

1 Michael Machat Esq.
Bar No. 109475
2 Law Office of Michael Machat,
8730 W Sunset Blvd Ste 250,
3 West Hollywood, CA 90069-2281
Phone: (310) 860-1833
4 Email: michael@machatlaw.com
Attorney for the Plaintiff/Petitioner
5

6 *Subject to admission pro hac vice*
Jacques G. Simon, Esq.
7 Admitted in NY, CT, GA, DC and TX
100 Jericho Quadrangle Suite 208
8 Jericho, NY 11753
Tel: (516)378-8400
9 Email: jgs@jacquessimon.com
Attorneys for the Plaintiff/Petitioner
10

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SACRAMENTO

13 -----X
STATE OF CALIFORNIA EX.REL.
14 RON KENNEDY M.D
Petitioner
15

16 and RON KENNEDY M.D. individually CIVIL ACTION
CASE NO.:
17 Plaintiff,
-against-
18

19 CALIFORNIA DEPARTMENT OF CONSUMER
20 AFFAIRS (“DCA”); ALEXIS PODESTA IN HER
OFFICIAL CAPACITY AS SECRETARY OF THE
21 DCA; DEAN GRAFILO IN HIS OFFICIAL CAPACITY
AS THE DIRECTOR OF THE DCA; CALIFORNIA
22 MEDICAL BOARD (BOARD”); DENISE PINES
IN HER OFFICIAL CAPACITY AS PRESIDENT OF
23 THE BOARD; RONALD M. LEWIS M.D. IN HIS
CAPACITY AS VICE PRESIDENT OF THE BOARD;
24 MICHELLE ANN BHOLAT M.D. IN HER OFFICIAL
CAPACITY AS SECRETARY OF THE BOARD;
25 RANDY HAWKINS, M.D. IN HIS OFFICIAL CAPACITY
26 AS A MEMBER OF THE BOARD; HOWARD KRAUSS
M.D. IN HIS OFFICIAL CAPACITY AS A MEMBER
OF THE BOARD; KRISTINA LAWSON J.D. IN
27 HER OFFICIAL CAPACITY AS MEMBER OF THE
BOARD; SHARON LEVINE M.D IN HER OFFICIAL

1 CAPACITY AS A MEMBER OF THE BOARD; BRENDA
2 SUTTON- WILLIS J.D. IN HER OFFICIAL CAPACITY
3 AS MEMBER OF THE BOARD; DAVID WARMOTH
4 IN HIS OFFICIAL CAPACITY AS MEMBER OF THE
5 BOARD; JAMIE WRIGHT J.D. IN HER OFFICIAL
6 CAPACITY AS MEMBER OF THE BOARD; FELIX
7 C. YIP M.D. IN HIS CAPACITY AS MEMBER OF
8 THE BOARD; PAULETTE ROMERO STAFF SERVICES
9 MANAGER DCA, MEDICAL BOARD OF CALIFORNIA
10 ENFORCEMENT PROGRAM; KIMBERLY KIRCHMEYER
11 AS EXECUTIVE SECRETARY OF THE BOARD.

Respondents/Defendants.

-----X

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

**COMBINED VERIFIED COMPLAINT AND VERIFIED PETITION FOR
MULTIPLE RELIEF IN MANDAMUS, INJUNCTIVE RELIEF, DECLARATORY
JUDGEMENT AND AN ORDER QUASHING SUBPOENA.**

COMES NOW THE PLAINTIFF/PETITIONER, Ron Kennedy M.D. by his undersigned attorneys and sets forth this combined pleading as and for his Verified Petition and Verified Complaint seeking multiple relief:

IDENTITY OF THE PARTIES.

1. The plaintiff is a physician duly licensed to practice medicine in the state of California. He maintains a principal place of business at 2448 Guerneviller Rd., Ste 800, Santa Rosa, CA 95403.

2. The following defendants are agencies of the state of California: (a) California department of Consumer Affairs - is the umbrella agency for the California Medical Board and (b) California Medical Board, a sub agency of thee DCA with a principal place of business at 2005 Evergreen Street, Suite 1200 Sacramento, CA 95815.

