

1 FRANCISCO J. SILVA (SBN 214773)
e-mail: fsilva@cmanet.org
2 LONG X. DO (SBN 211439)
e-mail: ldo@cmanet.org
3 CALIFORNIA MEDICAL ASSOCIATION
1201 J Street, Suite 200
4 Sacramento, California 95814-2906
Telephone: (916) 444-5532
5 Facsimile: (916) 551-2027

6 Attorneys for Petitioner
CALIFORNIA MEDICAL ASSOCIATION

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

10
11 CALIFORNIA MEDICAL
ASSOCIATION,

12 Petitioner,

13 v.

14 ARNOLD SCHWARZENEGGER, as
15 Governor of the State of California; JOHN
CHIANG, as California State Controller;
16 BILL LOCKYER, as California State
Treasurer; DAVID GILB, as Director of
17 the California Department of Personnel
Administration; MICHAEL GENEST, as
18 Director of the California Department of
Finance; and DOES 1 through 50,
19 inclusive,

20 Respondents.

Case No. _____

**VERIFIED PETITION FOR
WRIT OF MANDATE**

21
22
23
24
25
26
27
28

1 public duties at a time of critical need (or increase staffing to meet its needs). Instead, it is
2 losing 5,100 hours of work every month, equivalent to 28 or 29 positions monthly. The
3 result is an unprecedented backlog of license applications and excessive delays in
4 disciplinary investigations and enforcements. Qualified physicians who are unlicensed
5 but ready to immediately practice medicine must sit idly. Hospitals and medical practices
6 that have hired new physicians must also wait. Communities lacking access to care too
7 must wait. In short, California is losing opportunities to bring in new physicians.

8 4. No less dire, the Medical Board is being delayed in discharging its mandate
9 to protect the public through its investigatory and disciplinary responsibilities. And
10 physicians under disciplinary investigation must endure unnecessary delays in having
11 their matters resolved, all the while suffering the stigma that comes with being under
12 investigation.

13 5. The Budget Transfer runs afoul of constitutional provisions and state laws
14 that unequivocally prohibit the State from raiding the Contingent Fund (via a loan or
15 otherwise) and using physician-paid fees for some purpose other than to carry out the
16 mandates of the Medical Practice Act, Business & Professions Code sections 2000 –
17 2515. In issuing the Furlough Orders, the Governor acted without lawful authority. No
18 constitutional provision or state law gives the Governor unilateral power to furlough state
19 employees at a special fund agency that is financially self-sufficient and independent from
20 the General Fund. Furloughing Medical Board employees accrues not a penny in savings
21 for the General Fund but serves only to unlawfully impede and frustrate the Medical
22 Board's statutorily-mandated functions under the Medical Practice Act.

23 6. Because the State's actions are exacerbating the physician shortage in
24 California and jeopardizing the safety of the public, the California Medical Association
25 requests the Court to issue a peremptory writ invalidating the Furlough Orders, as applied
26 to the Medical Board, and the Budget Transfer as unconstitutional and unlawful; enjoining
27 their implementation; and making the Medical Board and its Contingent Fund whole
28 again.

1 **PARTIES**

2 7. Petitioner CMA is a not-for-profit, professional association of
3 approximately 35,000 physicians and medical students, with its principal place of business
4 in Sacramento, California. For more than 150 years, CMA has promoted the science and
5 art of medicine, the care and well-being of patients, the protection of the public health,
6 and the betterment of the medical profession. CMA's physician members practice
7 medicine in California in all specialties and settings. They regularly pay biennial license
8 fees to the Medical Board in order to maintain an active license to practice medicine in
9 California. CMA's physician members also are subject to the jurisdiction of the Medical
10 Board in its enforcement of the laws relating to medical practice and licensing.

11 8. CMA is duly authorized to bring this Petition on behalf of its own interests
12 and in its representative capacity on behalf of the interests of CMA's physician members
13 and their patients who are being harmed by the unlawful conduct described herein.

14 9. Respondent Arnold Schwarzenegger ("Schwarzenegger") is the elected
15 Governor of the State of California. Governor Schwarzenegger is named in his official
16 capacity.

17 10. Respondent John Chiang ("Chiang") is the elected Controller of the State of
18 California. State Controller Chiang's office is responsible for processing payroll
19 transactions for state employees, including paying the salaries and wages of employees of
20 the Medical Board out of the Contingent Fund. He also is empowered to superintend the
21 state's fiscal concerns. State Controller Chiang is named in his official capacity.

22 11. Respondent Bill Lockyer ("Lockyer") is the elected Treasurer of the State of
23 California. State Treasurer Lockyer is entrusted with the authority to receive, keep and
24 transfer all moneys belonging to the state, except as otherwise provided by law. He is
25 named in his official capacity.

