection in its judgment. [4 AA 797:17-18.] But since the judgment did not, *in fact*, comply with that section, mere recitation of the statute cannot cure the defect. (*Griset v. Fair Political Practices Commission* (2001) 25 Cal.4th 688, 696 ["It is not the form of the decree but the substance and *effect* of the adjudication which is determinative."].)

LEGAL ARGUMENT

1.

JMH ACTUALLY DID PRESENT ITS ARGUMENTS TO THE COURT OF APPEAL – AND THE COURT OF APPEAL REJECTED THEM

JMH opens its "legal" argument with a tirade about how burdensome it would be for it to be forced to expend "substantial resources" to provide Dr. Dhillon with a JRC hearing, especially in light of what it attempts to characterize as the "insignificant" discipline imposed on Dr. Dhillon. Because of the "major undertaking" involved in a JRC hearing JMH complains that it "can never obtain appellate review" of the trial court's order remanding the matter for a JRC hearing unless the remand order is found to be appealable. But that is nothing more than a further example of JMH's unsubstantiated rhetoric.

In fact, JMH *did* get a full and fair opportunity to present its arguments to the Court of Appeal, by way of its writ petition. Not only did JMH file a brief in support of its writ petition, which fully and carefully (though not accurately) explained its version of the facts and its arguments on the law, but the Court of Appeal issued a *Palma* notice and ordered Dr.

Dhillon to file an informal opposition. (See Exhibit 1, attached hereto, which is a true and correct copy of the appellate court docket in *John Muir Health et al. v. Superior Court (Dhillon),* First District Court of Appeal, Division 3, Case No. A143256, entry dated 10/16/14.) Dr. Dhillon, in fact, filed a formal return with full briefing on the issues.

JMH moved to consolidate the writ proceeding with its pending appeal. (Ex. 1, entry dated 12/1/14.) The appellate court deferred its ruling on that motion "pending this Court's consideration of the writ petition." (Ex. 1, entry dated 12/4/14.) After JMH filed its reply brief, the appellate court summarily denied the writ, i.e., denied it without a statement of reasons or an opinion. (Ex. 1, entry dated 12/11/14.)

Notably, a summary denial does not mean that JMH was deprived of its right to appellate review: "We hasten to dispel the bar's common misconception that a summary denial of a writ petition suggests summary consideration. The Courts of Appeal review and evaluate the hundreds of petitions filed each year in each appellate district. *The merits of these petitions are fully examined.* Sheer volume prohibits a written decision in every case, and one is not required." (*James B. v. Superior Court (Humboldt County Child Welfare Services* (1995) 35 Cal.App.4th 1014, 1018, emphasis added.)

The conclusion that JMH has, in fact, been afforded appellate review

is further supported by this Court's own analysis in *Leone v. Medical Board* (2000) 22 Cal.4th 660. In *Leone*, this Court held that the statute limiting a doctor to obtaining review of an administrative decision by the Medical Board by a writ petition rather than an appeal *is not a deprivation of the right to appellate review.* (See, also, *Powers v. City of Richmond* (1995) 10 Cal.4th 85, 92-93.) As this Court explained in *Leone*: "Thus, the ordinary and widely accepted meaning of the term 'appellate jurisdiction' is simply the power of a reviewing court to correct error in a trial court proceeding. By common understanding, a reviewing court may exercise this power *in the procedural context of a direct appeal* ***or*** *a writ petition.*" (Emphasis added.) *Leone* further confirms (contrary to JMH's fundamental argument) that "a reviewing court may exercise appellate jurisdiction – that is, the power to review and correct error in trial court orders and judgments – either by a direct appeal or by an extraordinary writ proceeding." (*Leone*, at 668.) Because the appellate court in this case did, in fact, exercise its appellate jurisdiction to address the issue presented by JMH by obtaining full briefing on the issue in the writ proceedings, JMH is hard-pressed to maintain its claim that it has not been afforded appellate review of the issue.

