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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

FEB 08 2010

John A. Clarke, Executive Officer/Clerk
By Glenn Enaley, Deputy

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF LOS ANGELES

10 PEOPLE OF THE STATE OF CALIFORNIA,
11 Plaintiff
12 v.
13 CONRAD MURRAY, M.D.,
14 Defendant
15 MEDICAL BOARD OF CALIFORNIA,
16 Applicant
17

Case No. SA073164

NOTICE OF APPEARANCE
AND RECOMMENDATION BY STATE
LICENSING AGENCY RE: RESTRICTIONS
ON PRACTICE OF MEDICINE;
MEMORANDUM OF POINTS AND
AUTHORITIES; PROPOSED ORDER

[Penal Code § 23]

Date: February 8, 2010
Time: 1:30 p.m.
Dept: 144
Judge:

19 TO THE CLERK OF THE ABOVE ENTITLED COURT AND TO THE DEFENDANT
20 AND HIS COUNSEL:

21 PLEASE TAKE NOTICE that on February 8, 2010, a request will be made for hearing of
22 the matters described herein in Department 144 of the above-entitled court, located at 11701 S. La
23 Cienega Boulevard, Los Angeles, California 90045, or another assigned Los Angeles Superior
24 Court Department at the next scheduled event in this case. At such time Linda K. Whitney, in her
25 official capacity as the Interim Executive Director of the Medical Board of California (Board),
26 Department of Consumer Affairs, will voluntarily appear before this Court, through counsel,
27 California Attorney General, Edmund G. Brown Jr., by Deputy Attorney General Trina L.
28 Saunders, under the authority of Penal Code Section 23, and will recommend that the Court issue

1 an Order requiring that, as a condition of bail or own-recognizance release (O.R.), Defendant
2 Conrad Murray, M.D. (Physician's and Surgeon's Certificate No. G71169), cease and desist
3 from practicing medicine during the pendency of this criminal action.

4 This Order, as it relates to the practice of medicine, is requested in the interest of justice
5 and as a condition of bail on the grounds that the Defendant, if allowed to continue to practice
6 medicine without restrictions, poses a danger to the public health, safety and welfare. This
7 request is being made pursuant to this Court's authority to "take into consideration the protection
8 of the public" when imposing conditions for release on bail. (Pen. Code § 1275)

9 This appearance and request is based upon this notice, the attached Memorandum of
10 Points and Authorities, the criminal complaint, and any testimony and documents submitted in
11 this matter, and such further evidence, papers and argument as the Court may hear at the time of
12 the hearing or of which the Court may take judicial notice.

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MEMORANDUM OF POINTS AND AUTHORITIES

THIS COURT IS EMPOWERED TO RESTRICT THE USE OF PROFESSIONAL LICENSE AS A CONDITION OF BAIL WHERE, AS HERE, THE DEFENDANT POSES A DANGER TO THE PUBLIC HEALTH, SAFETY AND WELFARE AND THE CRIMES CHARGED ARE SUBSTANTIALLY RELATED TO THE QUALIFICATIONS, FUNCTIONS OR DUTIES OF HIS LICENSE

I. STATEMENT OF THE CASE

Defendant Conrad Murray, M.D. is a physician licensed in the State of California. His Physician's and Surgeon's Certificate No. G71169, was issued on April 22, 1991, and will expire on February 28, 2011, unless renewed. Applicant Linda K. Whitney is the Interim Executive Director of the Medical Board of California. (Board) The Board is the agency charged with protecting the public through disciplinary proceedings against physicians whose conduct violates the Medical Practices Act (Bus. & Prof. Code, §2000 et seq.)

The Board learned that a Criminal Complaint is to be filed in this Court on or about February 8, 2010, alleging that Dr. Murray committed an act of involuntary manslaughter of a patient, M.J., who was under his care, on June 25, 2009.