26 12. Respondent David Gilb ("Gilb") is the Director of the California
27 Department of Personnel Administration, charged with carrying out and administering
28 personnel orders and laws. Director Gilb is named in his official capacity.

1 §2004. The Medical Board also is vested with power to hire employees to meet its
2 responsibilities: “The board may employ an executive director . . . and may also employ
3 investigators, legal counsel, medical consultants, and other assistance as it may deem
4 necessary to carry into effect this chapter [the Medical Practice Act].” *Id.*, §2020.
5 Although the Governor and the Legislature may appoint members of the Medical Board,
6 neither has any direct control over the administration, management and conduct of the
7 affairs of the Medical Board.

8 19. The Medical Board is budgeted to hire 263 employees, including an
9 executive director, to carry out its public charge.

10 20. The Medical Board’s work is carried out through two primary divisions – a
11 licensing division and an enforcement division. The licensing division is responsible for
12 all aspects of physician licensing under the Medical Practice Act. *See id.*, §§2050 *et seq.*
13 It promotes public protection for the health care consumer by ensuring all applicants’
14 educational credentials and training meet statutory and regulatory requirements prior to
15 issuing physician and surgeon licenses to practice medicine. Staff in this division process
16 applications for new licenses as well as renewal applications. They regularly interact with
17 physicians throughout the process. Staff also administer a continuing medical education
18 program and verify that licentiates satisfy their ongoing requirements to maintain an
19 active license. The licensing division also approves medical training and education
20 programs, including undergraduate and graduate medical school programs and clinical
21 internships. All of these duties are mandated under the Medical Practice Act. *See id.*,
22 §2004(f)-(i).

23 21. There are 46 employees in the licensing division. All positions in the
24 licensing division that have been budgeted for are filled. In other words, the Medical
25 Board would need to increase funding for the licensing division to hire more permanent
26 staff to address any staffing needs.

27 22. The enforcement division of the Medical Board has enforcement and
28 disciplinary responsibility over the provisions of the Medical Practice Act governing the

1 practice of medicine, which cover, among other things, advertising, delegation and
2 supervision, hospital privileges, scope of practice, prescribing medicine and peer review.
3 *See* Bus. & Prof. Code §§2220 *et seq.* The mandatory duties of this division also are
4 enumerated by statute (*see id.*, §2004(a)-(e)):

- 5 • The enforcement of the disciplinary and criminal provisions of the Medical
6 Practice Act;
- 7 • The administration and hearing of disciplinary actions;
- 8 • Carrying out disciplinary actions appropriate to findings made by a panel or
9 an administrative law judge;
- 10 • Suspending, revoking, or otherwise limiting certificates after the conclusion
11 of disciplinary actions; and
- 12 • Reviewing the quality of medical practice carried out by physician and
13 surgeon certificate holders under the jurisdiction of the board.

14 23. The Legislature has declared that “[p]rotection of the public shall be the
15 highest priority for the Medical Board . . . in exercising its licensing, regulatory, and
16 disciplinary functions.” *Id.*, §2001.1. Furthermore, “[w]henever the protection of the
17 public is inconsistent with other interests sought to be promoted, the protection of the
18 public shall be paramount.” *Id.*

19 24. There are 137 employees in the enforcement division, consisting of general
20 staff, case workers, professional investigators (peace officers) and medical consultants.
21 There currently are 16 vacant positions within this division.

22 25. The Medical Board offers several other important programs to benefit the
23 public:

- 24 • By statute the Medical Board must maintain a public website that allows
25 consumers to search for licensed physicians and view their public record,
26 including any records of discipline or reported criminal convictions. *See id.*,
27 §2027.
- 28 • The Medical Board collects biographical information from physicians when

1 they apply for or renew their licenses. *See id.*, §2425.3. Staff compile this
2 data and must publish statistics and other information about California's
3 physician population. Many other agencies and researchers have used such
4 useful demographic information.

- 5 • The Medical Board also established the Steven M. Thompson Physician
6 Corps Loan Repayment Program. This statutorily-created program (*see*
7 Health & Safety Code §§128550-128558) helps physicians to repay
8 educational debt if they practice in underserved areas for a certain period of
9 time. The Medical Board collects fees from physicians to fund this
10 program.

11 26. The sole source of funds available to the Medical Board to carry out its
12 numerous statutory duties comes from physician license fees and other user fees. By
13 statute all fees paid to the Medical Board must be paid into the State Treasury and credited
14 solely to the Contingent Fund. *Id.*, §2445. The Contingent Fund "shall be for the use of
15 the [Medical Board] and from it shall be paid all salaries and all other expenses
16 necessarily incurred in carrying into effect the provisions of [the Medical Practice Act]."
17 *Id.* The Medical Board takes no money from the General Fund and does not depend on
18 any portion of the state's general revenues.