Thus, the appellate court's summary denial of JMH's writ petition in *this* case does not mean that JMH was deprived of review by the appellate

court on the merits; it only means that the appellate court assessed and determined the issue but, because the review occurred in the writ context, it was not required to issue a written opinion in denying the writ. (See, e.g., Eisenberg, Horvitz and Wiener, *California Practice Guide: Civil Appeals and Writs* (Rutter 2015) ¶ 15:233.1.)

Moreover, because the appellate court requested and obtained a complete responsive brief from Dr. Dhillon, and a reply from JMH, the appellate court's consideration of the issue was obviously anything but "summary," except in the sense that the appellate court obviously agreed with the trial court on the merits but did not issue a written decision to that effect.

Thus, contrary to JMH's assertion, it *has* obtained appellate review of the trial court's remand order – but the relief it requested was denied. Thus, the very relief demanded, i.e., forcing the appellate court to consider the issue on its merits, has already been afforded to JMH and there is no basis for accepting JMH's unsupported and insupportable rhetoric to the contrary.

Finally, JMH itself provided the resolution to its purported dilemma of being forced to improperly (it believes) provide Dr. Dhillon with his allegedly-unwarranted and time-consuming and expensive procedural due process rights in the absence of an appeal: It can be held in contempt for

refusing to comply with the trial court's order and can thereafter challenge the validity of the trial court's remand order on the merits on appeal. (See, JMH Petition for Review, p. 15.)

JMH had the right to – and did – seek interim review from the appellate court and the appellate court denied the relief requested. Because, as discussed below, the trial court's order in this case remanded the matter for resolution by JMH, but did not fulfill the statutory requirements for a final judgment in an administrative mandamus proceeding, that was all the relief JMH was entitled to.

2.

BECAUSE THE TRIAL COURT *REMANDED* THE CASE TO THE ADMINISTRATIVE BODY AND DID NOT ENTER A JUDGMENT EITHER SETTING ASIDE JMH'S DECISION OR COMPLETELY DENYING THE WRIT, THERE WAS NO FINAL JUDGMENT UNDER SECTION 1094.5

As this Court has repeatedly confirmed, the "right to appeal is wholly statutory." (*Dana Point Safe Harbor Collective v. Superior Court* (2010) 51 Cal.4th 1, 5.) In order to be appealable, Code of Civil Procedure section 904.1 requires that a judgment must be "the final determination of

the rights of the parties," i.e., "when it terminates the litigation between the parties on the *merits* of the case . . . ." (*Ibid.*, emphasis added, internal quotations omitted.) And as this Court has also repeatedly confirmed, it "is not the form of the decree but the substance and effect of the adjudication which is determinative. As a general test, which must be adapted to the particular circumstances of the individual case, it may be said 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*, at 5, initial emphasis in original, latter emphasis added, internal quotations omitted.)

Thus, until "a final judgment is rendered the trial court may completely obviate an appeal by altering the rulings from which an appeal would otherwise have been taken. [Citations.] Later actions by the trial court may provide a more complete record which dispels the appearance of error or establishes that it was harmless. Having the benefit of a complete adjudication . . . will assist the reviewing court to remedy error (if any) by giving specific directions rather than remanding for another round of open-ended proceedings." (*Dana Point*, at 6, internal quotations omitted.)

The trial court's order in this case did *not* resolve the controversy

between the parties – it only compelled JMH to permit Dr. Dhillon to exhaust his administrative remedies. The controversy between the parties, i.e., whether the discipline imposed by JMH was supported by substantial evidence and was authorized by the Board, has not been concluded and will not be concluded unless and until JMH complies with the bylaws.

