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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **COUNTY OF LOS ANGELES**

17 PEOPLE OF THE STATE OF CALIFORNIA,

18 Plaintiff,

19 v.  
20

21  
22 CONRAD MURRAY,

23 Defendant,  
24

25 MEDICAL BOARD OF CALIFORNIA,  
26

27 Applicant.  
28

Case No. SA073164

DEFENDANTS RESPONSE TO  
ATTORNEY GENERAL'S  
REQUEST FOR RESTRICTION  
ON PRACTICE OF MEDICINE

Date: April 5, 2010

Time: 1:30 a.m.

Dept: 100

Judge: Honorable Peter Espinoza

29 TO THE HONORABLE JUDGE OF SAID COURT:

30 COMES NOW the Defendant, CONRAD MURRAY, in response to the  
31 Attorney's General's request for restriction on practice of medicine, requesting that this  
32 Court deny the Attorney General's request. In support, Defendant would show unto the  
33 Court the following:  
34

34

**Pertinent Facts**

35 Defendant Conrad Murray is a licensed physician in California. He further holds  
36 licenses to practice medicine in Nevada and Texas. On February 8, 2010, Defendant was  
37 arraigned in Los Angeles Superior Court, Department 144, with Honorable Keith  
38 Schwartz presiding, for the offense of Involuntary Manslaughter. (Pen. Code § 192(b).)  
39 At that time, the Attorney General appeared through its Assistant Attorney General, Trina  
40 Sanders, and filed a Motion requesting that the court prohibit Conrad Murray from  
41 practicing medicine during the pendency of the court case (said Motion is attached as  
42 Exhibit “A”). A hearing was held without witnesses and Judge Schwartz considered both  
43 the Attorney General’s request for bail conditions and the People’s request for a deviation  
44 from the scheduled bail amount.

45 After arguments of counsel, Judge Schwartz refused the request of the Attorney  
46 General to prohibit Defendant from practicing medicine. However, the Judge did order  
47 that Defendant limit his practice. Specifically, Judge Schwartz ordered that Defendant 1)  
48 not prescribe or administer anesthetic agents such as Propofol and 2) not personally  
49 sedate patients. Bail was set at \$75,000, which was immediately posted by Defendant  
50 (docketed order is attached as Exhibit “B”). Defendant has complied with all conditions  
51 set by Judge Schwartz and has made appearances at all required court settings.

52

**Pertinent Law and Argument**

53 The California Medical Board, through the Attorney General, makes its  
54 appearance under its presumed authority under California Penal Code 23 to make  
55 recommendations regarding conditions of probation or provide the court assistance in fact

56 finding. That code section allows a state agency that has issued a license to a criminal  
57 defendant to appear in the criminal matter “to furnish pertinent information, make  
58 recommendations regarding specific conditions of probation, or provide any other  
59 assistance necessary to promote the interests of justice and protect the interests of the  
60 public . . . if the crime charged is substantially related to the qualifications, functions or  
61 duties of a licensee.” (Pen. Code § 23.) It is not at all clear that this permits a licensing  
62 authority to make recommendations as to bail conditions. (*Gray v. Superior Court*,  
63 (2005) 125 Cal.App.4<sup>th</sup> 629, 643.)

64 On behalf of the Medical Board, the Attorney General asks his Honor to alter the  
65 conditions of bail already set by Judge Schwartz on February 8, 2010. In this request, the  
66 Attorney General relies on §1275 and §1289 of the California Penal Code. (Pen. Code §§  
67 1275 & 1289.) There is no specific code section that relates to modifications of  
68 conditions of felony bail *per se*. The Attorney General assumes that these two code  
69 sections relate to bail conditions as well, and so shall we. (see also *In Re McSherry*,  
70 (2003) 112 Cal.App.4<sup>th</sup> 856, 859-863.)

### 71 Requirement of Changed Conditions

72 California Penal Code §1289 allows his Honor to amend conditions of bail or  
73 increase bail upon a showing of good cause shown. (Pen. Code § 1289.) However,  
74 “different policy considerations are operative if *the reconsideration is to be*  
75 *accomplished by a different judge.*” (*In re Annis*, (2005) 127 Cal.App.4<sup>th</sup> 1190, 1196  
76 (emphasis added); *In re Alberto*, (2002) 102 Cal.App.4<sup>th</sup> 421, 427; see *Greene v. State*  
77 *Farm Fire & Casualty Co.*, (1990) 224 Cal.App.3d 1583, 1588.)

78           As noted in *Alberto*, a subsequent Judge cannot change bail unless good cause is  
79   *predicated on “changed circumstances.”* (*supra*, at 532 (emphasis added).) It cannot be  
80   based on a conclusion by the subsequent Judge that the first Judge simply got it wrong.  
81   (*Ibid.*)

82           The Attorney General makes no claim that circumstances have changed with  
83   regard to the State of California or Defendant. In fact, there is no information presented  
84   to his Honor that Defendant has seen or treated any patients in California since his  
85   arraignment on February 8, 2010. It was made clear at the arraignment setting that  
86   Defendant has no medical offices in the State of California. Additionally, Defendant has  
87   no intention to see or treat any patients in California or undertake the expense of opening  
88   a new practice or relocate either of his two offices in Nevada or Houston.