3. The following defendants are state officials and executive officers of the California Department of Consumer Affairs: (a) Alexis Podesta - Secretary of the DCA and (b) Dean Grafilo, Director of the DCA.

1 directing the Defendants to return the same records to the school districts pending the
2 adjudication of the legality of their subpoenas and any duplication of the same.

3 8. The petitioner is also seeking a writ of mandamus pursuant to Cal. Code Civ.
4 Proc. Sec. 1085(a) directing the respondents to comply with the ministerial task of Cal. Bus &
5 Prof. Code Sec. 800(c) by providing the Petitioner with the information mandated by the statute
6 and sought by the plaintiff in his letter to the respondents of October 29, 2018 - exhibit "10"
7 annexed hereto.

9 9. In accordance with California procedure, the Petitioner is also seeking the
10 issuance of an alternative writ of mandamus pursuant to Cal. Code Civ. Proc. Sec. 1087 and
11 1088 in the substance and form submitted herewith directing the Respondents to show cause at a
12 given place and time before this Court why the permanent writ of mandamus should not issue.

13
14 **(iii) Injunction and preliminary injunction**
15 **against the defendants.**

16 10. The Plaintiff is seeking a permanent injunction pursuant 42 USC 1983 enjoining
17 the defendants from proceeding or causing to proceed with any further investigation or
18 administrative prosecution of the Petitioner pursuant to any provisions including Cal. Bus &
19 Prof. Code Division 2 Chapter 5 Article 12 based upon any records obtained pursuant to the
20 subpoenas issued to the school districts which subpoenas were issued without notice to Dr.
21 Kennedy.

22 11. The injunction is sought based upon the fact that the records were obtained
23 without notice to the petitioner and in violation of his Fourth Amendment rights to judicially
24 challenge the subpoenas seeking the records which were generated by Dr. Kennedy. The request
25 for injunctive relief is further based upon the fact that defendants' actions described hereinabove
26 and below, constitute a continuous violation of Petitioner's Fourth Amendment rights.

27

1 12. The Plaintiff is further seeking an injunction against the defendants pursuant to 42
2 USC sec. 1983 enjoining them from further violating Plaintiff's constitutionally protected rights
3 by:

4 (a) enjoining the defendants from obtaining or otherwise seeking to obtain from school
5 districts through subpoenas duces tecum, medical records and medical vaccine exemptions
6 generated by the Plaintiff without affording the Plaintiff his Fourth Amendment right to
7 judicially challenge in the California Courts the subpoenas seeking his medical records;

8 (b) enjoining the defendants from using and/or causing to use for any investigative or
9 disciplinary purposes any medical records of Dr. Kennedy which were obtained by the illegal
10 and unconstitutional subpoenas issued to Mendocino District and any other school district, as
11 alleged below in this pleading, without notice of the subpoena given to the Plaintiff and to the
12 parents of the children in question;

13 (c) mandatory injunction directing the Defendants to either place the records obtained
14 through the subpoenas duces tecum issued to the school districts in Court custody pending the
15 hearing and determination of this action and further enjoining the defendants from
16 submitting the same records for any purpose to any individual employed or working for the
17 Defendants in any function or to any outside consultant of the defendants;

18 (d) mandatory injunction directing the Defendants to return all medical records obtained
19 through the illegal subpoenas issued to Mendocino District and any other school district to the
20 school districts from which these records were obtained without duplication;

21 (e) enjoining the defendants from investigating or causing to investigate Dr. Kennedy or
22 from commencing any disciplinary actions against Dr. Kennedy based upon any of the medical
23 records obtained from Mendocino District and any other school district in response to the
24 subpoenas which were issued without notice to Dr. Kennedy.
25
26
27

1 13. The Plaintiff is seeking a preliminary injunction against the Defendants pursuant
2 to Cal. Code Civ. Proc. 527(a) pending the hearing and determination of the merits of this action
3 preliminarily enjoining them as follows:

4 (a) enjoining the defendants from obtaining or otherwise seeking to obtain from school
5 districts through subpoenas duces tecum, medical records and medical vaccine exemptions
6 generated by the Plaintiff without affording the Plaintiff his Fourth Amendment right to
7 judicially challenge in the California Courts the subpoenas seeking his medical records;