Code of Civil Procedure section 1094.5, the administrative mandamus statute, an additional gloss on the assessment of whether an order or judgment is "final." Subdivision (f) of that statute defines the scope of a trial court's power to enter judgment in an administrative mandamus action: "The court shall enter judgment either commanding respondent to set aside the order or decision, or denying the writ. Where the judgment commands that the order or decision be set aside, it may order the reconsideration of the case in light of the court's opinion and judgment and may order respondent to take such further action as is specially enjoined upon it by law, but the judgment shall not limit or control in any way the discretion legally vested in the respondent."

Thus, section 1094.5, subdivision (f) limits the judgments a court may issue in an administrative mandamus proceeding to:

(1) Commanding respondent to set aside the order or decision;

(2) Denying the writ; or

(3) Commanding respondent to set aside the order or decision,

and ordering *reconsideration* of the case and to take such further action as required.

Section 1094.5 *does not*, however define a "judgment" as a *remand* for further proceedings in the absence of an order commanding the respondent to set aside an order or decision.

Confirmation that section 1094.5 defines the limitations on the form of a final judgment that may be issued in an administrative mandamus action was provided by this Court in *Voices of the Wetlands v. State Water Resources Control Board* (2011) 52 Cal.4th 499, 526. In *Voices of the Wetlands*, this Court addressed two primary questions involving the procedural process for administrative mandamus. The first was whether the trial court could order an interlocutory remand, requiring the administrative agency to reconsider its decision, after concluding that the administrative record did not support the agency's conclusion. The second issue was whether, upon remand, additional evidence could be submitted to the administrative agency. This Court concluded that both actions were proper.

In doing so, this Court noted that "[o]n its face, subdivision (f) of section 1094.5 indicates *the form of final judgment* the court may issue in an administrative mandamus action. Unremarkably, subdivision (f) states that the last step the trial court shall take in the proceeding is either to

command the agency to set aside its decision, or to deny the writ. The trial court here followed that mandate; it issued a final judgment denying a writ of mandamus." (*Voices of the Wetlands*, at 526, emphasis in original.) But the trial court in this case *did not deny the writ*. Nor did it command JMH to set aside its decision. It did something different, i.e., it ordered a remand for further proceedings. Because the trial court's order was not a final judgment, as defined under section 1094.5, subdivision (f), it was not appealable.

Furthermore, this Court concluded in *Voices of the Wetlands*, "properly understood and interpreted, subdivisions (e) and (f) of section 1094.5 impose no absolute bar on the use of prejudgment limited remand procedures such as the one employed here. Moreover, when a court has properly remanded for agency reconsideration on grounds that all, or part, of the original administrative decision has insufficient support in the record developed before the agency, the statute does not preclude the agency from accepting and considering additional evidence to fill the gap the court has identified." (*Voices of the Wetlands*, at 526.)

Thus, once Dr. Dhillon has obtained a final decision from the JMH Board after remand, he can then seek further administrative mandamus from the Superior Court and, ultimately, appellate review. (*Kumar v. National Medical Enterprises, Inc.* (1990) 218 Cal.App.3d 1050 [remand

for redetermination is not an appealable order under section 1094.5.)

The limitations on what constitutes a final, and therefore appealable, judgment under section 1094.5 is consistent with the cases that have concluded that a trial court order remanding a matter to an administrative body for further consideration must be addressed by a writ proceeding and is not an appealable order.

For example, in what JMH identifies as the "seminal" case, *Board of Dental Examiners v. Superior Court (Sedler)* (1998) 66 Cal.App.4th 1424, the appellate court "considered whether a remand order is appealable and whether the trial court, under Code of Civil Procedure section 1094.5, subdivision (e), properly augmented an administrative record with evidence submitted after the administrative hearing." (*Sedler*, at 1425.) The *Sedler* court held "that a remand order is not an appealable order." (*Ibid.*)

In *Sedler*, a dentist filed a writ of administrative mandamus after the Board of Dental Examiners took disciplinary action against him, and submitted a letter in support of his writ petition from one of the witnesses who testified at the administrative hearing, which contained new evidence. (*Sedler*, at 1426.) The trial court did not rule on the petition but issued a partial remand to the Board to consider and evaluate the new evidence. (*Ibid.*) After the Board did so, the trial court issued a second remand order, which the Board sought to appeal. The appellate court held that a remand

order is not appealable, but exercised its discretion to consider the appeal as a petition for writ of mandate and decide the issues on their merits.