89           It is alleged by the Attorney General that further restriction on Defendant’s ability  
90   to practice medicine is necessary for the protection of California’s citizens, but he has  
91   given the Court no information that this protection is any more important than it was at  
92   the time of the initial bail decision by Judge Schwartz. Further, the Attorney General has  
93   presented no evidence that Defendant has violated any of the restrictions already placed  
94   on his ability to practice medicine.

95           In effect, what the Attorney General seeks to do is to take another bite at the  
96   apple, albeit this time with a different Judge. Prevention of this practice is precisely the  
97   reasoning given by the Appeals court in *Alberto* for requiring the showing of changed  
98   circumstances. As the Appeals Court noted, to require otherwise “would lead directly to  
99   forum shopping, since if one judge should deny relief, defendant’s would try another and

100 another judge until they found one who would grant what they were seeking.” (*Id.* at  
101 529.)

102 **Procedural Due Process**

103 As noted in the declaration by Trina Saunders, the Deputy Attorney assigned to  
104 this case, there are procedures by which the Medical Board of California must follow to  
105 take away a valuable property right such as a medical license. (Declaration, p. 2:11-23.)  
106 The Attorney General’s reasoning for asking the Court to do an act tantamount to taking  
107 away this property right is because “unless a criminal conviction is obtained, the Board  
108 would have to put on the same evidence, witnesses and exhibits that must be used in this  
109 criminal proceeding in order to prove the charges. *This would involve considerable*  
110 *expense for the Board.*” (*Id.* (emphasis added).)

111 Without question this would involve expense and effort. Procedural due process  
112 often does. However, the California and United States Constitutions do require due  
113 process and at a minimum this means a hearing before an impartial forum. (U.S. Const.  
114 14th Amend., § 1; Cal. Const., art. I § 7.)

115 The question of whether a Superior Court may prohibit a physician from  
116 practicing as a condition of bail has been firmly decided by the 1st District Court of  
117 Appeals of California in Gray v. Superior Court, 125 Cal.App.4th 629

118 In *Gray*, as in this case, the Attorney General made an appearance on behalf of  
119 the Medical Board and requested that Gray, a licensed physician in the State of  
120 California, be forbidden from practicing medicine during the pendency of his case for

121 several felonies, including charges of possessing a controlled substance and sexually  
122 exploiting a former patient. The reasoning given by the Attorney General was strikingly  
123 similar to the reasoning given in this case. The Judge in *Gray* acquiesced to the Attorney  
124 General's demands and prohibited Dr. Gray from practicing medicine as a condition of  
125 bail. Gray filed a Writ of Habeas Corpus , which was denied by another Superior Court.  
126 Gray appealed.

127 The Appeals Court recognized that a medical license was a cognizable property  
128 interest. (*Id.* at 54; quoting *Smith v. Board of Medical Quality Assurance*, (1988) 202  
129 Cal.App.3d 316, 326.) Further, the Appeals Court held that before this property interest  
130 was taken from a physician he must be provided adequate procedural due process. (*Gray*,  
131 *supra*, at 56.)

132 For purposes of a due process analysis, the Appeals Court found no meaningful  
133 distinction between a license suspension and an order prohibiting a licensee from  
134 engaging in the profession for which the person is licensed. (*Id.* at 54 n.4.) The Court of  
135 Appeals vacated the Judge's order, stating, "The trial court significantly impaired Gray's  
136 freedom to pursue a private occupation without giving him notice, an effective  
137 opportunity to confront the charges or witnesses against him, or a full hearing, in  
138 violation of his due process rights." (*Id.* at 55.)

139 Essentially, what the Attorney General is asking this Court to do is what they  
140 were uncategorically denied the ability to do in previous cases. He wants this Court to  
141 take away Defendant's medical license so that the Medical Board does not have to go  
142 through the trouble. Assuming *arguendo*, that the Attorney General has authority to

143 make this request, and assuming arguendo that the Court has authority to change a prior  
144 Judge's bail decision without any recognizable change in circumstances, it must at least  
145 be admitted by the Attorney General that the United States and California Constitutions  
146 must be adhered to before this modification is permitted.

147 Denial of the Medical Board's request does not mean that the Medical Board is  
148 left impotent. As was noted in *Gray*, the Medical Board has procedures available to it to  
149 take the license of a medical professional, outside of the criminal arena. (*Id.* at 59; citing  
150 Bus. & Prof. Code §§ 2236.1, 2237, 2239.) Further, upon conviction the Board may  
151 seize a medical license. (Bus. & Prof. Code § 2236.) However, under the Bus. & Prof.  
152 Code rules, the mere filing of a criminal complaint is not sufficient. (*Gray*, *supra*, at 59.)