The Board has been informed and upon information and belief asserts that the coroner deemed the cause of death of patient M.J., on June 25, 2009, to be a homicide resulting from acute propofol intoxication. Defendant Murray administered the lethal dose of propofol, as well as other drugs to patient M.J. The People allege that Dr. Murray's reckless conduct led to the demise of patient M.J.

The above-described actions of the Defendant, violate the Medical Practices Act and are reprehensible. Defendant Murray used his medical license to perpetrate this crime. But for his license to practice medicine, he would not have had any contact with victim M.J., nor the ability to administer the powerful medication in question. Murray's criminal conduct, and reckless actions taken in the care and treatment of his patient M.J. makes him a danger to the public. This application seeks to protect the public interest by requesting this Court to impose a bail provision preventing Dr. Murray from practicing medicine in the State of California pending the outcome of these criminal proceedings.

ARGUMENT

1
2 THIS COURT SHOULD ORDER THAT DEFENDANT MURRAY BE RESTRAINED
3 FROM PRACTICING MEDICINE WHILE THE CRIMINAL CHARGES ARE
4 PENDING

5 **1. The Medical Board's Authority to Request Restrictions**

6 The Board is the agency charged with protecting the public from dangerous, incompetent,
7 or impaired physicians and surgeons. The Board has the responsibility for enforcing the
8 disciplinary and criminal provisions of the Medical Practice Act. To help fulfill that
9 responsibility the Legislature has authorized the Board to voluntarily appear in criminal
10 proceedings, make recommendations, and assist the Court to protect the public interest.
11 Specifically, Penal Code section 23 provides: "In any criminal proceeding against a person who
12 has been issued a license to engage in a business profession by the state agency pursuant to
13 provisions of the Business and Professions Code . . . , the state agency which issued the license
14 may voluntarily appear to furnish pertinent information, make recommendations regarding
15 specific conditions of probation, or provide assistance necessary to promote the interest of justice
16 and protect the interests of the public, or may be ordered by the court to do so, if the crime
17 charged is substantially related o the qualifications, functions, or duties of the licensee."

18
19 Section 23 is a liberally designed statute adopted by the Legislature to promote public
20 protection and to assist the court to accomplish that end. No formal procedures or format are
21 mandated when an agency makes a voluntary appearance. The statute recognizes that licensing
22 agencies, such as the Board, have a compelling and urgent interest in cases in which licensees are
23 charged with crimes substantially related to the qualifications, functions and duties of their
24 profession. Pursuant to this authority, the Interim Executive Director of the Board, Linda K.
25 Whitney hereby voluntarily appears through counsel to request that is Court protect the interest of
26 the public by imposing conditions requiring defendant Murray to refrain from the practice of
27 medicine during the pendency of this case.
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1 Penal Code section 23 defines a state agency to include any state board, like the Medical
2 Board of California, created pursuant to the provisions of the Business and Professions Code to
3 license and regulate individuals who engage in certain professions. The Board licenses and
4 regulates physicians. (Bus. & Prof. Code, §2000 et seq.) In cases where appropriate notice has
5 been provided to the defendant and where a verified showing has been made regarding the
6 circumstances of the crime, the Superior Court is authorized to act upon the request of a licensing
7 agency and to restrict the practice of the defendant licensee. (*Gray v. Superior Court* (2005) 125
8 Cal.App.4th 629, 638)
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10 **2. In Setting Bail This Court's Primary Consideration Must Be the Protection of the**
11 **Public.**

12 Several statutes allow the court to consider, and reconsider, the terms of a defendant's
13 bail, or release on his or own recognizance (O.R.), during the pendency of a criminal case. (Pen.
14 Code § 1275: imposition of bail; Pen. Code § 1313: own recognizance release; Pen. Code § 1289;
15 increase or decrease bail for good cause after a defendant has been admitted to bail upon an
16 indictment or information; Pen Code §§ 1273 and 1277: bail set when the defendant is held to
17 answer after the preliminary examination.) The Court may place restrictions upon a defendant as
18 a condition of bail to ensure public safety. Specifically, Section 1275 of the Penal Code was
19 amended in 1985 to state, in relevant part.