Although the *Sedler* court did not articulate the basis for its conclusion that a remand order is not appealable, the procedural status in that case is consistent with section 1094.5, subdivision (f). That is, the trial court's remand order did not deny the mandamus petition, nor did it command the agency to reverse its decision. Thus, the order at issue in *Sedler* – like the order at issue in this case – was not a final judgment from which an appeal could be taken, as defined in section 1094.5, subdivision (f).

Other cases also comport with the limitations established in section 1094.5, subdivision (f) as to what constitutes a final judgment. For example, in *Village Trailer Park, Inc. v. Santa Monica Rent Control Board* (2002) 101 Cal.App.4th 1133, 1139-1140 the court did not deny the petition for writ of mandamus, nor did it grant the relief sought but, instead, remanded the matter to the trial court for recalculation of the damages. The appellate court held that because the judgment only partly granted the petition and remanded for further proceedings, the court concluded – correctly – that the remand order was not appealable. Again, that decision comports with the limitations mandated in section 1094.5.

The appellate court in *Gillis v. Dental Board of California* (2012)

206 Cal.App.4th 311, 318 similarly concluded that the trial court's order remanding the matter to the administrative agency was not appealable. Again, as in the other cases, the trial court's order did not either deny the petition for writ of mandamus or command the agency to set aside the order or decision; rather, it merely remanded the issue for redetermination.

In contrast to the cases in which remand orders are issued without either denying the petition or commanding the administrative body to set aside its order, other appellate opinions permit appeal from trial court's decisions in administrative mandamus cases where, in fact, the petition is actually denied or the trial court commands the administrative body to set aside its order, either with or without an order that it reconsider its determination. (See, e.g., *Smith v. Selma Community Hospital* (2008) 164 Cal.App.4th 1478, 1481; *Bode v. Los Angeles Metropolitan Medical Center* (2009) 174 Cal.App.4th 1224, 1232; *Hongsathavij v. Queen of Angels/Hollywood Presbyterian Medical Center* (1998) 82 Cal.App.4th 1123.)

In at least one case, *Hackenthal v. Loma Linda Community Hosp. Corp.* (1979) 91 Cal.App.3d 59, the appellate court permitted an appeal, without analysis of the appellate jurisdiction issues, where the trial court's order was a remand to either reinstate the doctor's privileges or afford him the required administrative hearing. Although not expressly compliant with

section 1094.5, subdivision (f), by ordering the hospital to reinstate the doctor's privileges, that order at least arguably commanded the administrative body to set aside its decision and reconsider its determination. Thus, the appellate court's implied conclusion that the order was appealable is consistent with the statute.

Although the cases holding that remand orders in administrative mandamus proceedings are not appealable did not articulate the basis for their conclusion (see, e.g., *Village Trailer Park*, *Gillis* and *Sedler*), those decisions are, in fact, consistent with the express language of section 1094.5, subdivision (f).

The same is true here. The appellate court's conclusion that the trial court's order in this case was not appealable is entirely consistent with the requirements for a final judgment under section 1094.5, subdivision (f): The order in this case: (1) Did not deny the petition in its entirety; (2) Did not command JMH to set aside its decision; and (3) Did not command JMH to set aside its decision and reconsider its determination. Thus, like the orders in *Sedler*, *Village Trailer Park*, and *Gillis*, the order in this case was not appealable. Rather, an appeal must await the final exhaustion of Dr. Dhillon's administrative review appeals and a final determination by the

Board which can then be reviewed by the Superior Court.[3]

3.

