

1 ELISE S. ROSE
Chief Counsel, California State Personnel Board
2 State Bar No. 102218
DOROTHY BACSKAI EGEL
3 Senior Staff Counsel
State Bar No. 124227
4 801 Capitol Mall
Sacramento, CA 95814
5 Telephone: (916) 653-1403
Facsimile: (916) 654-4256
6 Email: erose@spb.ca.gov

7 Attorneys for California State Personnel Board

8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 **MARCIANO PLATA, et al.,**

13 Plaintiffs,

14 v.

15 **ARNOLD SCHWARZENEGER, et al.,**

16 Defendants.
17

Case No.: C01-1351-TEH

18 **CALIFORNIA STATE PERSONNEL BOARD'S SUPPLEMENTAL OPPOSITION**
19 **TO RECEIVER'S MOTION FOR WAIVER OF STATE LAW**
20 **RE PHYSICIAN CLINICAL COMPETENCY DETERMINATIONS**
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1 ELISE S. ROSE
Chief Counsel, California State Personnel Board
2 State Bar No. 102218
DOROTHY BACSKAI EGEL
3 Senior Staff Counsel
State Bar No. 124227
4 801 Capitol Mall
Sacramento, CA 95814
5 Telephone: (916) 653-1403
Facsimile: (916) 654-4256
6 Email: erose@spb.ca.gov

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ARNOLD SCHWARZENEGER, et al.,

17

Defendants.

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Pursuant to the court's order dated January 11, 2008, the California State Personnel Board (SPB) submits the following supplemental opposition to the Receiver's Motion for Waiver of State Law re Physician Clinical Competency Determinations.

23

INTRODUCTION

24

The Receiver's motion to waive California state law to allow for a new disciplinary review process for civil service physicians accused of incompetence would require this court to waive key provisions of the California Constitution that vest exclusive jurisdiction over state civil service employee discipline with the SPB. *State Personnel Board v. Department of Personnel*

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1 *Administration*, 37 C.4th 512 (2005). SPB takes the position that existing civil service
2 disciplinary procedures are adequate to enable the Receiver to perform his duties and rid CDCR
3 of incompetent physicians. Nevertheless, in the spirit of cooperation, the SPB has had numerous
4 discussions with the Receiver's office in an effort to reach agreement over a process that would
5 incorporate medical-expert peer review of physician clinical competency into the SPB's
6 constitutionally mandated disciplinary-review function. The Receiver, however, even in his
7 most recent iteration of his discipline proposal, continues to insist that the SPB play no
8 meaningful role in reviewing the factual basis for terminating CDCR physicians from the state
9 civil service or deciding the disciplinary appeal. Therefore, the SPB continues to oppose the
10 Receiver's latest attempt to persuade the court to oust the SPB from its constitutional authority.

11 **ISSUES REMAINING IN DISPUTE**

12 **1. Whether State Civil Service Laws Are Clearly Preventing The Receiver From** 13 **Implementing A Constitutionally Adequate Medical Health-Care System**

14 The SPB disputes that the Receiver has met his initial threshold burden under this court's
15 February 14, 2006 Order Appointing Receiver ("OAR") and the Prison Litigation Reform Act
16 (PLRA) that a waiver of state law is necessary in order for the Receiver to accomplish his
17 mission of remedying the federal constitutional violations identified by the court. The
18 established civil-service disciplinary procedures and judicial-review avenues available under
19 existing state law pose no barrier to the ability of the Receiver to accomplish the court's goal of
20 bringing inmate health care up to constitutionally adequate standards, nor do they preclude the
21 termination of physicians who have demonstrated a failure to meet medically acceptable
22 standards of clinical performance. Instead, any past failure of CDCR to rid itself of poorly
23 performing physicians has been the result of inadequate and untimely investigation and
24 inadequate prosecution. Therefore, there is no basis for this court to consider waiving state law
25 governing the review of physician discipline. SPB has no objection to the Receiver's use of a
26 peer-review process to investigate alleged clinical misconduct and to base the imposition of
27 discipline on the findings of such a panel, subject to appeal to the SPB. The SPB, however,
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1 cannot agree to a process in which it is deprived of the opportunity to conduct a full and
2 meaningful review of the disciplinary action imposed.