19 27. To maintain the financial independence and self-sufficiency of the Medical
20 Board, the Medical Practice Act includes clear mandates detailing how fees can be
21 collected into and disbursed out of the Contingent Fund. Business & Professions Code
22 section 2445 states, "If there is any surplus in these receipts [of fees] after the board's
23 salaries and expenses are paid, such surplus shall be applied *solely to expenses incurred*
24 *under the provisions of this chapter* [the Medical Practice Act]." (Emphasis added.)
25 Addressing the possibility of attempts to raid surpluses in the Contingent Fund, the
26 Medical Practice Act expressly states, "[n]o surplus in these receipts shall be deposited in
27 or transferred to the General Fund." *Id.*

28 28. There are other statutes detailing how surpluses in the Contingent Fund

1 must be maintained. The Medical Board “shall fix the biennial renewal fee and the initial
2 license fee so that, together with the amounts from other revenues, the reserve balance in
3 the board’s contingent fund shall be equal to approximately two months of annual
4 authorized expenditures.” *Id.*, §2435(f)(2). In other words, the Medical Board “shall seek
5 to maintain a reserve in the Contingent Fund . . . equal to approximately two months’
6 operating expenditures.” *Id.*, §2435(i).

7 29. An audit report issued in October 2007 by the California State Auditor
8 concluded that at the end of fiscal year 2006-07, the reserve level of the Contingent Fund
9 was more than 100 percent above the level mandated by law. The reserve level has not
10 gone down in more recent fiscal years. The audit report recommended that the Medical
11 Board have more flexibility under the law to adjust physicians’ license fees in order to
12 maintain its fund balance at or near the mandated level and that the Medical Board should
13 consider refunding license fees or temporarily reducing them.

14 ***The Budget Transfer***

15 30. The Legislature passed the Budget Act of 2008 (Ch. 268, Stats. 2008) on
16 September 16, 2008, and the Governor signed it seven days later, on September 23, 2008.
17 The Budget Transfer appears as Item 1110-011-0758 of Section 2.00 of the Budget Act.
18 It provides for the “[t]ransfer by the Controller, upon order of the Director of Finance,
19 from the Contingent Fund of the Medical Board of California to the General Fund
20 [\$]6,000,000.” This transfer is characterized as a “loan”:

21 The amount transferred in this item is a loan to the General Fund. This loan shall
22 be repaid with interest calculated at the rate earned by the Pooled Money
23 Investment Account at the time of the transfer. Repayment shall be made so as to
24 ensure that the programs supported by the Contingent Fund of the Medical Board
of California are not adversely affected by the loan through reduction in services or
through increased fees.

25 31. In accordance with the Budget Transfer, in or about December 2008, under
26 instructions from Finance Director Genest and/or State Treasurer Lockyer, State
27 Controller Chiang executed the transfer of \$6,000,000 from the Contingent Fund to the
28 General Fund.

1 32. Such transfer of physician fees from the Contingent Fund deprived the
2 Medical Board of funds that were collected pursuant to the Medical Practice Act and
3 statutorily dedicated for use by the Medical Board to carry out its duties. The State has
4 not returned the money to the Contingent Fund.

5 33. Nothing in the Budget Act required that the \$6 million in physician fees
6 taken from the Contingent Fund be used to carry out the Medical Board's duties under the
7 Medical Practice Act. Such physician fees were not in fact used to carry out the Medical
8 Board's duties under the Medical Practice Act after the transfer.

9 ***The Furlough Orders***

10 34. The Furlough Orders represent another measure purportedly aimed at
11 helping to relieve the General Fund deficit. Governor Schwarzenegger issued Executive
12 Order S-16-08 on December 19, 2008 (a true and correct copy is attached hereto as
13 Exhibit A). This executive order sought to impose a furlough of two days per month on
14 all state employees, effective February 1, 2009, through June 30, 2010. On July 1, 2009,
15 with the issuance of Executive Order S-13-09 (a true and correct copy is attached hereto
16 as Exhibit B), the Governor added a third furlough day each month, effective July 1, 2009,
17 through June 30, 2010.

18 35. Governor Schwarzenegger and the Department of Personnel Administration
19 (the "DPA") have maintained that the Furlough Orders are applicable to all employees of
20 the State, regardless whether they work at special fund agencies or for independent
21 constitutional officers. They insist specifically that the Furlough Orders apply to
22 employees of the Medical Board.

23 36. The Medical Board has sought to be exempted from the Furlough Orders,
24 but this request was denied.

25 37. The DPA has implemented the Furlough Orders against employees of the
26 Medical Board.

27 38. State Controller Chiang also has implemented the Furlough Orders against
28 Medical Board employees. The Controller's Office processes payroll and issues pay

1 checks to these employees. Since February 1, 2009, the Controller's Office has reduced
2 the paychecks of Medical Board employees to reflect the reduction in work days effected
3 by the Furlough Orders.