THE ANALYSIS PROPOSED BY JMH IS LEGALLY AND LOGICALLY INSUPPORTABLE

JMH's attack on the appellate court's determination that the trial court's order was not appealable is without legal or logical support.

First, of course, JMH provides no analysis of section 1094.5, subdivision (f) and its requirements for a final judgment in the administrative mandamus context.

Second, JMH's attempt to analogize the situation here with the rule developed by this Court in the context of a legislative subpoena in *Dana Point* is particularly inapt. An action to enforce a legislative subpoena is its own, entire, self-contained proceeding. As this Court concluded in *Dana Point*, "[a]t no point does the order [enforcing the legislative subpoena]

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3 JMH contends that it does not intend to pursue any administrative mandamus from a final Board decision in this case. (OBM, p. 35.) But Dr. Dhillon certainly intends to do so in the event that the Board does not relieve Dr. Dhillon of the PACE program mandate and expunge the suspension from his records. Moreover, JMH contends that the Superior Court would no doubt be "surprised" if this case returned to it. (OBM, p. 27.) More likely the Superior Court would be surprised if it did not.

contemplate future proceedings nor otherwise indicate that it is not final. Thus, the order is final for purposes of appeal."

That, however, cannot be said with respect to the remand order by the trial court in this case. Indeed, there is every reason to believe that the trial court did not intend for its mandamus order to be final since it did not comply with the requirements of section 1094.5, subdivision (f) for issuing a judgment in mandamus. Had the trial court intended its order to be final, rather than an interim or interlocutory remand for further proceedings, it would have granted Dr. Dhillon's petition, commanded JMH to set aside its order compelling Dr. Dhillon to attend the PACE program and revoke the suspension, while requiring it to reconsider its ruling and complete the administrative review process. But that's not what the trial court did and the order it issued is *not* a final, appealable judgment under section 1094.5.

Furthermore, the *Dana Point* decision was also predicated on this Court's analysis distinguishing legislative subpoena orders from the usual discovery orders in civil suits. (*Dana Point*, at 9-11.) But the order at issue in this case is more like a discovery order than it is like an order enforcing a legislative subpoena. Like a discovery order, the order in this case contemplates further proceedings - i.e., a remand and further action once Dr. Dhillon is afforded his administrative appeal rights. Also like a discovery order, the order requiring that JMH afford Dr. Dhillon a JRC

hearing would be subject to appeal from the final judgment rendered after a final judgment is actually rendered – although, like most discovery orders, the issue would be moot at that stage. Like a discovery order, JMH had – and took – the opportunity to obtain interim writ relief in order to avoid the potential mootness of the order. Thus, unlike the legislative subpoena order addressed in *Dana Point*, the remand order in this case *is* like discovery order and is *not* like a final judgment.

JMH's reliance on *AJA Associates v. Army Corps of Engineers* (3rd Cir. 1987) 817 F.2d 1070 is also wholly misplaced. First, of course, the *AJA* court was not dealing with the mandates of Code of Civil Procedure section 1094.5, subdivision (f) and therefore its rationale has no application to this case. Furthermore, even the *AJA* court acknowledged that "[R]emands to administrative agencies *are not ordinarily appealable* under [28 U.S.C.] section 1291." (*AJA*, at 1073, internal quotations omitted.)

Finally, the *AJA* court made an exception to that general rule because the district court's decision "resolved an issue of wide-reaching impact," which "opens up for all applicants the argument, raised after permit denial, that due process requires a hearing in their particular cases, and which was an "important decision [that] cannot receive later appellate review." There are, however, no such equivalent exceptions to California's one final judgment rule. Indeed, under California's procedural rules, such

an important decision with such wide-ranging effects would likely have resulted in the grant of a petition for writ review – a procedural vehicle rarely obtainable under the federal rules. (Goelz, Watts & Batalden, *California Practice Guide: Federal Ninth Circuit Appellate Practice Guide* (Rutter 2015) ¶ 13:11 [unlike state court practice, writ review is available in the Ninth Circuit only under "stringent standards."].)