20 This Court may issue an order prohibiting Defendant from engaging in the practice
21 of medicine as a condition of bail if the public interest is thereby protected. (Pen. Code, § 1275,
22 subd. (a); see also *In Re McSherry* (2003) 112 Cal.App.4th 856, 861.) Penal Code section 1275,
23 subdivision (a) provides in pertinent part:

24
25 (a) "In setting, reducing, or denying bail, the judge or magistrate **shall take into**
26 **consideration the protection of the public**, the seriousness of the offense charged, the
27 previous criminal record of the defendant, and the probability of his or her appearing at
28 trial or hearing of the case. **The public safety shall be the primary consideration.**
(Emphasis added.)

1 The discretion to curtail a defendant's dangerous practices is like the court's broad
2 discretion to impose conditions of probation prohibiting a person from engaging in any
3 occupational, vocational, or professional activity, whether or not regulated by state licensing
4 agencies, if it relates to the crime for which he or she was charged or convicted, or forbids
5 conduct related to possible future criminality. In both situations, the conditions serve to protect
6 the public. (*People v. Frank* (1949) 94 Cal.App.2d 740, 7741-742 [pediatrician could not practice
7 medicine after lewd act conviction]; *People v. Keefer* (1973_) 35 Cal.App.3d 156, 168-169
8 [defendant precluded from working in heating business after theft conviction]; also *People v.*
9 *Lewis* (1978) 77 Cal.App.3d 455, at 463-464[defendant could not drive taxis or bartend after
10 pimping conviction].)

11 It is well established that the presumption of innocence does not attach to a pretrial
12 determination concerning bail; rather, the Court is to assume the defendant is guilty of the
13 charged offenses. (*Ex Parte J.C. Duncan* (1879) 53 Cal. 410; followed in re *York* (1995) 9 Cal.
14 4th 1133, 1147-1148; the rule was affirmed by the United States Supreme Court in *Bell v. Wolfish*
15 (1979) 441 U.S. 520, 533.) The Court has the authority to impose restrictions that protect the
16 public as a condition of Defendant's release on bail. (*Gray v. Sup. Ct.* (2005) 125 Cal.App.4th
17 629.)

18
19 **3. This Court's Imposition of a Bail Provision Preventing Defendant Murray From**
Practicing Medicine Is Reasonable Under the Circumstances.

20 The imposition of a restriction on Defendant's professional license as a condition of bail is
21 reasonable in light of the nature of the charges pending against him, and does not offend the
22 constitutional presumption of innocence. In, *In Re York* (1995) 9 Cal.4th 1133, the Supreme
23 Court stated that the "reasonable conditions" contemplated by the statute went beyond merely
24 assuring a defendant's future appearances in court, but instead empowered a court to impose
25 appropriate conditions "that relate to the prevention and detection of further crime and thus to the
26 safety of the public." (*Id.*, p. 1145; Court approved random drug testing and warrantless search
27 and seizure O.R. release conditions in drug case; see also *Terry v. Superior Court* (1999) 73
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1 Cal.App.4th 661, 665.) The only limitation on this power is that the court must make a specific
2 individualized determination that the condition is appropriate with respect to the defendant.

3 The Board plans to initiate formal administrative proceedings against Defendant
4 Murray based on the grounds stated in the present criminal charges. An order by a criminal judge
5 or magistrate prohibiting defendant from the practice of medicine is the preferred remedy
6 available to the Board for several reasons, especially in exigent circumstances such as in this case.
7 While procedures exist for the Medical Board to seek civil and administrative remedies to enjoin
8 or suspend Defendant from the practice of medicine until the Board undertakes disciplinary action
9 (for example, an Interim Suspension Order or TRO), none are as quick and efficient as Penal
10 Code section 23; moreover, such remedies are cumulative and not exclusive. Penal Code sections
11 23 and 1275 are tools that accomplish public protection quickly, efficiently and economically.
12 However, if this Court does not impose the requested prohibition on Defendant's practice of
13 medicine, Defendant may not be subjected to any restrictions, supervision or guidance pending
14 the Board's completion of its investigation and the resultant formal administrative proceedings.
15 Allowing Defendant to return to his medical practice, unfettered and unrestricted would treat as
16 insignificant the charges of this complaint.