8 (b) enjoining the defendants from using and/or causing to use for any investigative or
9 disciplinary purposes any medical records of Dr. Kennedy which were obtained by the illegal
10 and unconstitutional subpoenas issued to Mendocino District and any other school district, as
11 alleged below, without notice of the subpoena given to the Plaintiff and to the parents of the
12 children in question;

13 (c) mandatory injunction directing the Defendants to either place such records in Court
14 custody pending the hearing and determination of this action and further enjoining them from
15 submitting the same records for any purpose to any individual employed or working for the
16 Defendants in any function;

17 (d) mandatory injunction directing the Defendants to return all medical records obtained
18 through the illegal subpoenas issued to Mendocino District and any other school district to the
19 school districts from which these records were obtained without duplication;

20 (e) enjoining the defendants from investigating or causing to investigate Dr. Kennedy or
21 from commencing any disciplinary actions against Dr. Kennedy based upon any of the medical
22 records obtained from Mendocino District and any other school district in response to the
23 subpoenas which were issued without notice to Dr. Kennedy.

24
25
26
27

1 **(iv) Declaratory judgment against the Defendants .**

2 15. Plaintiff is seeking a declaratory judgment against the defendants pursuant to Cal.
3 Code Civ. Proc. Sec. 1060 et.seq. as follows:

4 (a) declaring defendants' actions in issuing subpoenas duces tecum and obtaining
5 privileged school and medical records from school districts without giving the Plaintiff notice of
6 the existing subpoenas as illegal and unconstitutional for all of the reasons articulated in this
7 verified pleading;

8 (b) declaring defendants' further investigations and actions taken by the defendants
9 against the plaintiff and predicated upon the medical records obtained pursuant to the illegal and
10 unconstitutional subpoenas issued to the school districts as illegal, unconstitutional and acts
11 taken in excess of defendants' powers and subject matter jurisdiction.

12 (c) declaring Plaintiff's right to challenge the subpoenas duces tecum in Court as a
13 right which is provided by the Fourth Amendment of the US constitution and which has been
14 violated and continues to be violated by the defendants;

15 (d) declaring any and all acts and actions taken by the defendants against the Plaintiff
16 pursuant to the illegally obtained privileged records as null and void and unconstitutional as the
17 same are predicated upon materials which were illegally and unconstitutionally obtained.

18 **(v) An order pursuant to Cal. Code Civ. Proc. Sec. 1987.1 quashing subpoenas.**

19 16. The Plaintiff is seeking an order pursuant to Cal. Code Civ. Proc. Sec. 1987.1
20 quashing the subpoenas issued by the defendants to the Plaintiff (Exhibits "6" and ""7") for all of
21 the reasons articulated hereinabove and below.

22 **FACTUAL BACKGROUND.**

23 17. On or about January 24, 2018 the Board, through investigator Rashya Henderson
24 made a demand for the medical records of minor patients SM and JM. See Exhibit "1" hereto.
25
26
27

1 18. By letter dated 02/20/2018 the Petitioner/Plaintiff through his counsel objected to
2 the request for medical records based upon the following grounds: (a) that the minors' parents
3 were divorced; (b) the Board provided only one authorization from the father while the mother
4 of the children sent an objection to the Board advising both the Board and the plaintiff that she is
5 directing the physician not to disclose the medical records until further direction from a judicial
6 determination made by Court order. See exhibit "2" hereto.
7

8 19. By letters dated August 31, 2018, the Board renewed its requests for the medical
9 records of minor patients SM and JM contending that they are entitled to such medical records
10 under Family Code Sec. 3025 which provides that anon custodial parent shall have access to
11 children's medical records. See exhibit "3" hereto).
12

13 20. By letter dated October 1, 2018 the Petitioner/Plaintiff through counsel again
14 objected to the renewed request for medical records based upon the prior objections raised in the
15 correspondence of 02/20/2018. (See exhibit "4" hereto).
16

17 21. By email dated October 4, 2018 (Exhibit "5" hereto), the defendants through
18 counsel Larry Mercer Esq. of the California Attorney General's Office advised counsel for the
19 Plaintiff/ Petitioner that if the Plaintiff/Petitioner did not comply with the demand for medical
20 records regarding the M children by October 5, 2018 at noon, subpoenas will be issued and will
21 be followed enforcement actions.