Thus, the *AJA* decision does not support fashioning an exception to the mandates of section 1094.5 affording appellate review to a limited specie of administrative mandamus orders.

The California appellate cases relied on by JMH are similarly inapposite: Not only are they factually distinguishable but, again, they do not address the definition of a final judgment under section 1094.5. For example, in *Carson Gardens, LLC v. City of Carson Mobilehome Park Rental Review Board* (2006) 135 Cal.App.4th 856, 866, a mobilehome park owner applied to the rental board for a 50% increase in space rentals. The board rejected that requested increase and authorized only a 9.8% increase in rents. The park owner sought administrative mandate relief from the superior court and that court granted the requested relief, "directing the Board to *set aside its resolution* and to conduct a new hearing." (*Carson Gardens,* at p. 862.) That order falls within the definition of a final judgment under section 1094.5, subdivision (f) and was appealable. No

appeal was filed, however, and after remand, the matter returned to the superior court, which again found the rent control board's methodology inappropriate under the statute. The superior court then issued an order setting aside the rental board's order and itself determined the amount of rent increase to be allowed and ordered another remand. The board appealed from that order.

In its appeal, the board challenged the trial court's interpretation of the rental increase statutes made by the trial court in the first remand order. But the appellate court concluded that the board had waived that challenge by failing to appeal from that first order. (*Carson Gardens*, at 866.) And, in fact, as noted above, that first order did comply with section 1094.5, subdivision (f), and was appealable.

As to the appeal from the second order, the appellate court denied a motion to dismiss the appeal, without analysis or explanation in the published decision. But, in point of fact, the trial court's second order arguably also complied with section 1094.5, subdivision (f)'s requirements for a final judgment because it ordered the Board's determination "null and void," essentially thereby commanding the Board to set aside its decision. Thus, unlike here, because the order did comply with the requirements for a judgment under section 1094.5, subdivision (f), it was, in fact, properly appealable.

The same distinctions exist with respect to *Los Angeles International Charter High School v. Los Angeles Unified School District* (2012) 209 Cal.App.4th 1348. First, that case is distinguishable because the charter school sought a writ of mandate under Code of Civil Procedure section 1085, not section 1094.5. (*Los Angeles International*, at 1353.) Furthermore, the charter school sought administrative mandate to require the school district to provide facilities to it as required under Proposition 39. The superior court granted the substantive relief requested in the petition for administrative mandate (which was an order that would have complied with section 1049.5, subdivision (f)'s requirements) and neither party appealed from the order, either by way of a direct appeal or by way of an appellate writ petition. When the school district refused to provide access to facilities at the specific high school location the charter school preferred, the charter school went back to the superior court, which found that the district met its legal obligations in offering the facilities it did and *discharged the writ*, which thereby became final. The charter school appealed the discharge and the appellate court affirmed the discharge.

As part of its analysis, the appellate court concluded that by failing to appeal from the initial mandamus order, the charter school had waived the right to challenge the language of the initial order. But since, as in *Carson Gardens*, since the original order met the requirements of section

1094.5, subdivision (f), it was properly appealable. Similarly, the final order, discharging the writ (i.e., denying it) also complied with the mandates of section 1094.5, subdivision (f) and was also appealable. Again, that is not the case here and *Los Angeles International* has no application.

City of Carmel-By-The-Sea v. Board of Supervisors 1982) 137 Cal.App.3d 964, 970 similarly involved an order that complied with the requirements of section 1094.5, subdivision (f): "[T]he court filed its judgment granting peremptory writ of mandamus, ordering that a peremptory writ would issue remanding the proceedings to the board and *commanding it 'to set aside its approval* [of the Rancho use permit] unless and until [the Board] adopts findings supported by substantial evidence that the use permit . . . is consistent with the general plan requirements and conditions of the extension granted by the [OPR] . . . .'" (*City of Carmel*, at 970.) In other words, the order commanded the Board to set aside its decision and to reconsider it. That, in turn, constituted an appealable order under section 1094.5, subdivision (f).

