In the Supreme Court of the State of California

DEPARTMENT OF PUBLIC HEALTH, **Petitioner,** **v.** **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO,** **Respondent,** **CENTER FOR INVESTIGATIVE REPORTING,** **Real Party in Interest.**	Case No. S214679

SUPREME COURT
FILED
MAY 16 2014
Frank A. McGuire Clerk
Deputy

Court of Appeal, Third Appellate District, Case No. C072325
Honorable Harry E. Hull, Jr., Acting Presiding Judge
Honorable M. Kathleen Butz, Justice
Honorable Andrea Lynn Hoch, Justice
Sacramento County Superior Court, Case No. 34-2012-8000104
Honorable Timothy M. Frawley

ANSWERING BRIEF ON THE MERITS

KAMALA D. HARRIS
Attorney General of California
KATHLEEN KENEALY
Chief Assistant Attorney General
GREGORY BROWN
Deputy Solicitor General
JULIE WENG-GUTIERREZ
Senior Assistant Attorney General
NIROMI W. PFEIFFER
Supervising Deputy Attorney General
GRANT LIEN
Deputy Attorney General
State Bar No. 187250
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 327-6749
Fax: (916) 324-5567
Email: Grant.Lien@doj.ca.gov
Attorneys for Department of Public Health

TABLE OF CONTENTS

Page

Introduction 1
Relevant Statutory Provisions 2
A. Lanterman Act 2
B. Long Term Care Act 4
C. California Public Records Act 5
D. Information Practices Act 5
Factual and Procedural Background 6
A. CIR's California Public Records Act request 6
B. Superior Court proceedings 6
C. Court of Appeal proceedings 7
Argument 9
I. The Long Term Care Act and Lanterman Act should be harmonized to effectuate the Legislature's intent in enacting each statute. 9
A. Legal principles governing harmonization of potentially conflicting statutes 10
B. The statutes should be harmonized to effectuate the purposes of each. 11
1. The Long Term Care Act protects patients by promoting public accountability for facilities. 11
2. The Lanterman Act protects patient confidentiality. 11
3. The statutes can be harmonized to effectuate the purposes of each. 13
C. The Information Practices Act provides an additional, independent basis for redacting personal information from citation reports 17

TABLE OF CONTENTS
(continued)

Page

II. The Court of Appeal's construction is correct regardless of whether the statutes can properly be "harmonized" 19

A. Each point of irreconcilable conflict must be separately analyzed to determine which statute governs on that point 20

B. To the extent that the statutes conflict, the Lanterman Act should govern the disclosure of information concerning patients' medical conditions, while the LTCA should otherwise govern the disclosure of the nature of a facility's violation 21

C. Alternatively, if one statute must prevail in its entirety, the Lanterman Act should supersede the Long Term Care Act. 22

III. CIR's construction would undermine the Lanterman Act's confidentiality provisions, harm the patients both statutes are designed to protect, and contravene legislative intent. 26

CONCLUSION 29

TABLE OF AUTHORITIES

Page

CASES

Aden v. Younger
(1976) 57 Cal.App.3d 662 12

Albertson v. Superior Court
(2001) 25 Cal.4th 796 .... 24, 25

Chavez v. City of Los Angeles
(2010) 47 Cal.4th 970 .... 10, 20

Collection Bureau of San Jose v. Rumsey
(2000) 24 Cal.4th 301 21

County of Riverside v. Superior Court
(1974) 42 Cal.App.3d 478 7

Department of Fair Employment & Housing v. Mayr
(2011) 192 Cal.App.4th 719 20

Devereaux v. Latham & Watkins
(1995) 32 Cal.App.4th 1571 26

Gilbert v. City of San Jose
(2003) 114 Cal.App.4th 606 .... 17, 18

Gilbert v. Superior Court
(1987) 193 Cal.App.3d 161 .... 14, 18

In re Ward
(1964) 227 Cal.App.2d 369 23

Jennifer M. v. Redwood Women's Health Center
(2001) 88 Cal.App.4th 81 18

Jones v. The Lodge at Torrey Pines Partnership
(2008) 42 Cal.4th 1158 16

Kizer v. County of San Mateo
(1991) 53 Cal.3d 139 .... 27, 28

TABLE OF AUTHORITIES
(continued)

Page

Lolley v. Campbell
(2002) 28 Cal.4th 367 16

Looney v. Superior Court
(1993) 16 Cal.App.4th 521 14

McDonald v. Conniff
(1893) 99 Cal. 386 23

Moran v. Superior Court
(1983) 35 Cal.3d 229 14

Nunes Turfgrass v. Vaughan-Jacklin Seed Co.
(1988) 200 Cal.App.3d 1518 .... 21, 23

Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles
(2012) 55 Cal.4th 783 10

People v. Pieters
(1991) 52 Cal.3d 894 10

Sorenson v. Superior Court
(2013) 219 Cal.App.4th 409 26

Tarasoff v. Regents of the Univ. of Cal.
(1976) 17 Cal.3d 425 (1976) 26

Valley Bank of Nevada v. Superior Court
(1975) 15 Cal.3d 652 18

STATUTES

Civil Code
§ 1798.1 .... 5, 17
§ 1798.3 .... 5, 17
§ 1798.24 .... 5, 17-18
§ 1798.24b 3
§ 1798.63 .... 18, 5

TABLE OF AUTHORITIES
(continued)

Page

Government Code
§ 6250 et seq. 5
§ 6253..........13, 18
§ 6259..........7

Health & Safety Code
§ 1250..........22
§§ 1278-1280..........25
§ 1340..........25
§ 1407..........25
§ 1417.1..........4,7,22
§ 1418..........22
§ 1423..........4,8,23
§ 1424..........4,9,23
§ 1429..........11,15, 23, 28
§ 1439..........4,8, 11, 13, 22

Welfare & Institution Code
§ 4514..........2, 3, 9, 12, 14, 15, 23
§ 4903..........1, 15, 16, 23
§ 5000 et seq. 2
§ 5328..........2, 3, 9, 12
§ 5328.15..........3, 12, 14, 15, 25
§ 5330..........4

INTRODUCTION

This Court should affirm the court of appeal's decision and harmonize the confidentiality provisions of the Lanterman-Petris-Short Act and the Lanterman Developmental Disabilities Services Act (collectively, the Lanterman Act) with the public disclosure provisions of the Long Term Care Act (LTCA) to effectuate the legislative purposes of each statute.

The Lanterman Act protects the confidentiality of information concerning the diagnosis, treatment, and services provided to patients with mental illness or developmental disabilities who live in state-operated developmental centers. These strict confidentiality provisions are essential both to protecting the privacy of this small and easily identifiable population, and also to encouraging mental health patients to seek and obtain effective treatment. The LTCA, meanwhile, provides for the public disclosure of citations issued by the California Department of Public Health (Public Health) to care facilities that violate the law. These public disclosure provisions are important to keeping the public apprised of the performance of these facilities and encouraging facilities to self-regulate.