22 22. The defendants annexed a copy of the notice decision of ruling from the
23 California Superior Court County of San Bernardino in the case of *Grafillo v. Robert Sears,*
24 *M.D.*, CVDS1812513 to purportedly support the position that courts order the production of
25 medical records even where both parents object to the disclosure of the records. The attached
26 decision does not specify any such findings. See exhibit "5" hereto.
27

1 23. On or about October 11, 2018, investigator Henderson served two subpoenas
2 demanding complete medical records of the SM and JM. See exhibit "6" hereto. The
3 Plaintiff/Petitioner was not provided with any reason for the issuance of the subpoena other than
4 what was stated in the Mercer email (Exhibit "5" hereto). No showing of relevancy of the
5 subpoena to the investigated issues was made. Nor was the complaint which the
6 defendants/respondents purportedly investigated and based upon which the subpoena was issued
7 ever provided to the plaintiff. No affidavit of relevancy accompanied the subpoena.
8

9 24. The investigator also served a subpoena demanding complete medical records of
10 a minor patient IL as well. Exhibit "7" hereto. No prior demand for records of minor IL was
11 made with corresponding authorizations from the parents as mandated by Cal. Bus & Prof. Code
12 Sec. 2225(b)(1). The Plaintiff/Petitioner was not provided with any reason for the issuance of the
13 subpoena. No relevancy showing of the subpoena to the investigated issues was made, nor was
14 the complaint based upon which the subpoena was issued predicated ever provided to the
15 plaintiff/petitioner. No affidavit of relevancy accompanied the subpoena.
16

17 25. The parents of minor IL objected to the disclosure of the records and submitted
18 written objections to the subpoena. See Exhibits "8" and "10" annexed hereto.
19

20 26. In addition, during the month of October, 2018 the plaintiff/petitioner has learned
21 from several parents of his patients that the defendants/respondents issued subpoenas duces
22 tecum to various school districts across the state of California seeking to obtain medical records
23 of minor students who obtained vaccine exemptions from the plaintiff/petitioner.

24 27. No copies of the same subpoenas were provided to Dr. Kennedy or his counsel or
25 to the parents of the children whose records were sought by the subpoenas. No opportunity to
26 judicially challenge the subpoenas issued to school districts was afforded by the
27 defendants/respondents to the plaintiff/petitioner.

1 28. The Plaintiff/petitioner came in possession of a letter dated October 18, 2018
2 from the Mendocino District authored by principal Kim Humrichouse. Exhibit "9" annexed
3 hereto through the parent of his patient to whom the letter is addressed.

4 29. According to the same letter Ms. Humrichouse contends that the District received
5 a subpoena from the medical Board of California requiring the District to provide the following
6 information:
7

8 a. Unredacted copy of medical exemption letters received by your school district
9 form Dr. Kennedy.

10 b. Name and date of birth of all children with medical vaccination exemptions from
11 Dr. Kennedy.

12 c. Name of parent and/or legal guardian of all child with medical vaccination
13 exemption on file with the school district from Dr. Kennedy

14 d. Contact information (to include physical address, telephone number and if
15 possible, email address) of parent and/or legal guardian of child with medical vaccination
16 exemption on file with your school District with Dr. Kennedy.

17 30. In addition, the Humrichouse letter tells the parent that regardless of whether the
18 parent objected to the production of the information or the record, the District will furnish the
19 Board with the privileged medical information required. Exhibit "9" hereto.

20 31. Upon information and belief, the petitioner/ plaintiff states that similar subpoenas
21 were issued by the Defendants to other school districts and the Defendants obtained
22 confidential medical records authored by Dr. Kennedy without having served copies of the
23 subpoenas upon the patients' guardians or parents or upon the plaintiff/petitioner.

24 32. Cal. Health & Saf. Code Sec. 120440 provides for a privacy interest held by the
25 parents of the children whose vaccination records are sought by subpoena and directs that any
26 unauthorized disclosure of the same by the District or unauthorized attempts to obtaining the
27 same record from the District without authorizations from the parents gives rise to civil and
criminal penalties.