4 39. Medical Board staff have been furloughed two days every month from
5 February 1, 2009, through June 30, 2009. During this period all Medical Board offices
6 throughout the state were closed and no business was conducted two Fridays every month.
7 From July 1, 2009 to present, employees of the Medical Board are and have been
8 furloughed three days per month, without pay. All Medical Board offices are closed and
9 no business is conducted three Fridays every month.

10 ***The State is Impeding the Functions of the Medical Board***

11 40. The Budget Transfer has caused a dramatic drop in the reserve level of the
12 Contingent Fund. The Medical Board reported in a May 31, 2009, financial statement that
13 the Contingent Fund held \$20.3 million in reserves, which is equivalent to 4.6 months'
14 operating expenditures. This reserve figure includes the transfer of \$6 million pursuant to
15 the Budget Transfer, which means the reserve level would otherwise be at \$26.3 million.
16 By comparison, at the end of fiscal year 2007-08 (June 30, 2008), the reserve level was at
17 \$23.9 million, equivalent to 5.6 months' operating expenditures.

18 41. The Furlough Orders have caused significant impairment to the work and
19 function of the Medical Board. A Licensing Program Report requested by the Executive
20 Committee of the Medical Board, dated October 1, 2009, identified the Furlough Orders
21 as a critical factor in causing an increase in application backlogs in the licensing division.
22 The Furlough Orders deprive the licensing division of 810 work hours per month. In the
23 larger enforcement division, the figure is 4,272 work hours lost per month. In total, the
24 Medical Board is losing over 5,100 hours of work every month under the Furlough
25 Orders.

26 42. The addition of the third furlough day beginning on July 1, 2009, could not
27 come at a worse time. Every year the Medical Board sees a surge in license applications
28 by physicians who have been admitted into internship, residency or fellowship programs.

1 To begin their program, these physicians need licensure by July 1st, the same day that the
2 Governor imposed the third furlough day on the Medical Board.

3 43. The work hours lost due to the Furlough Orders have resulted in an
4 unprecedented backlog of license applications at the Medical Board. By regulation the
5 Medical Board must complete initial review of an application within 60 working days of
6 receipt of an application. *See* 16 C.C.R. §1319.4(a). Initial review involves reviewing the
7 initial application materials and determining whether it is complete and acceptable for
8 filing or that it is deficient and what specific information or documentation is required to
9 complete the application. According to the October 1, 2009, Licensing Program Report,
10 as of September 1, 2009, there were 7,192 license applications pending before the Medical
11 Board. Of these pending applications, 1,806 applications had not completed the initial
12 review period.

13 44. Under the Furlough Orders, the current average period for the Medical
14 Board to complete initial review is approximately 5 and a half months (about 165 days),
15 almost three times longer than required by law. Before the Furlough Orders, in July 2008,
16 the average period for initial review was well within 90 calendar days (84 days for
17 U.S./Canadian applications, and 58 days for international applications).

18 45. Due to the enormous number of pending applications in initial review,
19 Medical Board staff in the licensing division have become overwhelmed. Their telephone
20 system to answer inquiries from applicants is stressed beyond capacity, meaning that
21 applicants often cannot reach Medical Board staff to have their questions answered or, if
22 they can leave a message, may not have their calls returned.

23 46. Physicians who have submitted applications and are mired in the backlog of
24 license applications at the Medical Board suffer in numerous different ways. Most
25 obviously, these physicians cannot practice medicine in California. Other negative
26 impacts on physicians include, but are not limited to, the loss of time-sensitive job
27 opportunities and disqualification from sitting for board exams, which are given only
28 periodically and require a medical license.

1 47. Some physicians – who hold active licenses from the Medical Board – are
2 unable to fill vacancies in their medical practices because the new physician(s) they have
3 hired must wait through the backlog of license applications at the Medical Board.

4 48. As noted, due to the Furlough Orders, the enforcement division of the
5 Medical Board loses 4,272 hours of work each and every month.

6 49. Upon receiving a complaint about an individual physician, the Medical
7 Board's enforcement division will review and determine whether an investigation is
8 warranted. If so, the Medical Board conducts an investigation into the complaint, which
9 remains confidential at this stage. A determination is made as a result of the investigation
10 whether to file a formal accusation. If so, the matter can proceed to a formal disciplinary
11 hearing, which could result in formal findings and disciplinary action. The filing of an
12 accusation (regardless of its result) becomes a part of a physician's public record. The
13 Furlough Orders are causing delays at all stages throughout this process.

14 50. The delays in the enforcement division are harming physicians and the
15 public. Although investigations are not public and about 17 percent of investigations
16 result in formal accusations, physicians under investigation may still need to disclose such
17 a fact to a medical group, hospital or health plan with which they are associated or work.
18 While the investigation is pending, the physician may be subject to initial disciplinary
19 action or may temporarily lose certain practice privileges. These disabilities are
20 unnecessarily lengthened when an investigation is delayed due to the Furlough Orders.