As the court of appeal correctly held, the Lanterman Act and LTCA can and should be harmonized to give effect to the legislative purpose of each by requiring the redaction of core Lanterman-protected information—such as information concerning patients' identities and mental, physical, or medical conditions and histories—while making the remainder of the citation publicly available to inform the public of the nature of the facility's violations—such as what the particular harm was, and what the facility did or failed to do. This harmonization is consistent with the purposes of both statutes, consistent with fundamental principles of statutory construction, and consistent with the Legislature's own understanding of the interaction between the LTCA and Lanterman Act as expressed in SB 1377's amendments to the Lanterman Act in 2012.

The Center for Investigative Reporting's (CIR) position—that the LTCA should supersede the Lanterman Act and require the public disclosure of all citations in unredacted form—is contrary to fundamental principles of statutory interpretation and would undermine the Legislature's intent by eviscerating the core protections of the Lanterman Act. Further, this construction would compound the harm to patients with mental illness or developmental disabilities who are harmed by their facilities' violations of law. In addition to being harmed by the facility, they would then suffer the double injury of having their Lanterman-protected medical information disclosed to the general public. There is no sound basis for CIR's proposed construction, and this Court should reject it.

Accordingly, and for the reasons set forth herein, this Court should affirm the court of appeal and harmonize the Lanterman Act and LTCA to effectuate the purposes of each.

RELEVANT STATUTORY PROVISIONS

A. Lanterman Act

The Lanterman Act, as referenced herein, includes two separate but parallel acts that, among other things, provide confidentiality protections for individuals who are mentally ill (Welf. & Inst. Code, § 5000 et seq. [Lanterman-Petris-Short Act]) or developmentally disabled (*id.*, § 4500 et seq. [Lanterman Developmental Disabilities Services Act]). The confidentiality provisions of both acts are quite similar.

Welfare and Institutions Code sections 5328, 5328.15, and 4514 mandate that all information and records obtained in the course of providing "services" to individuals with mental illness or developmental

disabilities "shall be confidential," subject to limited exceptions.[1] Section 4512, subdivision (b) broadly defines "services" to include virtually all aspects of patient care, including diagnosis, evaluation, treatment, personal care, day care, special living arrangements, and therapies.

Sections 5328.15, subdivision (c), 4514, subdivision (v), and 4903, subdivision (h), expressly contemplate the redaction of Lanterman-protected information from LTCA citations before they are made public. Specifically, these provisions authorize a "protection and advocacy agency"—which is defined by statute and is authorized to investigate abuse and neglect—to freely access Lanterman-protected information in "unredacted" LTCA citations. (§§ 5328.15, subd. (c); 4514, subd. (v); 4903, subd. (h).)[2] But this information "shall remain confidential," and a protection and advocacy agency is required to maintain that confidentiality. (§§ 5328.15, subd. (c); 4514, subd. (v); 4903, subd. (h).)[3] These provisions would be pointless if unredacted LTCA citations were already available to

---

[1] Exceptions include communications between service providers (Welf. & Inst. Code, §§ 5328, subd. (a), 4514, subds. (a) & (l)); patient consent (*id.*, §§ 5328, subd. (b), 4514, subds. (b) & (k)); insurance claims (*id.*, § 5328, subds. (c) & (d), 4514, subds. (c) & (d)); research purposes (*id.*, § 5328 subd. (e), 4514, subd. (e)); courts, law enforcement, Senate, patient's attorney, coroner, licensing and investigative agency personnel, medical boards, disclosure by developmental center to protect patient safety (*id.*, § 4514, subds. (f)-(j), (m)-(s)); licensing personnel (*id.*, § 5328.15, subd. (a)-(b)); and protection and advocacy agencies (*id.*, § 5328.15, subd. (c)). Apart from the exception for patient consent, each of these exceptions is narrowly tailored.

[2] Before the enactment of these sections, a protection and advocacy agency could access unredacted LTCA citations only if it first demonstrated probable cause concerning imminent jeopardy to patient health or in the case of patient death. (CIR Request for Jud. Notice in Ct.App., Exh. 1 [Senate Bill Analysis, pp. 5, 10].)

[3] Similar protections are found in Civil Code section 1798.24b of the Information Practices Act.

the general public, and thus they demonstrate the Legislature's understanding and intent that Lanterman-protected information must generally be redacted from LTCA citations.

The Lanterman Act imposes penalties of up to $10,000 for willfully releasing confidential information concerning one of these individuals. (Welf. & Inst. Code, § 5330.) The patient also may recover his or her costs and attorney's fees for bringing a suit for injunctive relief and damages to enforce these confidentiality provisions. (*Ibid.*)

B. Long Term Care Act

The LTCA establishes a citation system that directs Public Health to impose citations, including monetary penalties, on long-term health care facilities that violate state or federal laws and regulations. (Health & Saf. Code, §§ 1250 et seq., 1417.1.) Health and Safety Code sections 1423, subdivision (a)(2), and 1424, subdivision (b), require that citations "describe with particularity the nature of the violation" and document the "[r]elevant facts" considered by Public Health in issuing the monetary penalty.

Section 1429, subdivision (a), requires the posting of citations for 120 days "in plain view" of the "patients or residents" in the facility, visitors to the facility, and "persons who inquire about placement in the facility." Prior to such public posting, these citations are redacted by the Department of Developmental Services to exclude Lanterman-protected information. (Public Health's Motion to Take Additional Evidence, Declaration of Curteman, ¶ 3.) Section 1439 provides that a citation is a "public record" that is "open to public inspection" pursuant to the California Public Records Act (CPRA), except that the "names of any persons" other than the State's inspectors and investigators "shall not be open to public inspection" and shall be "deleted" from copies of any citations made public.

///

C. California Public Records Act

The CPRA requires that "public records," including the records of state agencies, must generally be made available to any member of the public upon request. (Gov. Code, § 6250 et seq.) The CPRA, however, provides an express exception for "public records exempt from disclosure by express provisions of law." (*Id.*, § 6253, subd. (b); see also *id.*, § 6253, subd. (a) [public records are subject to inspection only "after deletion of the portions that are exempted by law"]; *id.*, § 6254, subd. (k) ["[N]othing in this chapter shall be construed to require the disclosure of . . . records, the disclosure of which is exempted or prohibited pursuant to federal or state law . . ."].)

D. Information Practices Act

The Information Practices Act (IPA) prohibits state agencies from disclosing any "personal information"—which is defined as "any information that is maintained by an agency that identifies or describes an individual, including but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history"—unless it is specifically authorized by Civil Code section 1798.24. (Civ. Code, §§ 1798.24, 1798.3, subd. (a).)