17 The circumstances in this case call for the court to order that Defendant not to
18 engage in the practice of medicine as a condition of bail or other form or release. The crime
19 charged in this case is substantially related to the qualifications, functions, or duties of a
20 physician: Defendant is alleged to have administered a lethal dose of propofol and other powerful
21 drugs to patient M.J., which resulted in the patient's death. The exercise of such poor
22 professional judgment and placing the life of a patient in jeopardy requires that the Board take
23 measures to protect the public from future harm.

24 The Board submits that the facts in this matter merit that the Court restrict
25 Defendant's medical license as a condition of any bail imposed in this matter. The serious
26 charges in this matter are substantially related to defendant's qualifications, functions, and duties
27 as a California-licensed physician. First, the incident was so egregious as to, "shock the
28 conscious." Defendant was trusted to practice medicine with the utmost respect for his patients'

1 well being. Instead, he demonstrated extremely poor medical judgment and ultimately took the
2 life of his patient. Defendant's behavior shows an utter disregard for the care and well-being of
3 the persons entrusted to his care. His conduct is unprofessional and reckless. This is conduct
4 from which the public should be protected. Therefore, there are good and compelling causes for
5 this Court to order, as a provision of bail or O.R. release, that defendant be prohibited from
6 engaging in the practice of medicine, and any related licensed activity, while these criminal
7 charges are pending.

8 This Court has the power under Penal Code sections 23 and 1275 to impose the
9 requested restriction on Defendant's license, and public interest requires nothing less.

10
11 **II. CONCLUSION**

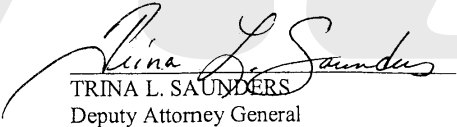
12 For the foregoing reasons, Applicant Linda K. Whitney, Interim Executive
13 Director of the Medical Board of California, respectfully requests that this Court impose as a
14 condition of bail or other form of release a prohibition on Dr. Murray's practice of medicine until
15 the final conclusion of the pending criminal proceedings, including imposition of sentence.

16 Dated: February 5, 2010

17
18 Respectfully submitted,

19 EDMUND G. BROWN JR.
20 Attorney General of California

21 ROBERT McKIM BELL
22 Supervising Deputy Attorney General

23 
24 TRINA L. SAUNDERS
25 Deputy Attorney General
26 Attorneys for Applicant

27 LA2009507194

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12 Attorneys for Applicant Medical Board

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF LOS ANGELES

10 PEOPLE OF THE STATE OF CALIFORNIA
11 Plaintiff

Case No.

12 v.

DECLARATION OF COUNSEL TRINA L.
SAUNDERS, DAG IN SUPPORT OF
RECOMMENDATION OF STATE
LICENSING AGENCY

14 CONRAD MURRAY, M.D.,
15 Defendant

RE: REQUESTED BAIL CONDITION
PROHIBITING PRACTICE OF MEDICINE

16 MEDICAL BOARD OF CALIFORNIA,
17 Applicant

[Penal Code § 23]

Date: February 8, 2010
Time: 1:30 p.m.
Place: Superior Court, Los Angeles County,
Airport Court
Dept: 144 (Arraignment Division)

19 I TRINA L. SAUNDERS, hereby declare:

21 1. I am an attorney licensed to practice in the State of California and am
22 employed with the California Department of Justice as a Deputy Attorney General in the Health
23 Quality Enforcement Section in Los Angeles. I have personal knowledge of the following facts
24 and if called as a witness, I could and would competently testify thereto.