1 33. Cal. Education Code Sec. 49076 also provides for the privacy of school records
2 including a child's medical records and prohibits the release of the same to anyone without
3 proper authorizations.

4 34. By letter from Plaintiff's/Petitioner's counsel to defendants' counsel Larry Mercer
5 dated October 29, 2018, Exhibit "10" hereto, the plaintiff/petitioner objected to the three Board
6 subpoenas (Exhibits "6" and "7" hereto). The Plaintiff also objected to the subpoena issued to
7 Mendocino District and provided the grounds for the objection and Dr. Kennedy's assertion of
8 the medical record privilege on behalf of all parents who did not consent to the release of the
9 same. The letter also provided objections
10

11 35. By Plaintiff's/Petitioner's counsel's letter dated October 29, 2018 to Mendocino
12 District superintendent Jason Morse the Plaintiff objected to the release of any medical vaccine
13 exemptions issued by the Plaintiff to district students while asserting the privacy privilege on
14 behalf of all parents who did not waive the same. See Exhibit "11" hereto.
15

16 **FIRST COUNT - WRIT OF MANDAMUS PURSUANT TO**
17 **CAL. CODE CIV. PROC. SEC. 1085 et.seq.**

18 36. The Petitioner repeats realleges and reiterates each and every allegation set forth
19 hereinabove with the same force and effect as if the same was fully set forth at length herein.

20 37. The respondents are mandated under California law and under the minimum
21 constitutional requirements of the Fourth Amendment to afford the Plaintiff/Petitioner notice of
22 subpoenas issued to school districts and seeking the particular medical records created by the
23 Plaintiff/Petitioner. Such notice is mandatory under the Fourth Amendment of the US
24 Constitution in order to enable the Plaintiff/Petitioner to challenge the said subpoena before the
25 courts of this state.
26

27 38. Moreover, the respondents are under a legal obligation to provide notice to the
parents of the minors of whom the defendants are seeking the disclosure of confidential medical

1 records by subpoena served on the school districts so as to enable them to properly object to the
2 disclosure of such documentation.

3 39. The respondents never provided the Petitioner/Plaintiff with copies of the
4 subpoenas duces tecum served upon the school districts and seeking specific medical records
5 generated by the Petitioner/Plaintiff in order to afford him an opportunity to challenge the
6 subpoenas in Court pursuant to his Fourth Amendment rights.
7

8 40. The subpoena issued to Mendocino District as described in Humrichouse's letter
9 (Exhibit "9") was never served upon the Petitioner by the defendants. All subpoenas served upon
10 the school districts, including but not limited to the Mendocino District were designed to bypass
11 and violate Plaintiff/Petitioner's Fourth Amendment rights in their entirety. Upon information
12 and belief, the defendants issued similar subpoenas to other school districts without Plaintiff's
13 knowledge while violating Petitioner's Fourth Amendment rights.
14

15 41. Where the agency is not involved in quasi legislative action involving the rule
16 making process and where the administrative agency fails to perform a ministerial task which is
17 enjoined upon it by statute or the US or California Constitutions, mandamus pursuant to Cal.
18 Code Civ. Proc. Sec. 1085(a) will lie to compel the agency to perform a ministerial duty.
19

20 42. The Fourth Amendment mandates that to be valid, a subpoena must afford the
21 Petitioner a mechanism by which he can challenge it in court. It is irrelevant that the Petitioner is
22 not the custodian of the records sought by the Board subpoenas issued to the school districts.

23 43. The Petitioner is entitled under the Fourth Amendment to challenge the
24 subpoenas and under Cal. Const Art. I Sec. 1 to object to the subpoenas and to raise the medical
25 record privacy privilege on behalf of his patients where the patients were not notified of the
26 subpoenas.
27

1 44. That was not done here because the respondents deliberately failed to serve the
2 Petitioner with the subpoenas served upon the school districts in violation of Petitioner’s Fourth
3 Amendment rights to have notice of the subpoenas and reasonable time to challenge the same on
4 courts.