Section 1798.1 of the IPA declares the right to privacy "a personal and fundamental right" protected by the state and federal constitutions, and states that "[i]n order to protect the privacy of individuals, it is necessary that the maintenance and dissemination of personal information be subject to strict limits." (Civ. Code, § 1798.1, subd. (c).) Under section 1798.63, the provisions of the IPA "shall be liberally construed so as to protect the rights of privacy arising under this chapter or under the Federal or State Constitution."

Section 1798.24, subdivision (g), provides an exception that allows for disclosure of personal information "[p]ursuant to the California Public Records Act."

FACTUAL AND PROCEDURAL BACKGROUND

A. CIR's California Public Records Act Request

On May 6, 2011, CIR made a request under the CPRA for citations issued by Public Health to seven of the state's residential facilities for persons with mental illness or developmental disabilities, from January 1, 2002 to May 6, 2011. (App., DPH 19.) On May 16, 2011, Public Health responded that it would produce responsive citations after redacting them in accordance with the Lanterman Act. (App., DPH 22.) Given the strong privacy protections afforded by the Lanterman Act, and in an abundance of caution to avoid harm to patients, Public Health produced 55 heavily redacted citations on June 13, 2011. (App., DPH 6:1-2, 30-165, 174-176.)

B. Superior Court Proceedings

On January 8, 2012, CIR filed a petition for writ of mandate to obtain the citations in unredacted or minimally redacted form. (App., DPH 1-222, Exhs. 1-2.) On September 13, 2012, the superior court issued a peremptory writ of mandate requiring Public Health to produce the requested citations without redaction, except as to the names of individuals other than the investigating officers. (App., DPH 1439-1449.) The superior court held that the public disclosure provisions of the LTCA were irreconcilable with, and superseded, the confidentiality provisions of the Lanterman Act. (*Ibid.*)

///

///

C. Court of Appeal Proceedings

On October 26, 2012, Public Health filed a petition for an extraordinary writ requesting that the court of appeal vacate the trial court's ruling.[4] On November 21, 2012, the court of appeal issued an order granting an alternative writ. On September 18, 2013, after briefing and argument, the court of appeal issued a peremptory writ that vacated the superior court's judgment and directed the superior court to enter a new judgment consistent with the court of appeal's decision.

The court of appeal recognized that the LTCA and Lanterman Act share the same purpose—to protect patient health and safety—but effectuate this common purpose from "opposite directions." (Opn. at p. 18.) The Lanterman Act encourages patients to undergo, and be candid during, treatment, by ensuring confidentiality. (*Ibid.*) This confidentiality also helps avoid any undesired publicity or stigma associated with mental illness or developmental disabilities. (Opn. at p. 11, citing *In re S.W.* (1978) 79 Cal.App.3d 719, 721 and *County of Riverside v. Superior Court* (1974) 42 Cal.App.3d 478, 481.) The LTCA establishes an inspection, citation, and reporting system that, by providing for public accountability, helps ensure that long-term health care facilities comply with patient care standards. (Opn. at p. 17, citing Health & Saf. Code, § 1417.1.) The LTCA makes citations publicly accessible. (Opn. at pp. 18-19.)

The court of appeal harmonized the two acts with respect to three issues: (1) the names of the involved persons; (2) the nature of the violation; and (3) the relevant facts. (Opn. at pp. 19-22.)

---

[4] A party must challenge an order requiring disclosure via a CPRA request by filing a petition for an extraordinary writ, rather than filing an appeal. (Gov. Code, § 6259, subd. (c).)

The court of appeal required the deletion of any names contained in the citations, other than those of the authorized inspectors and investigators specified in Health and Safety Code section 1439 of the LTCA. (Opn. at p. 19.) As the court of appeal recognized and CIR does not dispute, the redaction of these names is required under both acts.

With respect to the "nature of the violation," the court of appeal held that the LTCA's "public accessibility provisions can be harmonized with the Lanterman Act's mental health-based confidentiality provisions" by requiring Public Health to "describe with particularity, for example, *what* was the harm, *what* was the abuse, *what* was the lack of respect or dignity afforded, and *what* was the action that the facility did or failed to do" as well as the "*particular place or area of the facility* in which [the violation] occurred." (Opn. at pp. 20-21, quoting Health & Saf. Code, § 1423, subd. (a)(2).)[5] The court indicated, however, that "specific facts that identify an individual whose name is not to be disclosed" should be redacted. (Opn. at p. 21.)

With respect to the "relevant facts" that Public Health considered in determining the citation level and civil penalty, the court of appeal held that the statutes can be harmonized by redacting information concerning the patient's "mental, physical, and medical conditions, history of mental disability or disorder," and "the risk the violation presents to that mental and physical condition," as such information is at the heart of the mental health-based confidentiality provisions of the Lanterman Act. (Opn. at p.

---

[5] As the court of appeal acknowledged, Public Health already has disclosed, without redaction, certain information concerning the nature of the violation, including the statutory provision, standard, rule, or regulation allegedly violated; the deadline for compliance; the classification of the citation; and the amount of the proposed civil penalty. (Opn. at p. 20, citing Health & Saf. Code, § 1423, subd. (a)(2).)

21; Health & Saf. Code, § 1424, subds. (a)(1)-(3); Welf. & Inst. Code, §§ 5328, 5328.15, 4514.) The court of appeal held, however, that the Lanterman Act's confidentiality provisions do not foreclose public disclosure of the good faith efforts by the facility to prevent the violation and the facility's history of compliance with regulations. (Opn. at p. 22.) The court of appeal acknowledged that the Lanterman Act's strong protections are necessary to achieve its legislative purpose of encouraging people with mental illness or developmental disabilities to receive effective treatment, knowing that the treatment will remain confidential and free from stigma. (Opn. at p. 11.)

CIR filed a petition for rehearing, and on October 9, 2013, the court of appeal modified its opinion and judgment and denied the petition for rehearing. On November 18, 2013, CIR filed a petition for review, which this Court granted on January 29, 2014.

ARGUMENT

I. THE LONG TERM CARE ACT AND LANTERMAN ACT SHOULD BE HARMONIZED TO EFFECTUATE THE LEGISLATURE'S INTENT IN ENACTING EACH STATUTE.

The LTCA and Lanterman Act should be harmonized to give effect to the purposes of each statute. Both statutes seek a common purpose—"to promote and protect the health and safety of mental health patients"—but they approach that purpose from "opposite directions." (Opn. at p. 18.) The LTCA protects patients by requiring the public disclosure of care facilities' violations of law, and the Lanterman Act provides strict confidentiality protections for information relating to services provided to patients with mental illness or developmental disabilities. (Opn. at p. 18.) The purposes of both statutes can be achieved by harmonizing their provisions to require the public disclosure of citation reports describing the

nature of a facility's violations of law, while simultaneously requiring the redaction of information in those citation reports concerning individual residents' identities and mental, physical, and medical conditions and histories.