3 **2. Whether The Relief Requested By The Receiver's Motion Requires A Waiver Of**
4 **Article VII, Section 3(a) Of The California Constitution**

5 The SPB and the Receiver continue to disagree fundamentally on the issue of whether the
6 suspension, revocation or restriction of physician "privileges" based upon alleged clinical
7 misconduct by the physician in the course and scope of his or her employment at CDCR
8 constitutes "discipline" subject to the SPB's exclusive constitutional jurisdiction. The SPB
9 disagrees with the Receiver's contention that a determination on physician "privileges" to
10 practice medicine at CDCR may be adjudicated separately from an appeal from disciplinary
11 action imposed by the employer for the same misconduct. While the SPB is willing to allow a
12 medical peer-review panel to make recommended findings of fact as to whether or not a
13 physician's performance met appropriate medical standards, the decision as to whether or not the
14 physicians "privileges" should be suspended, revoked or restricted is disciplinary in nature and
15 inextricably intertwined with formal adverse action imposed against the physician for the same
16 misconduct. Pursuant to Article VII, section 3(a) of the California Constitution, the SPB must
17 retain its ability to review the factual and legal basis for such an action, subject to judicial review
18 by the California courts.

19 The SPB has proposed a hearing process in which a medical panel hears the case along
20 with an ALJ, and where the ALJ would be bound to either adopt the panel's findings as part of
21 the discipline decision or set forth in a decision his or her rationale for not doing so. While the
22 Receiver purports to agree to some involvement by SPB ALJs and the 5-member SPB in his
23 proposed process, he refuses to permit either the ALJ or the SPB itself to review the factual
24 findings of the panel of medical personnel as to whether or not the physician engaged in the
25 charged misconduct. Thus, under the Receiver's proposal, the SPB would not be able to conduct
26 a meaningful review of the disciplinary action because it would not be permitted to make
27 credibility determinations or its own factual findings based upon the evidence presented at a
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1 hearing before an ALJ. Such an process is inconsistent with the decision of the California
2 Supreme Court in *State Personnel Board v. Department of Personnel Administration*, 37 C.4th
3 512 (2005).

4 **3. Whether The Court May Defer Ruling On The Constitutional Issue Until**
5 **Such Time As The SPB Issues A Decision That Disagrees With A**
6 **Determination By The Peer-Review Panel**

7 The SPB strongly disagrees that this court can defer ruling on the state constitutional issue
8 raised by the Receiver’s motion. As discussed below, the constitutional issue arises not merely
9 when the SPB issues a decision that may conflict with a decision of the peer review panel, but
10 permeates the entire disciplinary review process.

11 **4. Whether The Process Proposed By SPB Is A Less-Intrusive Means Of**
12 **Accomplishing The Receiver’s Objectives**

13 While the SPB sees the value of peer review, the SPB disagrees that any modification of
14 existing civil-service disciplinary review procedures is necessary to enable the Receiver to fulfill
15 his functions. Nonetheless, in the event the court determines that some modification of those
16 procedures is appropriate, the SPB has proposed a reasonable, less-intrusive alternative that
17 incorporates the use of a peer review by medical experts while enabling the SPB to continue to
18 exercise its constitutional authority. The Receiver, however, has rejected that proposal.

19 **ARGUMENT**

20 **I.**

21 **THE RECEIVER HAS NOT ESTABLISHED THAT STATE CIVIL-**
22 **SERVICE LAWS ARE CLEARLY PREVENTING HIM FROM**
23 **IMPLEMENTING A CONSTITUTIONALLY ADEQUATE PRISON**
24 **MEDICAL HEALTH CARE SYSTEM**

25 As set forth in SPB’s prior briefs, the Receiver has failed to establish, at the outset, that
26 state civil-service laws governing employee discipline pose any impediment whatsoever to the
27 ability of CDCR to provide constitutionally adequate medical care to its inmates. Thus, the
28 Receiver has failed to meet his burden of proving that the state civil service laws are “clearly
preventing” him from implementing a constitutionally adequate medical health care system.”