21 51. Finally, the delays in the enforcement division caused by the Furlough
22 Orders can translate into unnecessary delays in disciplining those physicians who may not
23 be providing competent and quality health care. Physicians and the public (who work
24 with or are treated by such physicians, respectively) are harmed when there are delays in
25 the enforcement work done by the Medical Board.

1 2445 (which it does not) because it effects a “loan,” Government Code section 16832
2 expressly prohibits any loan from a special fund to the General Fund that “will interfere
3 with the carrying out of the object for which a special fund or other State account was
4 created.” Misappropriating \$6 million in physician fees from the Contingent Fund
5 deprives the Medical Board of funding to hire more staff and carry out its duties of
6 licensing and disciplining physicians. Moreover, whether a “loan” or not, raiding the
7 Contingent Fund also frustrates the right of physicians to have the fees they paid be used
8 for the benefit of their profession and to reductions of fees when the Contingent Fund
9 reaches certain surpluses.

10 56. In issuing the Furlough Orders, the Governor acted outside the power
11 granted to him under the state Constitution. No constitutional provision or state law gives
12 the Governor unilateral power to reduce salaries and furlough state employees for 17
13 months. The laws that have been cited by the Governor provide no legal cover.
14 Executive Order S-16-08 invoked Government Code section 3516.5, a provision of the
15 Ralph C. Dills Act that allows the state to react to an emergency affecting state
16 employment without first meeting and conferring with recognized employee union
17 organizations. Executive Order S-13-09 invoked Government Code section 8625, a
18 provision of the Emergency Services Act that authorizes a declaration of emergency
19 where there are “conditions of extreme peril to the safety of persons and property” and
20 allows the Governor to suspend laws and regulations to the extent necessary to address the
21 emergency, but only so long as the emergency persists and in no event for more than 60
22 days. The Governor also has cited Government Code sections 19851(a) and 19849(a),
23 which note that the DPA shall generally adopt rules governing the work hours of state
24 employees and that such work hours may be established in order to meet the varying
25 needs of the different state agencies.

26 57. These statutes have little, if any, application and certainly do not justify the
27 Furlough Orders. The furloughing of Medical Board staff in no way helps to meet the
28 needs of the Medical Board but rather only hampers its ability to function. The Furlough

1 Orders thus do not comply with, but rather violate, Government Code sections 19851(a)
2 and 19849(a). Nor does application of the Furlough Orders to the Medical Board lend any
3 assistance to relieving the deficit of the General Fund, *i.e.* the “emergency” that is the
4 subject of the furloughs and invoked by Executive Orders S-16-08 and S-13-09. The
5 Furlough Orders purport to save money in the General Fund by reducing state employees’
6 pay. However, the Contingent Fund, not the General Fund, pays the salaries of Medical
7 Board personnel. Neither Government Code section 3516.5 nor section 8625 supports the
8 Furlough Orders as applied to the Medical Board.

9 58. Article IV, section 10(f) of the California Constitution, also known as
10 Proposition 58, is the law that best applies to the Furlough Orders. Under this law, the
11 Governor may declare a fiscal emergency and propose (not unilaterally declare and
12 enforce) new legislation to address such an emergency. Indeed, setting public employees’
13 salaries is the province of the Legislature. *Pacific Legal Foundation v. Brown*, 29 Cal. 3d
14 168, 189 (1981); *Tirapelle v. Davis*, 20 Cal. App. 4th 1317, 1335 (1993). The Legislature
15 has not taken any action to approve the Furlough Orders, and it has not delegated any
16 authority to the Governor or any state agency to implement the Furlough Orders. In short,
17 there is no legal basis to uphold application of the Furlough Orders to the Medical Board.

18 59. Finally, the Furlough Orders are unlawful under the Medical Practice Act
19 because they hinder the Medical Board from discharging its statutory duties to effectively
20 administer the licensing, regulatory and disciplining provisions of the Medical Practice
21 Act. The Furlough Orders also unlawfully usurp the Medical Board’s power to hire
22 employees as necessary to carry out its duties.

23 60. CMA and its members have a direct and immediate beneficial interest by
24 this Petition. The Budget Transfer and the Furlough Orders are injuring and impairing the
25 vested rights of CMA, physicians (including CMA physician members), and the public
26 by, among other things: (1) misappropriating physician fees paid to the Medical Board
27 with the statutory expectation that such fees would be used only by the Medical Board and
28 only to carry out its duties under the Medical Practice Act; (2) impairing the Medical

1 Board from carrying out its licensing, regulatory and enforcement duties to the detriment
2 of physicians and health care consumers; and (3) violating Petitioner's clear, beneficial
3 and present right to Respondents' compliance with the Constitution and the laws of the
4 State of California.