A. Legal Principles Governing Harmonization of Potentially Conflicting Statutes

The "fundamental purpose" of statutory construction is "to ascertain the intent of the lawmakers so as to effectuate the purpose of the law." (*People v. Pieters* (1991) 52 Cal.3d 894, 898.) Thus, when construing two potentially conflicting statutes, the Court should "strive to effectuate the purpose of each by harmonizing them, if possible, in a way that allows both to be given effect." (*Chavez v. City of Los Angeles* (2010) 47 Cal.4th 970, 986; see also *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2012) 55 Cal.4th 783, 805 ["A court must, where reasonably possible, harmonize statutes, reconcile seeming inconsistencies in them, and construe them to give force and effect to all of their provisions"].) Accordingly, "[a]ll presumptions are against a repeal by implication," and in favor of harmonization. (*Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles*, *supra*, 55 Cal.4th at p. 805; see also *ibid.* ["Absent an express declaration of legislative intent, we will find an implied repeal 'only when there is no rational basis for harmonizing two potentially conflicting statutes, and the statutes are "irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation"'" (citations omitted)].)

B. The Statutes Should Be Harmonized to Effectuate the Purposes of Each.

The LTCA and Lanterman Act should be harmonized because the statutes share a common purpose and do not pose any direct, irreconcilable conflict with each other.

1. The Long Term Care Act protects patients by promoting public accountability for facilities.

The LTCA protects the health and safety of patients or residents in long-term health care facilities by, among other things, providing that citations issued by Public Health to such facilities are public records that are available to the public under the CPRA and must be posted "in plain view" in the facility for 120 days after they are issued. (Health & Saf. Code, §§ 1429, subd. (a); 1439.) These requirements promote public accountability by providing information to residents, their families, advocacy groups, and the general public that helps them determine which facilities are better—and which are worse—at protecting the health and safety of their residents. These public accountability provisions also provide incentives for facilities to self-regulate. Central to these requirements is the notion that the citation, as a public record, should inform interested persons of the specific nature of the facility's violation of law—i.e., what the facility did (or failed to do), and how that violation harmed or posed a risk of harm to the facility's residents.

2. The Lanterman Act protects patient confidentiality.

The Lanterman Act protects individuals with mental illness and developmental disabilities from the potential stigma and shame associated with their conditions by making information obtained in the course of providing services to these extremely vulnerable individuals confidential,

subject only to limited, narrowly tailored exceptions. (Welf. & Inst. Code, §§ 4514, 5328, 5328.15.) These confidentiality provisions are extremely important because "public exposure, or even disclosure to limited numbers of government representatives, may have a chilling effect on patients' efforts to undergo these treatments." (*Aden v. Younger* (1976) 57 Cal.App.3d 662, 680.)

In addition, the stigma from public disclosure may sabotage the effectiveness of treatment of mental illness. In a 1996 report analyzing the services for the mentally ill in California, the Assembly Subcommittee on Mental Health Services found that

> [t]here is persuasive evidence indicating that the mental patient is stigmatized in numerous ways while he is in, and after he is released from the hospital. There are indications that stigma works to prevent the ex-patient from succeeding in society—not only because of the way others see him, but because of the way he sees himself.

(App., DPH 1010 [Subcommittee on Mental Health Services Report, Assembly Interim Committee on Ways and Means, The Dilemma of Mental Health Commitments in California: A Background Document (Nov. 1996)] p. 57.) The Assembly Subcommittee on Mental Health Services also noted that, after a patient is released from the hospital, "you don't have any confidence in yourself. You're scared." (*Ibid.* [quoting a returning mental patient's description of the difficulty adjusting to life outside an institution].) Indeed, there are indications that the societal stigma attached to being a mental health patient may be even more debilitating than the stigma of being a criminal. (*Ibid.*) Therefore, the Lanterman Act's strict confidentiality provisions are essential both to encourage mental health patients to seek treatment and to help ensure that such treatment, once sought, will be effective.

3. The statutes can be harmonized to effectuate the purposes of each.

Here, the statutes can be harmonized, and the purposes of each can be given effect, by requiring the redaction of core Lanterman-protected information from citations before they are made public pursuant to the LTCA and CPRA. The purposes of the Lanterman Act's confidentiality provisions are effectuated by redacting essential Lanterman-protected information, which includes "[t]he patient's or resident's mental, physical, and medical conditions, history of mental disability or disorder," and "the risk that the violation presents to that mental and physical condition." (Opn., p. 21.) The purposes of the LTCA's public disclosure provisions, meanwhile, are given effect by requiring the public disclosure of the core facts concerning the nature of the violation—i.e., "*what* was the harm, *what* was the abuse, *what* was the lack of respect or dignity afforded, and *what* was the action that the facility did or failed to do." (Opn. at p. 21.)

This harmonization is consistent with both statutes. First, the redaction of Lanterman-protected information from citations is consistent with Health and Safety Code section 1439 of the LTCA. Section 1439 provides that citations are "public record[s] within the meaning of" the CPRA, and accordingly are "open to public inspection pursuant to the provision" of the CPRA. (Health & Saf. Code, § 1439.) The CPRA, meanwhile, expressly shields from disclosure any "public records exempt from disclosure by express provisions of law." (Gov. Code, § 6253, subd. (b); see also *id.*, § 6253, subd. (a) [public records are subject to inspection only "after deletion of the portions that are exempted by law"]; *id.*, § 6254, subd. (k) ["[N]othing in this chapter shall be construed to require the disclosure of . . . records, the disclosure of which is exempted or prohibited pursuant to federal or state law . . ."].) Here, the Lanterman Act prohibits the disclosure of information and records obtained in the course of

providing services to mentally ill and developmentally disabled patients. (Welf. & Inst. Code, §§ 4514, 5328, 5328.15; *Gilbert v. Superior Court* (1987) 193 Cal.App.3d 161, 165, 169.) Thus, the LTCA, by invoking the CPRA, directly contemplates the redaction of information exempted by law from disclosure, including information protected under the Lanterman Act. And there is nothing in the LTCA that requires the disclosure—or prohibits the redaction—of otherwise confidential information.