5 45. The respondents are compelled by the US Constitution to provide Dr. Kennedy a
6 copy of every subpoena seeking his medical records generated by Dr. Kennedy from school
7 districts. Notice of such subpoenas serve a dual purpose: (a) they enable Dr. Kennedy to exercise
8 his Fourth Amendment right to challenge the enforcement validity of the subpoena and (b)
9 enable Dr. Kennedy to challenge the subpoena based upon the medical record privacy privilege
10 on behalf of his patients and in accordance with the constitutional mandates of Cal Const. Article
11 I Sec. 1. That was simply not done in this case.

12 46. For all of the foregoing reasons the Petitioner is seeking an Order of Mandamus
13 pursuant to Cal. Code Civ. Proc. Sec.1085(a) against the Defendants directing them to withdraw
14 the subpoena issued to Mendocino District and any and all subpoenas issued to any other school
15 districts and seeking medical records of Petitioner's patients and to re-serve the same subpoenas
16 accordingly on Dr. Kennedy, on the parents and on the District so as to enable the petitioner to
17 assert his Fourth Amendment rights to have the administrative subpoenas judicially challenged.

18 47. Moreover, to the extent that the respondents obtained any school records
19 containing Dr. Kennedy's medical records and vaccine exemptions pursuant to the subpoenas
20 duces tecum issued to various school districts without notice to the Petitioner, the Petitioner is
21 seeking an order mandamus pursuant to Cal. Code Civ. Proc. Sec. 1085(a) directing the
22 Defendants to place the same records in the custody of this Court pending the outcome of this
23 litigation or return the same records to the school districts pending the adjudication of the
24 litigation or return the same records to the school districts pending the adjudication of the
25 litigation or return the same records to the school districts pending the adjudication of the
26 litigation or return the same records to the school districts pending the adjudication of the

27

1 legality of their subpoenas, without retaining any duplicate paper or electronic copies of the
2 same.

3 48. In addition, the Petitioner is seeking an order of mandamus directing the
4 respondents to comply with the mandated of Cal. Bus & Prof. Code Sec. 800(c) by providing the
5 Petitioner all of the information mandated by Cal. Bus & Prof. Code Sec. 800 as demanded in
6 counsel's letter of October 29, 2018 - Exhibit 10 hereto.

8 48. In order to effectuate compliance with the minimum mandates of the fourth
9 Amendment the Petitioner requests that a mandamus be issued pursuant to Cal. Code Civ. Proc.
10 Sec. 1085(a) mandating the respondents cannot obtain medical records from school districts
11 regarding Dr. Kennedy's specific records until all subpoenas are adjudicated before the courts of
12 the state of California.

13
14 **SECOND COUNT – ALTERNATIVE WRIT OF MANDAMUS**
PURSUANT TO CAL. CODE CIV. PROC. §1087 AND 1088 ET.SEQ.

15 49. Petitioner repeats reiterates and realleges each and every allegation set forth in
16 hereinabove as if the same force and effect as if the same was fully set forth a length herein.

18 50. The Petitioner is seeking the issuance of an alternative writ of mandamus
19 pursuant to Cal. Code Civ. Proc. Sec. 1087 and 1088 in the substance and form submitted
20 herewith directing the Respondents to show cause at a given place and time before this Court
21 why the permanent writ of mandamus should not issue.

22 51. The request for the alternative writ of mandamus is limited in substance to
23 seeking the mandate of this Court in the setting of a hearing. The Petitioner is not seeking an ex
24 parte Order mandating the Respondents to perform the tasks as sought in the Petition pursuant to
25 Cal. Code Civ. Proc. Sec. 1087 pending the hearing and determination of the petition on the
26 merits. In the FIRST COUNT the Petitioner alleged a cause of action which if proven will give
27 raise to a permanent writ of mandamus.

1 52. As a prerequisite compliance with the pleading requirements, the Petitioner
2 alleged above that the respondents failed to perform the task which is enjoined upon them by
3 California statutes, to wit: Cal. Bus and Prof. Code Secs. 800(c) and that which is enjoined upon
4 them by the Fourth Amendment of the US Constitution and by the CA Constitution.
5

6 53. For all of the foregoing reasons and for all of the reasons set forth in the
7 accompanying memorandum of law, the request for an alternative writ of mandamus pursuant to
8 Cal. Code Civ. Proc. Sec. 1087 and 1088 should be granted.