153 **The Practical Effect on the Criminal Case**

154 As a practical matter, an order that prohibits Defendant from practicing medicine  
155 in California will have no effect on the citizens of California. Dr. Murray has not seen  
156 patients in California for over eight months and does not presently intend to practice in  
157 the state any time soon. The order would be a shallow one, designed only to prove a point  
158 rather than make a difference.

159 However, with regard to Dr. Murray, the effect of such a prohibition on his  
160 medical practice would be financially and personally devastating. As the California  
161 Medical Board and Attorney General well know, other states may, and in some  
162 circumstances must, use his Honor's order to institute administrative action against Dr.  
163 Murray. This domino effect is insured by the reciprocity rules that govern the Medical  
164 Boards in those states.

165 In Texas, Texas Occupations Code §164.051 states in relevant part as follows:

166 (d) The [Texas Medical Board] *shall* revoke a license issued under this  
167 subtitle [e.g. medicine] if the license holder held a license to practice  
168 medicine in another state that has been revoked by the licensing authority  
169 in that state.

170 (Tex. Occ. Code § 164.051(d) (Vernon 2010) (emphasis added).) If his Honor restricts  
171 his California license even temporarily, then by application of Texas law, Dr. Murray’s  
172 Texas license to practice medicine shall also be similarly revoked.

173 Based upon the earlier bail restrictions on licensure by Judge Schwartz, the Texas  
174 Medical Board, through the authority of Tex. Occ. Code § 164.051(a)(9)<sup>1</sup> has already  
175 taken steps to obtain an order restricting his Texas medical license (see draft order,  
176 Exhibit “C”). It is highly likely that further limitations to Dr. Murray’s license will  
177 influence the Texas Medical Board to follow suit.

178 Similar action may take place in Nevada wherein Nevada Revised Statute §  
179 630.301(3) states in relevant part as follows:

180 **Criminal offenses; disciplinary action taken by other jurisdiction;**

181  
182 The following acts, among others, constitute grounds for initiating  
183 disciplinary action or denying licensure . . . .

184  
185 3. Any disciplinary action, including, without limitation, the  
186 revocation, suspension, modification or limitation of a license to practice  
187 any type of medicine, taken by another state . . . .

188  
189 (Nev. Rev. Stat. § 630.301 (2007).)

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<sup>1</sup> “GROUNDS FOR DENIAL OR DISCIPLINARY ACTION. (a) The [Texas Medical Board] may refuse to admit a person to its examination or refuse to issue a license to practice medicine and may take disciplinary action against a person if the person: ....(9) except as provided by Subsection (d), holds a license to practice medicine subject to disciplinary action by another state . . . .” (Tex. Occ. Code § 164.051(a)(9).)



190 By the requirements of self-reporting in Nevada, Nev. Rev. Stat. §§ 630.3068 &  
191 630.307, the Nevada Medical Board has already been notified by Dr. Murray of the  
192 restrictions on his license by virtue of the bail requirements already in place. It is  
193 anticipated that the Nevada State Board of Medical Examiners will take action due to  
194 these bail requirements. In fact, the Nevada Board has already filed notice of restrictions  
195 based on child support issues.

196 Given that there is no threat to the public that would be alleviated by Dr. Murray's  
197 suspension of practice in California, there is no need for further bail conditions affecting  
198 Dr. Murray's license. This would immediately affect his ability to practice in Nevada  
199 and Texas, to usurp these states' abilities to make decisions for their own citizens, and  
200 also to thereby destroy Dr. Murray's ability to make a living, to pay his child support, to  
201 pay his employees, and to positively affect his patients in these states.

202 Perhaps most important to the Superior Court, if Dr. Murray is unable to practice  
203 medicine in Texas, and especially Nevada, he will likely be faced with the inability to  
204 adequately defend himself of the charges facing him in the Superior Court of California.  
205 The case with which he is charged will require intensive attorney work and fees. In light  
206 of the fact that much of his defense will be scientifically based and involves the death of  
207 an internationally famous decedent, expenses for his defense will be considerable. Dr.  
208 Murray's financial difficulties as a result of the investigation into this case have already  
209 been well publicized. He is, without fear of overstatement, hanging on by a thread. His  
210 ability to pay for his own defense depends almost entirely on his ability to continue to  
211 treat patients in Nevada and Texas.

212

**CONCLUSION**

213           For the foregoing reasons, Defendant, Conrad Murray, M.D., respectfully requests  
214 that this Court deny the request of Applicant Linda K. Whitney, Interim Executive  
215 Director of the Medical Board of California, to impose a prohibition on Dr. Murray's  
216 practice of medicine as a condition of bail.

217           Dated: March 31, 2010

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Respectfully submitted

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JOSEPH H. LOW IV

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