Second, to the extent that the statutes might appear to conflict, any tension can be resolved by construing the LTCA and the Lanterman Act to create implied exceptions to each other. (*Looney v. Superior Court* (1993) 16 Cal.App.4th 521, 536 [harmonizing statutes by construing one as creating an implied exception to the other, where applying the literal language of both would undermine the intent of the legislature and the court's harmonization "serves the legislative purposes of both statutes"]; see also *Moran v. Superior Court* (1983) 35 Cal.3d 229, 237-238 [recognizing an implied exception where applying the literal language of the statute would have consequences inconsistent with the legislative purpose].) Thus, the Lanterman Act should be construed to create an implied exception to the LTCA that requires the redaction of information concerning patients' mental, physical, and medical conditions and histories from citations before they may be disclosed to the public. Similarly, the LTCA should be construed to create an implied exception to the Lanterman Act that allows the disclosure of non-patient-specific information concerning the nature of a facility's violation.

Third, the Legislature recently made clear that it understood and intended the Lanterman Act to require the redaction of Lanterman-protected information from citation reports before they are made public. Specifically, Senate Bill (SB) 1377, enacted on September 22, 2012, amended the Lanterman Act to add Welfare and Institutions Code sections 5328.15,

subdivision (c), 4514, subdivision (v), and 4903, subdivision (h). These sections, both individually and collectively, provide an exception to the Lanterman Act under which a "protection and advocacy agency," as defined by statute, may access an "*unredacted* citation report," but must keep this information confidential. (Welf. & Inst. Code, §§ 4514, subd. (v), 4903, subd. (h), & 5328.15, subd. (c) [emphasis added].) These amendments would be pointless if unredacted citation reports containing Lanterman-protected information were already available to the general public under the LTCA and/or CPRA.

The legislative history of SB 1377 further demonstrates the Legislature's understanding of the interaction between the LTCA and Lanterman Act. Prior to SB 1377, a protection and advocacy agency could access records without patient consent only if, in accordance with Welfare and Institutions Code section 4903, subdivision (e), the agency had probable cause to believe that the health or safety of an individual was in serious and immediate jeopardy, or in a case of death of an individual with a disability. (CIR Request for Jud. Notice in Ct.App., Exh. 1 [Senate Bill Analysis, p. 5].) If the protection and advocacy agency did not have probable cause, Public Health was required to redact the citations before producing them because the citations contained Lanterman-protected information. (*Id.* at p. 10.) Accordingly, SB 1377 shows the Legislature's understanding and intent that, where the Lanterman Act and LTCA intersect, Lanterman-protected information must be redacted before citations are disclosed to the public.

CIR's arguments against harmonizing the statutes are unavailing. (Opening Brief at pp. 33-36.) First, CIR asserts that the plain language of the LTCA requires that citations be publicly posted without redaction. (Opening Brief at pp. 33-34, citing Health & Saf. Code, § 1429, subds. (a) & (b).) But CIR is incorrect, as nothing in section 1429 prohibits the

redaction of Lanterman-protected information, or other privileged or confidential information, prior to posting citations.

Second, CIR cites *Lolley v. Campbell* (2002) 28 Cal.4th 367, 379, and *Jones v. The Lodge at Torrey Pines Partnership* (2008) 42 Cal.4th 1158, 1171, for the proposition that the Legislature's intent should not be inferred from a later-enacted law. (Opening Brief at p. 34.) But those cases apply to *unenacted* statutes, not to an enacted statute as is the situation here.[6]

Third, CIR argues that SB 1377 was merely a clarification and conferred no new rights. According to CIR, protection and advocacy agencies already had a right to obtain unredacted citations under Welfare and Institutions Code section 4903, subdivision (b), but further clarification was required because Public Health was violating the law by delaying the production of unredacted citations. (Opening Brief at pp. 34-36.) CIR's argument is beside the point, however, because regardless of whether protection and advocacy agencies had or should have had a pre-existing right to unredacted citations under section 4903, it is clear that the Legislature, in enacting SB 1377, understood and intended that the *general public* had no such right.

///

///

[6] "As evidences of legislative intent they [unpassed bills] have little value." *Lolly v. Campbell, supra*, 28 Cal.4th at p. 379. The full quotation from *Lolly*, which CIR truncates in its brief, reads "The declaration of a later Legislature is of little weight in determining the relevant intent of the legislature that enacted the law . . . [T]he statute presently in effect [is binding], not . . . a legislative statement of intent that failed to become law." (*Ibid.*)

C. The Information Practices Act Provides an Additional, Independent Basis for Redacting Personal Information from Citation Reports

The IPA provides an additional, independent statutory basis for redacting certain types of personal information from citations before they are disclosed to the public. Specifically, the IPA prohibits state agencies from disclosing any "personal information"—which is defined as "any information . . . that identifies or describes an individual, including but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history"—unless it is specifically authorized by Civil Code section 1798.24. (Civ. Code, §§ 1798.24, 1798.3, subd. (a).)

The IPA's protections are not as broad as the Lanterman Act's, as the IPA covers only "personal information," while the Lanterman Act covers all information and records obtained in the course of providing services. Nonetheless, the IPA covers a large amount of Lanterman-protected information—including a patient's "medical . . . history" (Civ. Code, § 1798.3, subd. (a))—and the IPA's protections are extremely strict because they are derived from the California Constitution's explicit right of privacy that operates against private and governmental entities. (*Gilbert v. City of San Jose* (2003) 114 Cal.App.4th 606, 613, citing Cal. Const., art. I, § 1; see also Civ. Code, § 1798.1 [right to privacy is a "personal and fundamental right"]; *id.*, § 1798.1, subd. (c) ["In order to protect the privacy of individuals, it is necessary that the maintenance and dissemination of personal information be subject to strict limits"].) The Legislature enacted the IPA "to prevent misuse of the increasing amount of information about citizens which government agencies amass in the course of their multifarious activities, the disclosure of which could be

embarrassing or otherwise prejudicial to individuals or organizations." (*Jennifer M. v. Redwood Women's Health Center* (2001) 88 Cal.App.4th 81, 88.) Further, the IPA states that its provisions "shall be liberally construed so as to protect the rights of privacy arising under this chapter or under the Federal or State Constitution." (Civ. Code, § 1798.63.)

While the IPA permits the disclosure of otherwise protected personal information "pursuant to the [CPRA]" (Civ. Code, § 1798.24, subd. (g)), the CPRA shields from disclosure "public records exempt from disclosure by express provisions of law" such as the Lanterman Act. (Gov. Code, § 6253, subd. (b); see also *id.*, §§ 6253, subd. (a), 6254, subd. (k).) Thus, the CPRA does not weaken the IPA's protections for personal information that is protected under both the IPA and the Lanterman Act.