1 February 14, 2006 Order Appointing Receiver (“OAR”), Section II(D); 18 U.S.C.
2 §§ 3626(a)(1)(A), (B), (b)(3).

3 Under existing California law, CDCR may summarily suspend a physician pending
4 investigation of allegations of mistreatment of persons in a state institution, and may take
5 disciplinary action if the investigation confirms that such misconduct has occurred. Cal. Govt.
6 Code § 19574.5. Existing law also poses no barrier to the Receiver utilizing a peer-review
7 panel of medical experts to investigate alleged clinical misconduct and to base disciplinary
8 action upon the findings of such a panel, so long as the SPB retains the authority to review the
9 disciplinary action imposed. Contrary to the Receiver’s assertions, such a process would indeed
10 have “teeth.” Under existing California law, the SPB will sustain discipline imposed by CDCR
11 upon proof by CDCR of the factual and legal basis for the action, and would likely give great
12 weight to the opinion of a panel of medical experts with regard to the medical issues presented.
13 Cal. Govt. Code § 19583. Therefore, if the investigatory findings of the peer-review panel
14 support the allegations of misconduct, the Receiver should have no difficulty establishing cause
15 for discipline under existing law.

16 SPB routinely adjudicates appeals from discipline by physicians and other medical
17 personnel involving allegations of clinical misconduct, utilizing administrative law judges
18 charged with making factual findings and credibility determinations, as well as applying the law.
19 The SPB has provided numerous examples of such cases previously to the court. As indicated
20 by those decisions, the SPB routinely upholds physician discipline where supported by the
21 evidence. See SPB’s Response to Receiver’s Motion to Waive State Law Re Physician Clinical
22 Competency Determinations at p. 5, lines 17-22 and cases cited therein; *See also* Exhibit A to
23 Response of Amicus Curiae SPB to Receiver’s Reply In Support of Receiver’s Motion for
24 Waiver of State Law Re Physician Competency Determination (revoking discipline where
25 misconduct allegations not supported by evidence).

26 Decisions of the SPB are also subject to judicial review by the California courts by way of
27 a petition for writ of mandate. *State Personnel Board v. Department of Personnel*

1 *Administration, supra*, 37 C.4th at p. 522; *Boren v. State Personnel Board*, 37 C.2d 634, 637
2 (1951). The courts will uphold the SPB's decision upon a showing that the SPB's factual
3 findings are supported by substantial evidence. *Shepherd v. State Personnel Board*, 48 Cal.2d
4 41, 46, 307 P.2d 4 (1957). The Receiver has failed to explain why the California judiciary is
5 unable to correct any failure of the SPB determine the appropriate discipline of physicians who
6 are proven to have provided substandard medical care to inmates.

7 II.

8 **THE RELIEF REQUESTED BY THE RECEIVER CANNOT BE** 9 **GRANTED WITHOUT WAIVING THE CALIFORNIA** 10 **CONSTITUTION**

11 Despite the absence of any showing by the Receiver that existing state law is preventing
12 the Receiver from performing the duties entrusted to him by this court, the SPB has expressed its
13 willingness to modify existing civil-service disciplinary review procedures to incorporate much
14 of the Receiver's proposed peer-review process. SPB has not, as the Receiver suggests, insisted
15 on maintaining the "status quo," but has proposed alternative processes that allow for the use of
16 peer review to enable medical experts to evaluate physician performance while preserving the
17 SPB's ultimate authority over discipline. The Receiver has repeatedly rejected SPB's offers to
18 incorporate peer review into the disciplinary review procedures administered by the SPB,
19 insisting instead that the SPB cannot "review whether the physician is privileged to treat patients
20 in the prisons." Receiver's Report and Supplemental Memorandum in Support of Motion for
21 Waiver of State Law Re Physician Clinical Competency Determinations filed January 7, 2008
22 (hereinafter "Receiver's Supplemental Memorandum") at p. 4, lines 13-14. By so doing, the
23 Receiver continues to insist on a process that would require this court to waive Article VII,
24 section 3(a) of the California Constitution that vests exclusive jurisdiction to review state
25 civil-service discipline with the SPB.