9 **THIRD COUNT - ORDER QUASHING SUBPOENAS**
10 **PURSUANT TO CAL. CODE CIV. PROC. Sec.1987.1**

11 54. Plaintiff repeats, reiterates and realleges each and every allegation set forth
12 hereinabove with the same force and effect as if the same was set forth at length herein.

13 55. All administrative subpoenas seeking medical records are deemed constructive
14 searches subject to the protections of the Fourth Amendment of the US Constitution.

15 56. In order to meet the minimum requirements of the Fourth Amendment a state
16 statutory scheme must afford a party who is subject to a state agency subpoena an opportunity to
17 challenge the same in court. The Fourth Amendment also requires that there exists a mechanism
18 by which validation, modification, or nullification of the subpoena can be judicially resolved,
19 without penalty, before compliance with the subpoena can be exacted.

20 57. Cal Govt Code Secs. 11180 through 11188 do not provide the Plaintiff with any
21 authority to challenge the administrative subpoenas issued to him in court.

22 58. Rather Cal. Govt. Code Sec. 11187 authorizes the head of an agency to petition
23 the Court for an Order compelling the subpoenaed individual to comply with the mandates of the
24 subpoena and to produce the documents mandate by the subpoena.

25 60. While the constitutionality of Cal. Govt Code Sec. 11181 through 11190 has been
26 upheld against Fourth Amendment requirements, the only statutory authority pursuant to which
the Plaintiff can challenge the subpoena is Cal. Code Civ. Proc. 1987.1.

27

1 61. Administrative subpoenas are deemed constructive searches and they are
2 constrained by the Fourth Amendment of the US Constitution.

3 62. To satisfy the requirements of the Fourth Amendment of the US Constitution the
4 subpoena must (1) relate to an inquiry which the administrative agency is authorized to make;
5 (2) seek information reasonably relevant to that inquiry; and (3) not be too indefinite.

6 63. In addition, several issues are also present here. California is a state in which the
7 medical Board cannot obtain medical records without providing authorization from the patient
8 which enables the Board to obtain medical records. Cal. Bus & Prof. Code Sec. 2225(b)(1).

9 64. In the present case the Board has not provided the Plaintiff with the proper
10 authorizations to obtain medical records. See Exhibits "2" "4", "7" and "10" hereto.

11 65. In the case of the M siblings the Board provided the Plaintiff with authorizations
12 from the father while the mother overtly objected to the production of medical records. See
13 exhibits "1" through "4" " hereto.

14 66. In the case of the minor IL both parents objected to the release of the records. See
15 exhibit "10" with annexed objections.

16 67. Consequently, the Defendants failed to comply with the mandate of Cal. Bus &
17 Prof Code 2225(b)(1).

18 68. The defendants then proceeded with the subpoena process. However, the
19 subpoenas are not accompanied by affidavits of relevancy nor do they indicate any relevancy
20 between the issues being investigated and the medical records sought. See Exhibits "5", "6" and
21 "7" hereto.

22 69. The Plaintiff is challenging the subpoenas (Exhibits "6" and "7" hereto) pursuant
23 to the Fourth Amendment of the US Constitution on the grounds that the same are not relevant to
24 the complaint received and, on the grounds, that a physician's writing of vaccine exemptions
25 pursuant Health & Safety Code Sec. 120370 with nothing more does not countervail a patient's
26 privacy interest in medical records.

27 70. While California law employs a balancing test between the privacy interest of the
patients in the medical records and the state's interest to protect the public, obtaining records in

1 hopes of finding violations of the law just because Dr. Kennedy wrote vaccine exemptions to his
2 minor patients pursuant Health & Safety Code Sec. 120370 and under the pretext of assurance
3 that the law was not violated does not countervail the patient's expectation of privacy in their
4 medical records.

5 71. In this case, the complaint being investigated has not been yet produced by the
6 defendants in response to Plaintiff's demand pursuant to Cal. Bus & Prof. Code Sec. 800(c).