Finally, even if this Court were to determine that the LTCA and CPRA authorize the disclosure of unredacted citations, the IPA would still require that those persons whose personal information would be disclosed be given notice and a reasonable opportunity to object. Before a government agency may respond to a CPRA request by disclosing personal information that is protected by the IPA, it must take "reasonable steps" both to notify the person to whom the information pertains of the "pendency and nature of the request for the information," and also to afford the person "a fair opportunity to object to disclosure, to join in resisting disclosure, or to institute appropriate legal proceedings to resist disclosure or limit the scope or nature of the matters sought to be discovered." (*Gilbert v. City of San Jose*, *supra*, 114 Cal.App.4th at pp. 615-616.) In *Gilbert*, the court of appeal ordered that the city provide notice to applicants and fair opportunity to object before releasing personal information from gaming license applications in response to a CPRA request. (*Ibid.*; see also *Valley Bank of Nevada v. Superior Court* (1975) 15 Cal.3d 652, 655-656 [right to privacy requires that bank's customers

receive notice and reasonable opportunity to object and seek protective orders before bank produces customer records in response to discovery requests].)

II. THE COURT OF APPEAL'S CONSTRUCTION IS CORRECT REGARDLESS OF WHETHER THE STATUTES CAN PROPERLY BE "HARMONIZED"

For the reasons set forth in Part I, the LTCA and Lanterman Act should be harmonized. However, were this Court to determine that the statutes irreconcilably conflict and cannot properly be "harmonized," that would not change the ultimate result. This is because that same result—requiring the redaction of Lanterman-protected patient mental health information, but otherwise allowing for the public disclosure of the nature of the facility's violation—is reached by analyzing each point of conflict between the statutes to ascertain which statute should override the other on that particular point in accordance with the legislative intent.[7]

/ / /

/ / /

[7] The majority and dissent in the court of appeal disagreed over whether the statutes can properly be harmonized, with the majority taking the view that statutes are properly harmonized if the purposes of each can be effectuated, and the dissent taking the view that the statutes cannot properly be harmonized if either statute must give way to the other at any point. (Opn. at pp. 18-23; Dis. Opn. at pp. 1-7.) For the reasons set forth in Part I, *supra*, Public Health contends that the LTCA and Lanterman Act can, and should, be harmonized. In either case, however, the ultimate question is one of ascertaining and giving effect to the Legislature's intent, and the answer is the same whether the question is analyzed as one of "harmonization" or as one of determining which statute "supersedes" the other on each particular point of conflict between them.

A. Each Point of Irreconcilable Conflict Must Be Separately Analyzed to Determine Which Statute Governs on That Point.

Even where two statutes irreconcilably conflict on some point(s), they must first be harmonized, and any conflict narrowed, to the extent possible. (*Chavez v. City of Los Angeles*, *supra*, 47 Cal.4th at p. 986.) Further, in interpreting conflicting statutes, *each point* of irreconcilable conflict must be separately analyzed to determine which statute should govern on that particular issue, and it is not necessarily the case that one statute will govern the other across the board on all issues. (*Department of Fair Employment & Housing v. Mayr* (2011) 192 Cal.App.4th 719, 725 [courts should assess which statute controls in each "particular application" of the conflicting statutes].)

Both CIR and the dissent, however, begin with an implicit presumption that, if the statutes are in irreconcilable conflict, then one statute must control the other on *all* points of conflict, and the courts may not carve out exceptions to each of the statutes on different points of conflict. (Opening Brief at pp. 42-43; Dis. Opn. at p. 1.) This premise is not supported by any authority and, when applied rigidly, is inconsistent with the fundamental principle of statutory construction, which is to ascertain and give effect to the intent of the Legislature. (*Chavez v. City of Los Angeles*, *supra*, 47 Cal.4th at p. 986.)

/ / /

/ / /

B. To the Extent That the Statutes Conflict, the Lanterman Act Should Govern the Disclosure of Information Concerning Patients' Medical Conditions, While the LTCA Should Otherwise Govern the Disclosure of the Nature of a Facility's Violation

To the extent that the statutes irreconcilably conflict, the Lanterman Act should govern the disclosure of patients' mental, physical, or medical conditions, while the LTCA should otherwise govern the disclosure of the nature of the facility's violation.

The general rule of construction is that "[i]f conflicting statutes cannot be reconciled, later enactments supersede earlier ones, and more specific provisions take precedence over more general ones." (*Collection Bureau of San Jose v. Rumsey* (2000) 24 Cal.4th 301, 310.) When a special and a general statute are in conflict, the special statute governs regardless of whether it was enacted before or after the general statute. (*Nunes Turfgrass v. Vaughan-Jacklin Seed Co.* (1988) 200 Cal.App.3d 1518, 1539.)

Here, the LTCA and Lanterman Act potentially conflict on two separate points, which should be separately analyzed to ascertain the Legislature's intent with respect to each point: (1) whether to disclose or redact information in a citation report concerning the mental, physical, or medical condition or history of any patient or resident in the facility; and (2) whether to disclose or redact information in a citation report concerning the nature of a facility's violation.

Information concerning a resident's mental, physical, or medical condition is at the heart of the Lanterman Act's confidentiality provisions and only at the periphery of the LTCA's public disclosure provisions. Such information is frequently idiosyncratic to a particular patient, and could therefore effectively identify that patient even without disclosing his or her name. And even if the patient cannot be identified, the disclosure of such

personal information in a public document could be sufficiently upsetting to a mental health patient to disrupt his or her treatment. Further, this type of information is generally unnecessary to further the LTCA's public disclosure aims, as it is the nature of the facility's wrongdoing, not the underlying condition of the resident, that is at the heart of the LTCA's disclosure provisions. Accordingly, the Lanterman Act should govern to the extent of any conflict concerning the disclosure of a patient's mental, physical, or medical condition.

Meanwhile, information concerning the nature of the facility's violation—such as what was the harm and what did the facility do or fail to do—lies at the heart of the LTCA's public disclosure provisions. To the extent that such information can be disclosed *without* also disclosing information pertaining to a resident's mental, physical, or medical condition, then even if it is technically covered by the Lanterman Act, it lies at the periphery of the Lanterman Act's protections and the LTCA should govern as the more specific statute addressing this type of information.

C. Alternatively, If One Statute Must Prevail in Its Entirety, the Lanterman Act Should Supersede the Long Term Care Act.

If the Court were to determine both that the Lanterman Act and LTCA cannot be harmonized, and also that one statute must override the other across-the-board, then the Lanterman Act should control because it is the more specific statute. The LTCA provides a broad background rule that citations must generally be available to the public. (Health & Saf. Code, §§ 1429, 1439.) It governs all patients housed in skilled nursing facilities and intermediate care facilities—e.g. nursing homes, convalescent hospitals, and rehabilitation centers. (Health & Saf. Code, §§ 1250, 1417.1, & 1418.) The citations issued to these facilities pertain to the entire class of long term

care patients—the vast majority of whom are receiving care and treatment after surgeries, accidents, long-term illnesses, and age-related ailments.