26 Most recently, on October 23, 2007, the Receiver presented SPB with a draft proposed
27 stipulated process for "Appealing Final Proposed Action to Judicial Review Committee and
28 State Personnel Board" that continues to treat the suspension, revocation or restriction of

1 “privileges” to provide patient care at CDCR as outside the scope of the SPB’s review of
2 discipline of physicians for alleged deficiencies in their clinical performance. (See Exhibit 1 to
3 Declaration of Elise S. Rose filed herewith.)^{1/} Under that process, a physician accused of clinical
4 misconduct would be subjected to two separate administrative actions arising out of the same set
5 of facts: the suspension, revocation or restriction of the employee’s “privileges” to practice
6 medicine at CDCR and the additional discipline of the employee based upon the same
7 misconduct. In essence, the Receiver continues to insist on a process that would prevent the SPB
8 from performing a meaningful review of the facts presented at an evidentiary hearing to
9 determine whether they support the charges of misconduct levied against the physician
10 employee. For this reason, SPB cannot agree to the Receiver’s proposal.

11 According to the Receiver’s proposal, a panel of medical experts, denominated a “judicial
12 review committee” (JRC), would have the sole and binding authority to make factual findings at
13 a consolidated hearing on the employee’s appeal from both the so-called “privileging” action and
14 the disciplinary action. While the ALJ would ostensibly be permitted to make certain
15 evidentiary and legal rulings, the ALJ would not be permitted to make credibility determinations
16 of witnesses or findings of fact with regard to the physician’s clinical competency, or to vote,
17 comment, or “otherwise advise any person or entity regarding the privileging aspects of the
18 case.” All factual issues and the sufficiency of evidence pertaining to “privileging
19 determinations” would be made solely by the JRC. The determination of the JRC on the
20 “privileging” issue would be final and binding, and neither the ALJ nor the 5-member SPB
21 would be permitted to review the panel’s factual findings on the underlying misconduct that
22 forms the basis for both the suspension, revocation or restriction of privileges and the resulting
23 employment action.^{2/} As stated by the Receiver in his brief:

24
25 1. It is unclear whether the Receiver intends to utilize this process if the court were to grant
26 his motion, or whether he is seeking to impose the process as originally set forth in his motion.

27 2. The Receiver’s proposal fails to indicate whether the Receiver intends to submit to the
28 jurisdiction of the California courts to review JRC decisions, or whether he intends that such
determinations would be beyond the scope of judicial review as well.

1 The JRC will decide whether the physician will continue to enjoy privileges to
2 practice medicine in the prisons and, if not, the termination would be sustained.
3 Either party may appeal to the SPB, which may review the determination as to
4 whether the physician should be terminated from State service, but it will not
5 review whether the physician is privileged to treat patients in the prisons.

6 Receiver's Supplemental Memorandum, at p. 4, lines 10-14 (emphasis added).

7 What the Receiver fails to recognize is that the suspension, revocation or restriction of
8 "privileges" based upon an employee's job performance is disciplinary action that is inextricably
9 intertwined with whatever other employment action may be imposed on the offending employee.
10 California law recognizes that disciplinary action may take many forms, and expressly provides
11 that dismissal, demotion, suspension or other disciplinary action are within the scope of the
12 SPB's constitutional authority. Cal. Govt. Code § 19570 ("As used in this article "adverse
13 action" means dismissal, demotion, suspension, or other disciplinary action."). The SPB has
14 long held that reassignment based on performance issues constitutes "other disciplinary action"
15 under Government Code section 19570. *See In the Matter of the Appeal by Carol DeHart*, SPB
16 Dec. No. 94-22, p. 5 (1994) (Exhibit 2 to Declaration of Elise S. Rose).

