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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARCIANO PLATA, et al.,
Plaintiffs,
v.
ARNOLD SCHWARZENEGGER, et al.,
Defendants.

Case No. C01-1351 TEH

**[PROPOSED] ORDER RE WAIVER OF
STATE LAW RE PHYSICIAN CLINICAL
COMPETENCY DETERMINATIONS**

On April 25, 2007, the Receiver filed his Motion for a waiver of state law re physician clinical competency determinations. The Receiver submitted a set of proposed policies and procedures with his motion.

After substantial briefing, the Court issued its Order, dated May 23, 2008, granting in part and denying in part the Receiver’s motion. The Court ordered the Receiver to “meet and confer with the parties and both amici [State Personnel Board (“SPB”) and Union of American Physicians and Dentists (“UAPD”)], or their designees, to revise the proposed policies based on the Court’s rulings.” May 23 Order (Docket # 1205), p. 16. In addition, the Court ordered SPB to “take the lead in preparing an implementation plan that includes deadlines, for example, for completing training of the SPB ALJs who will be conducting the evidentiary hearings; entering into a contract with CMAIMQ to provide a pool of physicians for use on the peer review panels; and hiring any additional SPB staff necessary to implement the proposed policies.” Id., p. 17.

The Court also ordered the Receiver to “submit the revised proposed policies and implementation plan for the Court’s approval, along with an updated proposed order, on or before June 20, 2008.” Id. Any objections to the revised policies and implementation plan were to be filed no later than June 25, 2008. Id.

1 The Receiver filed a Report on June 20, 2008, together with revised proposed policies
2 and procedures. The revised proposed policies (the "Policies") were attached as Exhibit 1 to the
3 Declaration of Linda Buzzini, filed on June 20, 2008. In addition, the Receiver attached a draft
4 implementation plan prepared by SPB and sent to the Receiver on June 19, 2008.

5 The Court has considered the original motion, all of the briefing submitted by the parties
6 and amici, as well as the Policies submitted by the Receiver. Accordingly, IT IS HEREBY
7 ORDERED that:

8 The Policies are approved and, effective immediately, shall govern clinical competency
9 determinations in the State prison medical care system.

10 The Receiver and SPB shall continue to cooperate to develop and finalize an
11 implementation plan that is responsive to the Court orders. When an implementation plan is
12 finalized, the Receiver shall file a report with the Court and attach the plan. Until a plan is ready
13 for implementation, the Receiver may administer the clinical competency determination process
14 pursuant to the Policies, but may utilize ALJs employed by the Office of Administrative Hearings
15 in the place of SPB ALJs.

16 The following State laws are waived to the extent necessary to implement the Policies:

17 Government Code §§ 19574.2, 19574.5, 19575, 19576, 19578, 19581, 19582, 19583,
18 19585, 19587, 19590, 19592.2;

19 2 Cal. Code Regs. § 51.4.

20
21 **IT IS SO ORDERED.**

22
23 Dated: _____, 2008

24 Hon. Thelton E. Henderson
United States District Judge

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CERTIFICATE OF SERVICE

The undersigned hereby certifies as follows:

I am an employee of the law firm of Futterman & Dupree LLP, 160 Sansome Street, 17th Floor, San Francisco, CA 94104. I am over the age of 18 and not a party to the within action.

I am readily familiar with the business practice of Futterman & Dupree, LLP for the collection and processing of correspondence.

On June 20, 2008, I served a copy of the following document(s):

[PROPOSED] ORDER RE WAIVER OF STATE LAW RE PHYSICIAN CLINICAL COMPETENCY DETERMINATIONS

by placing true copies thereof enclosed in sealed envelopes, for collection and service pursuant to the ordinary business practice of this office in the manner and/or manners described below to each of the parties herein and addressed as follows:

 BY HAND DELIVERY: I caused such envelope to be served by hand to the address designated below.

 X BY MAIL: I caused such envelope(s) to be deposited in the mail at my business address, addressed to the addressee(s) designated below. I am readily familiar with Futterman & Dupree's practice for collection and processing of correspondence and pleadings for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business.

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21
22 I declare that I am employed in the offices of a member of the State Bar of this Court at
23 whose direction the service was made. I declare under penalty of perjury, under the laws of the
24 united State of America, that the above is true and correct.

25 Executed on June 20, 2008 at San Francisco, California.

26 
Lori Dotson