The Lanterman Act, meanwhile, specifically addresses the confidentiality of information and documents obtained in the course of providing services to a narrow subclass of individuals covered by the LTCA—those with mental illness or developmental disabilities. (Welf. & Inst. Code, §§ 4514, 5328, & 5328.15.) The Lanterman Act's focus on a small subset of patients in long-term care facilities makes it the more specific statute, which governs over the broader, more general provisions of the LTCA. (*McDonald v. Conniff* (1893) 99 Cal. 386, 391 ["[A] statute which affects all the individuals of a class is a general law, while one which relates to particular persons or things of a class is special"]; *In re Ward* (1964) 227 Cal.App.2d 369, 374-375 [when two statutes conflict over a particular subject, the statute that extracts a subclass, or "particular persons" of the class, is generally the special statute that governs].)

Further, to the extent, if any, that the timeline of the LTCA and Lanterman Act enactments and amendments is relevant (see *Nunes Turfgrass v. Vaughan-Jacklin Seed Co.*, *supra*, 200 Cal.App.3d at p. 1539 [specific statute governs over general regardless of which was enacted first]), the 2012 amendments to the Lanterman Act under SB 1377 are the most recent amendments to either statute. (Welf. & Inst. Code, §§ 5328.15, subd. (c), 4514, subd. (v), and 4903, subd. (h).) Moreover, these amendments are the only provisions of either statute that expressly contemplate the interaction between the two, and they evince a clear legislative understanding that Lanterman-protected information must be redacted from LTCA citations before they are made public. (See Part I, *supra*; Welf. & Inst. Code, §§ 5328.15, subd. (c), 4514, subd. (v), and 4903, subd. (h).) In contrast, Health and Safety Code sections 1423, 1424, 1429,

and 1439 of the LTCA do not mention or otherwise contemplate the handling of Lanterman-protected information.

CIR's arguments that the LTCA should be considered the more specific statute are unavailing. CIR relies upon *Albertson v. Superior Court* (2001) 25 Cal.4th 796, and two Attorney General opinions, for the proposition that other statutes have been held to create exceptions to the confidentiality provisions of the Lanterman Act. (Opening Brief, pp. 43-44.) But these authorities do not support CIR's position here, as they show only that, consistent with fundamental principles of statutory interpretation, statutes addressing certain highly specific circumstances may be construed as more specific than, and thus carving out exceptions to, the Lanterman Act. But none of these statutes is analogous to the LTCA, and each of these exceptions addresses a very specific situation and is narrowly tailored to otherwise preserve the confidentiality of Lanterman-protected information. (*Albertson v. Superior Court, supra*, 25 Cal.4th at p. 805 [Sexually Violent Predators Act creates a narrow exception allowing disclosure of Lanterman-protected information to a petitioning attorney in a commitment proceeding, but otherwise maintaining the confidentiality of such information]; 58 Opn.Cal.Att.Gen. 824, 828 (1975) [requiring psychologists to disclose information concerning possible child abuse to law enforcement, but otherwise maintaining the confidentiality of such information]; 65 Ops.Cal.Att.Gen. 345, 358-359 (1982) [requiring mandatory reporters of child abuse to disclose information concerning possible abuse to law enforcement, but otherwise maintaining the confidentiality of such information].)

Here, in contrast, CIR does not seek to carve out a specific, narrowly tailored exception to the Lanterman Act's protections that otherwise preserves Lanterman confidentiality. Instead, CIR seeks a wholesale evisceration of the Lanterman Act's protections—via open-ended

disclosure to the general public—any time Lanterman-protected information appears in a citation report issued under the LTCA. Neither *Albertson* nor either Attorney General opinion supports this.

CIR's additional arguments are also unavailing. CIR argues that the Lanterman Act does not apply to LTCA citations because Welfare and Institutions Code section 5328.15 does not specifically mention the LTCA (Chapter 2.4 of the Health and Safety Code). (Opening Brief, pp. 36-37.) This argument fails because Welfare and Institutions Code section 5328.15 applies to any investigation which results in a LTCA citation. The provision governs Public Health's broad, pre-existing authority to license, suspend, revoke, enter, inspect, and issue inspection reports for long term care facilities—set forth in Chapter 2 of the Welfare and Institutions Code. (Health & Saf. Code, §§ 1278-1280, as added Stats. 1973 ch. 1202 § 2; former Health & Saf. Code, § 1340, as added Stats. 1972 ch. 1148 § 3; Health & Saf. Code, § 1407, as added Stats. 1945 ch. 1418 § 3.) This authority long predated the enactment of the LTCA in 1973. (*Ibid.*) In addition, the newest amendment to Welfare and Institutions Code section 5328.15 mandates that Lanterman-protected information in citations "*shall remain confidential*," when provided in an unredacted form to the protection and advocacy agency. (Welf. & Inst. Code, § 5328.15, subd. (c)(2) [emphasis added].)

CIR's insistence that the Legislature has never applied the Lanterman Act's confidentiality to LTCA citations is therefore incorrect. (Opening Brief at p. 22.) And in light of these provisions

mandating that Lanterman-protected information in citations shall remain confidential, the cases cited by CIR for the contrary proposition are inapplicable.[8]

III. CIR'S CONSTRUCTION WOULD UNDERMINE THE LANTERMAN ACT'S CONFIDENTIALITY PROVISIONS, HARM THE PATIENTS BOTH STATUTES ARE DESIGNED TO PROTECT, AND CONTRAVENE LEGISLATIVE INTENT.

CIR's position is that the LTCA should completely override the Lanterman Act on all points of potential conflict, and thus that all citation records should be publicly available, in unredacted form, regardless of whether they contain Lanterman-protected information. (Opening Brief at p. 6.) CIR's construction, however, is contrary to the Legislature's intent and would directly undermine the Lanterman Act's privacy protections. Under CIR's interpretation, if a patient in this extremely vulnerable population suffers the misfortune of being harmed or placed at risk by a facility's violation of law, that patient must now suffer the *double* blow of having his or her Lanterman Act privacy protections significantly eroded, if not effectively eliminated, by the publication of the patient's previously confidential information in an unredacted citation report.

The LTCA's requirement of redacting patient names is insufficient to protect privacy because patients may still be identified from their particular medical conditions, medical histories, behaviors, and other personally identifying information, without the need for their names. This is especially true in less populated, rural areas, where unique characteristics would especially stand out and a patient might be easily identified. Because this is a small, select group of individuals, a description of their

---

[8] *Sorenson v. Superior Court* (2013) 219 Cal.App.4th 409, 444; *Devereaux v. Latham & Watkins* (1995) 32 Cal.App.4th 1571, 1587; *Tarasoff v. Regents of the Univ. of Cal.* (1976) 17 Cal.3d 425, 431 (1976).

disabilities, along with the facility name, is often enough to identify them. For example, an exhibit that CIR submitted in the trial court describes a patient who ate soft knit shirts and diapers. (App., DPH 1401, Exh. 14 [Gabrielson's Supp. Decl.] at Exh. 4.) Disclosure of such a distinctive behavior or condition and the name of the facility makes it difficult to mask a patient's identity.