17 The Receiver continues to assert that the decision as to whether or not a physician should
18 continue to retain "privileges" to practice medicine at CDCR institutions is somehow distinct
19 from the decision as to whether or not the same physician should be disciplined—*i.e.*, suspended
20 or terminated from employment—for the same acts giving rise to the "privileging" action. Such
21 a construction ignores the fact that the two actions arise out of the same set of facts, which must
22 be determined by weighing the evidence and making credibility determinations. The Receiver's
23 proposal deprives the SPB and its ALJs of the opportunity to make those crucial
24 determinations.^{3/} Instead, once the JRC determines to suspend or revoke a physician's privileges
25 to provide medical care at CDCR, the employee can no longer perform the functions of his

26 3. Because the SPB's review over disciplinary actions cannot be delegated to another entity,
27 it would be constitutionally improper for ALJs employed by another state agency to preside over
28 state employee disciplinary hearings. Instead, ALJs employed by the SPB act as its authorized
representatives in presiding over disciplinary hearings and preparing proposed decisions for review
by the 5-member SPB. *See* Cal. Govt. Code § 19582.

1 position, leaving the SPB with no realistic option but to uphold the employee's suspension or
2 termination.^{4/} There is, therefore, no material difference between the "suspension" or
3 "revocation" of a physician's clinical privileges and the suspension or termination of the
4 physician from his or her position altogether. Regardless of phraseology, the employer is taking
5 action to prohibit the physician from performing his or her normal job duties based upon alleged
6 deficiencies in the employee's job performance. Because the action constitutes discipline, it falls
7 well within the SPB's constitutional jurisdiction.

8 The Receiver is incorrect in his assertion that the SPB's constitutional authority to review
9 discipline can be circumscribed by the Legislature. While the courts have held that the
10 Legislature may establish causes for discipline, the California Supreme Court has squarely
11 rejected the notion that the Legislature may delegate the SPB's constitutional review function to
12 another entity. *State Personnel Board v. Department of Personnel Administration*, 37 C.4th 512,
13 527 (2005). As stated by the Supreme Court:

14 [the] public interest [in ensuring compliance with the merit principle] would be
15 subverted if various ad hoc arbitral boards, operating beyond control of the
16 State Personnel Board and not bound to apply its merit-based standards, could
17 review and reverse disciplinary actions taken against state civil service
18 employees.

19 The Receiver's proposal does not purport to describe causes for discipline,^{5/} but seeks to
20 define the term "discipline" itself in a manner inconsistent with California law and in a way that
21 interferes with the SPB's constitutional authority.

22 4. The Receiver's suggestion that the SPB would be free to reassign a physician to another
23 position within CDCR that does not involve patient care or to perform patient care for another state
24 agency borders on the absurd. Surely, the court does not contemplate the Receiver foisting off its
25 unwanted physicians to care for patients in state institutions outside the scope of the Receivership.
Other than reviewing disciplinary reassignments, the SPB does not determine where a state agency
will assign its employees, nor does it reassign employees from one state agency to another.

26 5. A physician who fails to meet acceptable medical standards may be disciplined under
27 existing California law for causes including incompetency, inefficiency, inexcusable neglect of duty,
28 insubordination, wilful disobedience, and other failure of good behavior. Cal. Govt. Code §
19572(b), (c), (d),(e), (o) and (t).