The Board filed a return, indicating that it complied with that otherwise-appealable order and the appellate court found that by complying with the order, the Board had waived the right to appeal it after a subsequent order. Thus, once again, the order at issue in City of Carmel –

unlike the order in this case – *was* an appealable judgment under section 1094.5, subdivision (f).

JMH's reliance on *Quintanar v. County of Riverside* (2014) 230 Cal.App.4th 1226 is particularly misplaced because it, in fact, support's Dr. Dhillon's position. In *Quintanar*, a police officer filed an administrative mandamus petition seeking to overturn a hearing officer's conclusion that he used excessive force, thereby justifying his demotion. The petition asserted that the hearing officer did not exercise his own independent judgment on the issue, in conflict with the controlling requirements. The trial court remanded the matter for a determination on whether the hearing officer exercised his independent judgment. There was no appeal or writ taken from that order and the appellate court never concluded that any party had waived the right to appeal the *Quintanar* trial court's determination on that issue during a subsequent appeal.

After the hearing officer responded to the remand order, describing his determination process in reaching his decision, the trial court concluded that he had not, in fact, exercised his independent judgment and granted an order on the substantive issue, i.e., commanding the hearing officer to exercise his independent judgment in assessing the issues. The County filed an appeal from that second remand order.

But the appellate court did not definitively determine whether the

second remand order was appealable or not; rather, the court 'hedged its bets' and concluded that, even if the order was not, in fact, appealable, it had "discretion to treat a failed appeal as a petition for a writ of mandate . . . we would do so in this case." (*Id.*, at 232.)

Finally, the only other case relied on by JMH, *Carroll v. Civil Service Commission of Kern County* (1970) 11 Cal.App.3d 727 is like the other cases relied on by JMH as discussed above: The order issued in *Carroll* "command[ed] respondents to set aside their order affirming the summary dismissal . . . and to redetermine the penalty imposed . . . ." (*Carroll*, at 730.) Thus, the order in *Carroll*, unlike the order here, specifically complied with the mandates of section 1094.5, subdivision (f).

In a subsequent proceeding, the superior court ordered the administrative agency to comply with the prior judgment but, instead of ordering it to redetermine the penalty issue, the order reinstated the terminated employee with full benefits. (*Carroll*, at 731.)

The appellate court in *Carroll* confirmed that the first order was appealable, and specifically cited to section 1094.5, subdivision (f) in reaching that conclusion. (*Carroll*, at 733.) The appellate court concluded, however, that the second order substantially modified the original order and was, itself, separately appealable as a "special order made after final judgment." (*Carroll*, at733.) Thus, once again, *Carroll*

confirms by implication that the order at issue in *this* case was *not* a final order under section 1094.5, subdivision (f).

Had JMH proposed a judgment that complied with section 1094.5, subdivision (f), and had that judgment been signed by the trial court, the judgment would have been appealable. But the "judgment" signed by the trial court in this case does not comply with section 1094.5 and is not appealable.

CONCLUSION

JMH had the opportunity for appellate review of the trial court's procedural remand order requiring it to provide Dr. Dhillon with his procedural due process rights under the JMH Bylaws: It filed a writ petition on that interim ruling and the appellate court was within its power and jurisdiction to deny that writ. The appellate court also correctly determined that the order was not appealable. As such, it properly dismissed the appeal.

Dated: July 9, 2015

THE MINNARD LAW FIRM

THE ARKIN LAW FIRM

By:_____

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

CERTIFICATE OF BRIEF LENGTH

I, Sharon J. Arkin, declare under penalty of perjury under the laws of the State of California that the word count for this Brief, excluding Tables of Contents, Tables of Authority, Proof of Service and this Certification is no more than 9770 words as calculated utilizing the word count feature of the Word for Mac software used to create this document.