5 61. Respondents each have a clear, present and ministerial duty to act in strict
6 conformance with the laws of the State of California and to avoid violations of law.
7 Implementing the Budget Transfer and the Furlough Orders is unlawful.

8 62. CMA and its members have no plain, speedy and adequate remedy in the
9 ordinary course of law, other than relief sought in this Petition. CMA and its members
10 have suffered and will continue to suffer irreparable injury as a result of the Budget
11 Transfer and the Furlough Orders, and Respondents' unlawful conduct described herein.

12 63. CMA and its members have no administrative remedy that will result in
13 preventing or enjoining the illegal acts and their unlawful impact on CMA and its
14 members.

15 64. An actual controversy has arisen and now exists between Petitioner and
16 Respondents regarding their respective rights and duties. Respondents maintain that they
17 have acted lawfully in issuing, enacting and implementing the Budget Transfer and the
18 Furlough Orders, and have indicated no intention of reversing the unlawful conduct
19 described herein. CMA maintains that the Budget Transfer and the Furlough Orders are
20 unlawful and unconstitutional and causing injury to the interests and rights of CMA and
21 its members.

22 65. CMA and its members hence desire a declaration of the rights and powers, if
23 any, of Respondents concerning the Budget Transfer and the Furlough Orders.

24 66. A declaration from the Court is necessary and appropriate at this time in
25 order to avoid the further imposition of salary reductions and furloughs against Medical
26 Board employees pursuant to the Furlough Orders, and because Respondents have already
27 effected the transfer of \$6 million from the Contingent Fund to the General Fund and have
28 no intention of reversing this transfer.

1 **PRAYER**

2 WHEREFORE, Petitioner CMA prays for relief as follows:

3 1. That the Court issue a writ of mandate (a) commanding Respondents
4 Governor Schwarzenegger and Director Gilb to set aside the portions of the Governor's
5 Executive Orders S-16-08 and S-13-09, and any plans issued by the DPA purporting to
6 implement such executive orders, calling for furloughs and pay reductions for employees
7 of the Medical Board; and (b) commanding Respondent State Controller Chiang to pay
8 the full salaries and wages of Medical Board employees in accordance with the law,
9 without any reductions pursuant to the furloughs directed by the executive orders and any
10 DPA plans;

11 2. That the Court issue a writ of mandate commanding Respondents State
12 Controller Chiang, State Treasurer Lockyer and Finance Director Genest to immediately
13 re-transfer to the Contingent Fund any moneys that have been transferred to the General
14 Fund pursuant to the Budget Transfer, with interest;

15 3. That the Court declare (a) that Respondents Governor Schwarzenegger and
16 Director Gilb had and have no authority to furlough employees of the Medical Board
17 pursuant to the Governor's Executive Orders S-16-08 and S-13-09 and any plans issued
18 by the DPA purporting to implement such executive orders, and (b) that State Controller
19 Chiang had and has no authority to reduce the pay of employees of the Medical Board
20 pursuant to the furloughs and pay reductions directed by the executive orders and any
21 DPA plans;

22 4. That the Court declare the Budget Transfer to be unconstitutional – and
23 therefore invalid, unenforceable and having no force or effect of law – insofar as such
24 legislation seeks to transfer, whether in the form of a loan or otherwise, any moneys from
25 the Contingent Fund to the General Fund;

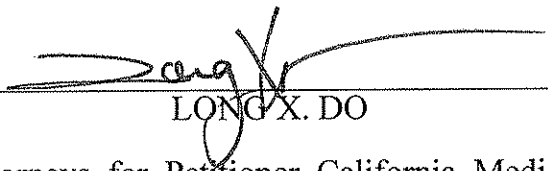
26 5. For costs of this writ proceeding;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 6. For reasonable attorneys' fees; and
- 7. Such other and further relief as the Court may deem just and proper.

DATED: October 12, 2009

FRANCISCO J. SILVA
LONG X. DO
CALIFORNIA MEDICAL ASSOCIATION

By: 
LONG X. DO
Attorneys for Petitioner California Medical Association

VERIFICATION

I, J. Brennan Cassidy, M.D., am the President-Elect of the California Medical Association, which is the Petitioner in the above-captioned proceeding. I have read the foregoing Petition for Writ of Mandate and know its contents. The facts stated therein are true and are within my personal knowledge. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 12, 2009, at Irvine, California.