1 The Receiver continues to assert that the SPB should treat the CDCR's revocation of
2 privileges like the revocation of a medical license by the Medical Board, and that the Receiver
3 should be permitted to summarily "nonpunitively terminate" affected CDCR physicians under
4 existing state law. *See* Cal. Govt. Code § 19585.^{6/} Yet, the Receiver acknowledges that he is not
5 proposing that loss of privileges be treated as subject only to the non-punitive termination rules,
6 but has requested a waiver of state law governing appeals from disciplinary action. *See*
7 Receiver's Supplemental Memorandum at p. 8, lines 9-10; Proposed Orders Granting Receiver's
8 Motion. As the SPB has previously advised the court, the nonpunitive termination process
9 applies only where the *sole* basis for termination is the failure of the employee to meet a
10 requirement for continuing employment established by the SPB, and does not apply where the
11 termination is based upon the employee's failure to meet performance standards. *See* Response
12 of *Amicus Curiae* State Personnel Board to Receiver's Reply in Support of Receiver's Motion
13 for Waiver of State Law Re Physician Competency Determinations, at pp. 6-8.

14 In contrast, the Receiver's proposed "privileging" process constitutes punishment imposed
15 by the employer for on-the-job misconduct. The legal and factual issues, as well as the evidence,
16 in the "privileging" action are substantially the same as those in the disciplinary action: did the
17 employee engage in clinical misconduct warranting removal of the employee from his or her
18 position providing patient care? By continuing to treat the "privileging action" as a separate
19 action, the Receiver seeks to draw an artificial distinction where none exists: the refusal to
20 permit a physician to perform his or her duties for reasons related to the physician's performance
21 is disciplinary action subject to review by the SPB.

22 More tellingly, by requesting a waiver of state statutes governing the state civil-service
23 *disciplinary* process, the Receiver implicitly and explicitly recognizes that his proposal does
24 indeed implicate the jurisdiction of the SPB established by Article VII, section 3(a) of the
25 California Constitution. Each of his proposed orders requests that this court waive application of
26

27 6. The Receiver's reliance on a 2006 letter from the SPB's counsel is misplaced. That letter
28 is not binding on the Board, nor is it an expression of Board current policy.

1 state statutes governing the disciplinary process, as set forth in specified California Government
2 Code sections. There can be no doubt that the Receiver recognizes that his proposal implicates
3 the California Constitution.^{7/}

4 **III.**

5 **THE CONSTITUTIONAL ISSUE CANNOT BE DEFERRED**

6 In asserting that the court can reach the result requested by the Receiver without waiving
7 Article VII of the California Constitution, or by deferring such a ruling, the Receiver
8 misconstrues the nature of the constitutional conflict in this case. The constitutional conflict is
9 not “largely hypothetical,” as the Receiver claims, (*see* Supplemental Memorandum, at p. 12,
10 lines 1-2), but arises the moment the Receiver’s proposed process is implemented and the SPB is
11 deprived of the opportunity to conduct a full and meaningful review of the disciplinary action
12 imposed, not just in the event the SPB determines that a disciplinary action imposed upon a
13 physician whose privileges have been deemed revoked by the physician panel should be revoked
14 or modified. Indeed, a decision by the JRC affecting a physician’s “privileges” could be subject
15 to appeal before the SPB as other disciplinary action. By preventing the SPB and its ALJs from
16 performing a meaningful review of the underlying factual basis of the disciplinary action, the
17 proposal prevents the SPB from performing its constitutional review function.

18 **IV.**

19 **THE SPB HAS OFFERED A REASONABLE MEANS OF**
20 **ACCOMMODATING THE RECEIVER’S CONCERNS WHILE**
PRESERVING ITS CONSTITUTIONAL AUTHORITY

21 As described in the November 16, 2007 letter from the SPB Chief Counsel, the SPB has
22 offered to allow a physician panel to sit with its ALJs and hear the evidence presented in support
23 of allegations that a physician has engaged clinical misconduct. See Attachment to SPB’s
24

25 7. Nothing prevents the Receiver from seeking to revoke a physician’s medical license
26 before the Medical Board and, if successful, then properly invoking the nonpunitive termination
27 statute before the SPB. By attempting to shortcut the Medical Board’s process through improper
28 use of the nonpunitive termination statute, the Receiver ends up undermining state law and policy
applicable to both the Medical Board and the SPB.