25 2. In my capacity as a Deputy Attorney General, I am the attorney of record
26 Assigned to make an appearance in this case on behalf of Linda K. Whitney, Interim Executive
27 Director of the Medical Board of California, to requests that the Defendant be prohibited from
28 practicing medicine during the pendency of this criminal matter, as a condition of bail.

1 3. The Board records show that Defendant Conrad Murray is a licensed physician
2 in the State of California. His certificate, number G71169, was issued on April 22, 1991, and
3 will expire on February 28, 2011, unless renewed.

4 4. As counsel for the Board, I was informed that on February 5, 2010, a criminal
5 complaint would be filed against Defendant Murray, alleging involuntary manslaughter, of his
6 patient M.J. on June 25, 2009, and that his arraignment for such charge would take place on the
7 same date.

8 5. As a member of the Health Quality Enforcement Section, I am personally
9 familiar with the procedures that are available to obtain a suspension this physician's and
10 surgeon's certificate through the administrative process.

11 6. The alleged criminal conduct as well as possible conviction for the charged
12 crime constitutes a violation of the Medical Practice Act, and would subject the Defendant's
13 professional license to discipline.

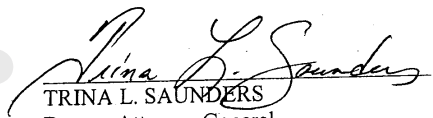
14 7. Unless a criminal conviction is obtained, the Board would have to put on the
15 same evidence, witnesses and exhibits that must be used in this criminal proceeding in order to
16 prove the charges. This would involve considerable expense for the Board. If a criminal
17 conviction is obtained, a final disciplinary order cannot be entered by the Board based on that
18 conviction under Business and Professions Code section 2227 until the time of appeal has
19 elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is
20 made suspending the imposition of sentence. (Bus. & Prof. Code § 490.)

21 8. Proceeding administratively prior to completion of this criminal action
22 constitutes a duplication of scarce public resources and a greater imposition on the
23 witness/victims. It would jeopardize the defendant's rights against self-incrimination as he can be
24 called as a witness by the Board at the administrative hearing and if he fails to put on a defense,
25 that will be considered against him.
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9. As a condition of Defendant's bail, in order to protect the public's health, safety and welfare, an order requiring Defendant to cease and desist from the practice of medicine in California during the pendency of this case up to the final disposition of the criminal matter, and sentence, is respectfully requested on behalf of Linda K. Whitney, the Interim Director of the Medical Board of California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 5th day of February, 2010, in Los Angeles, California.


TRINA L. SAUNDERS
Deputy Attorney General
Declarant

LA2009507194

DECLARATION OF PERSONAL SERVICE

Case Name: PEOPLE OF THE STATE OF CALIFORNIA, v. CONRAD MURRAY, M.D.,
MEDICAL BOARD OF CALIFORNIA, Applicant

Case No.: SA07-3164

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; my business address is: 300 South Spring Street, Suite 1702, Los Angeles, CA 90013.

On February 8, 2010, I served the attached **NOTICE OF APPEARANCE AND RECOMMENDATION BY STATE LICENSING AGENCY RE: RESTRICTIONS ON PRACTICE OF MEDICINE; MEMORANDUM OF POINTS AND AUTHORITIES; PROPOSED ORDER; DECLARATION OF COUNSEL TRINA L. SAUNDERS, DAG IN SUPPORT OF RECOMMENDATION OF STATE LICENSING AGENCY** personally delivering a true copy thereof to the following person(s) :

Ed Chernoff
Suite 200
1018 Preston St
Houston, TX 77002

David Walgren
Los Angeles County District Attorney
210 W Temple St # 18000
Los Angeles, CA 90012-3210 .

J. Michael Flanagan
1156 North Brand Boulevard
Glendale, California 91202

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 February 8, 2010, at Los Angeles, California.

Trina L. Saunders
Declarant


Signature