J. Brennan Cassidy, M.D.

EXHIBIT A



Office of the Governor

ARNOLD SCHWARZENEGGER
THE PEOPLE'S GOVERNOR

EXECUTIVE ORDER S-16-08

12/19/2008

WHEREAS, due to developments in the worldwide and national financial markets, and continuing weak performance in the California economy, there is an approximately \$15 billion General Fund deficit for the 2008-09 fiscal year, which without effective action, is estimated to grow to a \$42 billion General Fund budget shortfall over the next 18 months; and

WHEREAS the cash reserve in the State Treasury is below the amount established by the State Controller to ensure that the cash balance does not reach zero on any day in the month; and

WHEREAS without effective action to address the fiscal and cash crisis, the cash reserve in the State Treasury is estimated to be a negative \$5 billion in March 2009; and

WHEREAS on November 6, 2008, due to concerns regarding dramatically declining revenues, I issued a Special Session Proclamation and convened the Legislature of the State of California to meet in extraordinary session to address the fiscal crisis that California faces; and

WHEREAS the Legislature failed during that Special Session to enact any bills to address the State's significant economic problems; and

WHEREAS on December 1, 2008, due to the worsening fiscal crisis, I declared that a fiscal emergency exists and convened the Legislature to meet in extraordinary session to address the fiscal crisis that California faces; and

WHEREAS on December 1, 2008, due to the fiscal emergency and the nationwide economic recession, I also issued a Special Session Proclamation and convened the Legislature of the State of California to meet in extraordinary session to address the economic crisis; and

WHEREAS on December 17, 2008, the California Pooled Money Investment Board took the unprecedented action to halt lending money for an estimated 2,000 infrastructure projects as a result of the cash crisis, including the substantial risk that California will have insufficient cash to meet its obligations starting in February 2009; and

WHEREAS in the December 1, 2008 fiscal emergency extraordinary session, the Legislature failed to effectively address the unprecedented statewide fiscal crisis; and

WHEREAS immediate and comprehensive action is needed to address the fiscal and cash crisis facing the State of California; and

WHEREAS failure to substantially reduce the deficit carried forward from the current fiscal year into the next fiscal year will likely prevent the State from being able to finance the cashflow shortages of billions of dollars, thus making it likely that the State will miss payroll and other essential services payments at the beginning of 2009; and

WHEREAS immediate and comprehensive action to reduce current spending must be taken to ensure, to the maximum extent possible, that the essential services of the State are not jeopardized and the public health and safety is preserved; and

WHEREAS State agencies and departments under my direct executive authority have already taken steps to reduce their expenses to achieve budget and cash savings for the current fiscal year; and

WHEREAS a furlough will reduce current spending and immediately improve the State's ability to meet its

obligations to pay for essential services of the State so as not to jeopardize its residents' health and safety in the current and next fiscal year.

NOW, THEREFORE, I, ARNOLD SCHWARZENEGGER, Governor of the State of California, by virtue of the power and authority vested in me by the Constitution and statutes of the State of California, do hereby determine that an emergency pursuant to Government Code section 3516.5 exists and issue this Order to become effective immediately:

IT IS ORDERED that effective February 1, 2009 through June 30, 2010, the Department of Personnel Administration shall adopt a plan to implement a furlough of represented state employees and supervisors for two days per month, regardless of funding source. This plan shall include a limited exemption process.

IT IS FURTHER ORDERED that effective February 1, 2009 through June 30, 2010, the Department of Personnel Administration shall adopt a plan to implement an equivalent furlough or salary reduction for all state managers, including exempt state employees, regardless of funding source.

IT IS FURTHER ORDERED that effective January 1, 2009 through June 30, 2010, the Department of Personnel Administration shall work with all State agencies and departments to initiate layoffs and other position reduction and program efficiency measures to achieve a reduction in General Fund payroll of up to ten percent. A limited exemption process shall be included.

IT IS FURTHER ORDERED effective January 1, 2009, the Department of Personnel Administration shall place the least senior twenty percent of state employees funded in any amount by General Fund resources on the State Restriction of Appointment (SROA) list.

IT IS FURTHER ORDERED that effective January 1, 2009 through June 30, 2010, all State agencies and departments under my direct executive authority, regardless of funding source, are prohibited from entering into any new personal services or consulting contracts to perform work as a result of the furloughs, layoffs or other position reduction measures implemented as a result of this Order.

IT IS REQUESTED that other entities of State government not under my direct executive authority, including the California Public Utilities Commission, the University of California, the California State University, California Community Colleges, the legislative branch (including the Legislative Counsel Bureau), and judicial branch, implement similar or other mitigation measures to achieve budget and cash savings for the current and next fiscal year.

This Order is not intended to create, and does not create, any rights or benefits, whether substantive or procedural, or enforceable at law or in equity, against the State of California or its agencies, departments, entities, officers, employees, or any other person.

I FURTHER ORDER that, as soon as hereafter possible, this Order shall be filed in the Office of the Secretary of State and that widespread publicity and notice be given to this Order.



IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 19th day of December, 2008.