1 Response to Receiver's Motion to Waive State Law Re Clinical Competency Determinations
2 filed May 22, 2007; Exhibit 1 to Declaration of Linda Buzzini in Support of Receiver's Motion
3 for Waiver of State Law Re Clinical Competency Determinations filed January 7, 2008.

4 The SPB is willing to require its ALJs to undergo special training in medical cases in the
5 same manner as proposed by the Receiver for ALJs employed by the Office of Administrative
6 Hearings, to allow the medical panel to make recommended findings of fact concerning the
7 alleged medical misconduct, and should the ALJ decline to adopt those findings, to require its
8 ALJ to explain the reasons. Such recommended findings of fact would be included in the record
9 of the administrative proceedings in the event the 5-member SPB elects to hear the case itself, as
10 well as in the event of judicial review. What the SPB is not willing to do is to relinquish its
11 ultimate constitutional authority to review all of the facts underlying a disciplinary action and to
12 make the final decision, subject to judicial review, as to whether or not the employer has
13 established the factual allegations against the employee, and whether the disciplinary action
14 imposed by the employer is consistent with the constitutional merit principle embodied in Article
15 VII of the California Constitution.

16 Contrary to the Receiver's assertion, the SPB's proposal to incorporate peer review into its
17 disciplinary review process is not "functionally meaningless and effectively without
18 consequences." See Receiver's Supplemental Memorandum, at p. 2, lines 12-13. The SPB has
19 welcomed the assistance of the medical expertise that can be provided by a peer review panel to
20 aid it in evaluating the evidence presented before it in determining whether a physician has
21 engaged in clinical misconduct warranting disciplinary action. Given that the SPB's decision
22 will be upheld by the courts if it is supported by substantial evidence, there should be little basis
23 for complaint by the Receiver. If, in fact, adequate evidence exists to support the decision to
24 impose disciplinary action, the action will be upheld by both the SPB and state courts.

25 CONCLUSION

26 The Receiver's proposal to prevent the SPB from reviewing the factual and legal basis for
27 suspending, restricting, or removing a physician from clinical duties based upon alleged clinical
28

1 performance deficiencies raises a substantial, immediate, and unnecessary conflict with Article VII,
2 section 3(a) of the California Constitution. Although the Receiver cannot establish that California
3 civil-service disciplinary laws pose any impediment to the ability of CDCR or the Receiver to
4 provide a constitutional level of medical care to California prison inmates, the SPB has offered to
5 substantially modify its procedures in order to incorporate a peer-review process that would satisfy
6 the court's objectives. The Receiver has failed to put forth any alternative that would retain the
7 SPB's constitutional jurisdiction to review discipline imposed on state civil-service physicians.
8 Accordingly, the Receiver's motion should be denied in its entirety.

9

10 Dated: January 22, 2008

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Respectfully submitted,

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ELISE S. ROSE
Chief Counsel

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DOROTHY BACSKAI EGEL

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Senior Staff Counsel

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Attorneys for California State Personnel Board

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: ***Marciano Plata, et al. v. Arnold Schwarzenegger, et al.***
U.S. District Court, Northern District Case No. C01-1351 TEH

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 that same day in the ordinary course of business.

On January 22, 2008, I served the attached **California State Personnel Board's Supplemental Opposition to Receiver's Motion For Waiver of State Law Re Physician Clinical Competency Determinations**. That I electronically filed a true and correct copy of said document(s) at the U.S. District Court for the Northern District of California located at 450 Golden Gate Avenue in San Francisco, California 94102-3483.

That I placed a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1515 Clay Street, Suite 2000, Oakland, California 94612-1413, addressed as follows:

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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 January 22, 2008, at Oakland, California.

Thelma Montoya
Declarant



Signature

DECLARATION OF SERVICE BY U.S. MAIL - Cont'd.

CASE NAME: *Marciano Plata, et al. v. Arnold Schwarzeneger, et al.*
U.S. District Court, Northern District Case No. C01-1351 TEH

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