Dated: July 9, 2015

SHARON J. ARKIN

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Docket (Register of Actions)

John Muir Health et al. v. The Superior Court of Contra Costa County
Division 3
Case Number A143256

Date	Description	Notes
10/10/2014	Filed petition for writ of:	Mandate and/or Prohibition
10/10/2014	Filing fee.	
10/10/2014	Exhibits lodged.	Volume 1 of 3; Pages 1-181 (Exhibits A-R) and 730-801 (Exhibits T-EE)
10/10/2014	Exhibits lodged.	Volume 2 of 3; Pages 182-435 (Exhibit S) [Filed Under Seal]
10/10/2014	Exhibits lodged.	Volume 3 of 3; Pages 436-729 [Filed Under Seal]
10/10/2014	Filed proof of service.	
10/16/2014	Opposition requested.	opposition due 10/27/14; optional reply due 11/6/14; Palma notice included
10/22/2014	Requested - extension of time.	Opposition filed. Requested for 11/17/2014 By 21 Day(s) to 11/17/14 for opposition and 12/8 for reply; stipulation attached
10/23/2014	Order filed.	THE COURT: Pursuant to the parties' stipulation, filed October 22, 2014, real party in interest shall serve and file his informal opposition to the petition on or before November 17, 2014. Petitioner may serve and file a reply on or before December 8, 2014.
10/23/2014	Granted - extension of time.	Opposition filed. Due on 11/17/2014 By 21 Day(s)
11/04/2014	Association of attorneys filed for:	RPI associates Sharon J. Arkin of The Arkin Law Firm as counsel of record
11/17/2014	Opposition filed.	
12/01/2014	Requested - extension of time.	Reply filed to:. Requested for 12/29/2014

		By 21 Day(s) 21 days to 12/29
12/02/2014	Opposition filed.	RPI's objection/opposition to application for 21 days eot to file reply.
12/01/2014	Motion filed.	Motion to consolidate writ proceeding with appeal, to decide appeal instead of writ proceeding, and to treat writ briefing and exhibits as appellate briefing and record. A143256 and A143195
12/02/2014	Opposition filed.	RPI's objection/opposition to motion to treat writ briefing as appellate briefing.
12/04/2014	Order filed.	THE COURT:* Petitioners' application for a 21-day extension to file a reply is denied. The optional reply brief shall be filed on or before December 8, 2014. Petitioners' motion to consolidate writ proceeding with appeal and to treat writ briefing and exhibits as appellate briefing and record is deferred, pending this court's consideration of the writ petition. Petitioners' motion to decide the appeal instead of the writ proceeding is denied. The clerk of the court is directed to place a copy of this order in the Dhillon v. John Muir Health et al., A141395 court file. (pol, sig)
12/08/2014	Reply filed to:	
12/11/2014	Order denying petition filed.	THE COURT: The petition for a writ of mandate and/or prohibition is denied. (pol, sig)
12/11/2014	Case complete.	
12/22/2014	Service copy of petition for review received.	David S. Ettinger, for John Muir Health, Board of Directors of John Muir Health.
01/13/2015	Answer to petition for review received.	from RPI
01/22/2015	Received copy of:	Reply to answer to petition for review.
02/11/2015	Petition for review denied in Supreme Court.	
04/24/2015	Received copy of:	Certification of interested entities or persons. S224472.

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PROOF OF SERVICE

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

On **July 9, 2015**, I served the within document described as:

ANSWER BRIEF ON THE MERITS

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

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

Court of Appeal **First Appellate District** **Division Three** **350 McAllister Street** **San Francisco, Ca 94102**	
Contra Costa Superior Court **725 Court Street** **Martinez, CA 94553**	

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

Executed on July 9, 2015 at Brookings, Oregon.

Sharon J. Arkin