ARNOLD SCHWARZENEGGER
Governor of California

ATTEST:
DEBRA BOWEN
Secretary of State

EXHIBIT B



Office of the Governor

ARNOLD SCHWARZENEGGER
THE PEOPLE'S GOVERNOR**EXECUTIVE ORDER S-13-09**

07/01/2009

WHEREAS the global recession has caused California's revenues to continue to plummet, leaving our state with an unprecedented budget deficit that forces the State to take drastic actions that will affect every Californian; and

WHEREAS on December 19, 2008, I issued Executive Order S-16-08, in which I ordered the Department of Personnel Administration (DPA) to: (1) initiate the layoff process for state civil service employees effective January 1, 2009 through June 30, 2010; and (2) adopt a plan to implement a furlough of two days per month effective February 1, 2009 to June 30, 2010; and

WHEREAS on January 9, 2009, in order to reduce current spending to ensure that essential services of the State are not jeopardized and the public health and safety is preserved, the DPA adopted a furlough plan; and

WHEREAS on May 15, 2009, state agencies and departments sent out over 4,500 layoff notices to employees funded by the General Fund to further reduce current state spending; and

WHEREAS on May 20, 2009, after the failure of Propositions 1A through 1E, California faced a budget deficit of at least \$21.3 billion for fiscal years 2008-09 and 2009-10; and

WHEREAS California planned to borrow up to \$6 billion through a Reimbursement Warrants (commonly known as RAWs) to address part of the budget deficit, but this short-term borrowing is no longer an available option due to the recent decision of the federal government not to provide financial assistance or loan guarantees for this emergency, short-term borrowing; and

WHEREAS the State's inability to borrow through RAWs will result in more severe spending cuts in the State's programs and services; and

WHEREAS on May 22, 2009, the Legislative Analyst predicted that the Governor's May Revision revenue projections may prove overly optimistic, and instead, projected that the drop in revenues will be at least \$3 billion worse than projected putting the size of the State's shortfall at more than \$24 billion for fiscal years 2008-09 and 2009-10; and

WHEREAS the State Controller has determined that without effective action to address the budget and cash crisis, the State will have insufficient cash to meet its obligations starting July 2009 and will need to issue registered warrants (IOUs) in order to preserve cash and protect payments the State must make to fund education and repay outstanding debt; and

WHEREAS the projected \$24 billion budget deficit will require deeper cuts to state programs and services, additional borrowing from available resources such as special funds, and the release of thousands of prison inmates who are undocumented immigrants; and

WHEREAS on June 30, 2009, the Legislature failed to take action to pass a revised budget for fiscal years 2008-09 and 2009-10 to effectively address the unprecedented statewide fiscal crisis, thereby requiring billions of dollars in additional solutions; and

WHEREAS the State will be forced to eliminate state programs and services providing critical public services, ranging from public safety to health and welfare; and

WHEREAS if the State eliminates any of these critical state programs and services, then the public health and safety

will be jeopardized, causing extreme peril to the safety of persons and property; and

WHEREAS immediate and comprehensive action to further reduce current spending must be taken to ensure, to the maximum extent possible, that the essential services of the State are not jeopardized and the public health and safety is preserved; and

WHEREAS an additional furlough day per month is necessary to continue to reduce current spending and immediately improve the State's ability to meet its obligations to pay for essential services of the State, such as services provided by CAL Fire, hospitals and 24-hour care facilities, so as not to jeopardize its residents' health and safety in the current and next fiscal year.

NOW, THEREFORE, I, ARNOLD SCHWARZENEGGER, Governor of the State of California, by virtue of the power and authority vested in me by the Constitution and statutes of the State of California, do hereby determine that an emergency pursuant to Government Code section 3516.5 exists and issue this Order to become effective immediately:

IT IS ORDERED that effective July 1, 2009 through June 30, 2010, the Department of Personnel Administration shall adopt an amended plan to implement a furlough of represented state employees for three days per month, regardless of funding source. This plan shall include a limited exemption process.

IT IS FURTHER ORDERED that effective July 1, 2009 through June 30, 2010, the Department of Personnel Administration shall adopt an amended plan to implement an equivalent furlough or salary reduction for all non-represented state employees, including supervisors, managers, and exempt state employees, regardless of funding source.

IT IS FURTHER ORDERED that all state employees covered by the original and amended furlough plans must use their accrued furlough days prior to using vacation, annual leave, personal holiday, holiday credit, personal leave plan (PLP) credit, and compensatory time off (CTO).

This Order is not intended to create, and does not create, any rights or benefits, whether substantive or procedural, or enforceable at law or in equity, against the State of California or its agencies, departments, entities, officers, employees, or any other person.

I FURTHER ORDER that, as soon as hereafter possible, this Order shall be filed in the Office of the Secretary of State and that widespread publicity and notice be given to this Order.



IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 1st day of July, 2009.

ARNOLD SCHWARZENEGGER
Governor of California

ATTEST:
DEBRA BOWEN
Secretary of State