Additionally, the public disclosure of this information, even if it does not actually allow outsiders to identify an individual patient, can still be upsetting to the patient and disrupt his or her treatment, and the threat of such disclosures could deter some mental health patients from seeking treatment.

Here, an order requiring Public Health to disclose unredacted LTCA citations would make it impossible for the agency to safeguard patient privacy under the Lanterman Act and effectively waive the privacy rights of third-party Lanterman patients. These patients would lose their privacy protections simply because their patient information was included in citations. They would have no notice, and no means to object and assert their rights under the Lanterman Act. This was not the outcome that the Legislature envisioned when it enacted the Lanterman Act.

CIR also contends that upholding the privacy rights of Lanterman patients would invalidate the LTCA and create an unworkable compliance system. (Opening Brief at pp. 44-47.) That is incorrect. The Lanterman Act and the LTCA can and should be harmonized to fully effectuate the purposes of each act. (See Part I, *supra*.) Moreover, even if the Lanterman Act were deemed to supersede the LTCA on all points of conflict, the implementation of most of the LTCA's provisions would remain unchanged, and the Lanterman Act only applies to a small subclass of LTCA patients.

Redacting citations does not create a two-tiered system of LTCA enforcement which CIR analogizes to the situation in *Kizer v. County of San Mateo* (1991) 53 Cal.3d 139, 142-144. In *Kizer*, this Court rejected a county's assertion that as a public entity, its long-term care facility was altogether exempt from the LTCA's civil penalties. (*Ibid.*) Here, Public Health is not seeking an exemption to civil penalties for developmental centers. Facilities housing Lanterman patients would still face citations and civil penalties under the LTCA. Only the extent of public disclosure of information contained in the citations would be affected. The redacted citations would still provide information about the nature and seriousness of the violation, including the type of citation issued, the amount of the fine, and the statutory or regulation infraction. And in lieu of the public having access to all of the information in the citations, the protection and advocacy agency would have access to the unredacted citations to conduct its investigations.

CIR's assertion that agency employees would be overly aggressive in their redactions for fear of being sanctioned is unfounded. The court of appeal's decision provides clarity to agency employees concerning what must be disclosed and what must be redacted. Moreover, agency employees cannot be sanctioned for following the law.

In fact, compliance with the court of appeal's decision is already occurring. After a developmental center receives a Class A or AA citation, it is sent to the headquarters of the Department of Developmental Services (DDS)—the agency which oversees these facilities—to be redacted before it is posted for 120 days pursuant to Health and Safety Code section 1429. (Public Health's Motion to Take Additional Evidence, Declaration of Curteman, ¶ 2.) DDS redacts confidential client information from the citation pursuant to the Lanterman Act and the court of appeal's decision. (*Id.* at ¶ 3.) The redacted information includes the patient's diagnosis,

types of services, and any information that identifies the individual, such as age and room/residence numbers. (*Id.* at ¶ 4.) After the confidential client information is redacted, the citation is sent to the developmental center to post. (*Id.* at ¶ 5.)

If a dispute arises concerning the validity and extent of redactions by the facility or Public Health, the aggrieved party can petition the trial court and seek an *in camera* review. This Court should not preemptively eliminate the privacy rights of an extremely vulnerable class of individuals as a purported solution to CIR's fears of abuse in the redaction process.

CIR also argues that the court of appeal improperly extended its decision to the LTCA's computer database. (Opening Brief, pp. 47-48.) The court of appeal correctly applied its decision to the LTCA's computer database to ensure uniformity in public disclosure. Its decision would be rendered meaningless if the redacted information from the citations could be obtained from the LTCA computer database. The Lanterman Act's protections apply to the LTCA's computer data base for the same reasons discussed above.

/ / /

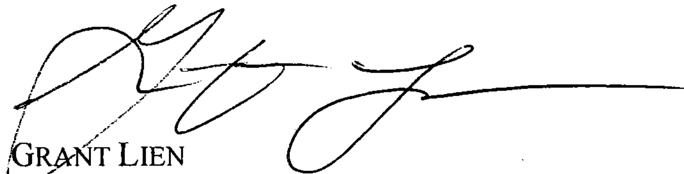
/ / /

CONCLUSION

This Court should harmonize the Lanterman Act and LTCA to effectuate the Legislature's purpose behind each statute.

Dated: May 16, 2014

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
KATHLEEN KENEALY
Chief Assistant Attorney General
GREGORY BROWN
Deputy Solicitor General
JULIE WENG-GUTIERREZ
Senior Assistant Attorney General
NIROMI W. PFEIFFER
Supervising Deputy Attorney General



GRANT LIEN
Deputy Attorney General
Attorneys for Department of Public Health

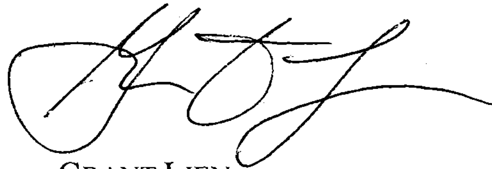
SA2013113751
11350611.doc

CERTIFICATE OF COMPLIANCE

I certify that the attached **ANSWERING BRIEF ON THE MERITS** uses a 13 point Times New Roman font and contains 8,500 words.

Dated: May 16, 2014

KAMALA D. HARRIS
Attorney General of California
KATHLEEN KENEALY
Chief Assistant Attorney General
GREGORY BROWN
Deputy Solicitor General
JULIE WENG-GUTIERREZ
Senior Assistant Attorney General
NIROMI W. PFEIFFER
Supervising Deputy Attorney General



GRANT LIEN
Deputy Attorney General
Attorneys for Department of Public Health

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Center for Investigative Reporting v. Department of Public Health**
No.: **S214679**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On May 16, 2014, I served the attached **ANSWERING BRIEF ON THE MERITS** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

Duffy Carolan, Esq.
Jassy Vick Carolan LLP
400 Montgomery Street, Suite 200
San Francisco, CA 94104

County of Sacramento
Gordon D. Schaber Downtown Courthouse
Superior Court of California
720 9th Street
Sacramento, CA 95814-1398

Third Appellate District
Court of Appeal of the State of California
Stanley Mosk Library and Courts Building
914 Capitol Mall, 4th Floor
Sacramento, CA 95814

Rochelle Wilcox
Davis Wright Tremaine LLP
505 Montgomery Street, Suite 800
San Francisco, CA 94111-6433

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 16, 2014, at Sacramento, California.

Wanda Thissen	[signature]
Declarant	Signature

SA2013113751
11341608.doc