7 72. The Plaintiff is challenging the subpoenas based upon relevancy to the complaints
8 received which upon information and belief were accompanied by nothing than illegally
9 disclosed school records and exemptions in violation of Cal. Health & Saf. Code Sec. 120440
10 and Cal. Education Code Sec. 49076.

11 73. The defendants failed to show the relevancy of the demand for the entire medical
12 record of the foregoing patients (Exhibits "6" and "7") to the issues being investigated.

13 74. Once the Plaintiff challenges the subpoenas based on relevancy grounds it is
14 incumbent upon the respondents to come forward with proof that their request for medical
15 records is relevant to the issues of the investigation being conducted.

16 75. In addition, once a subpoena is issued, the courts apply a balancing test to
17 determine if the privacy interests of the individuals are outweighed by the interest of the state in
18 obtaining complete medical records. In the present case the medical Board articulated no valid
19 interest or relevancy for the subpoenas demanding complete medical records of patient JM, SM
20 and IL. While administrative subpoenas duces tecum are not unconstitutional for failure to
21 provide an affidavit
22

23 76. The parents objected to the production of the medical records as indicated in the
24 annexed exhibits "2" and "10" hereto.

25 77. Without the disclosure of the subject matter of the investigation, there is no
26 minimal showing of relevancy of the requested records to the subject matter being investigated.

27

1 78. A subpoena duces tecum has no force or effect if the affidavit required by section
2 1985 of the Code of Civil Procedure does not comply with the provisions of that section. The
3 requirement of that section that the affidavit must contain a showing of good cause for the
4 production of the matters and things described in the subpoena and "shall set forth in full detail
5 the materiality thereof to the issues involved in the case" is not met by an affidavit which is
6 totally devoid of any statement of facts. The affiant cannot rely merely upon the legal
7 conclusion, stated in general terms, that the desired documentary evidence is relevant and
8 material.
9

10 79. In the present case the defendants issued no affidavit at all. While it is clear that
11 administrative subpoenas are issued under Cal Govt Code Secs 11181 through 11189 while
12 subpoenas issued in civil actions are issued under the Code of Civil procedure Sec. 1985,
13 disciplinary investigations and the actions succeeding them are civil in nature in California.
14

15 80. Therefore, in the absence of an affidavit showing the relevancy of the three
16 subpoenas in question here, the same are of no validity and in violation of Plaintiff's Fourth
17 amendment rights for Defendants ' failure to make a relevancy showing.

18 81. The need for judicial scrutiny of the subpoenas and of the purported investigation
19 itself is heightened because the subpoenas and the investigation are both used here to intimidate
20 and harass the Plaintiff for providing vaccine exemptions in the aftermath of the amendments of
21 SB 277 which is now codified in part in Cal. Health and Safety Code Sec. 120370.
22

23 82. SB 277 eliminated the personal and religious belief exemption to mandatory
24 vaccination and placed California physicians of the forefront of the debate regarding vaccination
25 safety and contraindications.
26

27 83. As a result of the provisions of the amendments of SB 277, the only manner in
which a pupil may be admitted into a school program without vaccination is if the parent or

1 guardian files with the governing authority a written statement by a licensed physician to the
2 effect that the physical condition of the child is such, or medical circumstances relating to the
3 child are such, that immunization is not considered safe, indicating the specific nature and
4 probable duration of the medical condition or circumstances, including, but not limited to, family
5 medical history, for which the physician does not recommend immunization. See Cal. Health &
6 Saf. Code Sec. 120370.
7

8 84. In short, while the legislature eliminated the personal and religious exemptions to
9 vaccination requirements in California, the defendants took upon the task of systematically
10 eliminating the physicians who now write the exemptions through the license disciplinary system.

11 85. Dr. Kennedy is one of the many physicians targeted by the special interest groups
12 and by the Defendants for writing such exemptions irrespective of the specific provision of Cal.
13 Health & Saf. Code Sec. 120370(a) which specifically allows him to assess patients and write
14 such exemptions.
15

16 86. The subpoenas and the disciplinary investigative system in this case are used to
17 facilitate Dr. Kennedy's selective prosecution for acting under the specific provisions of Cal.
18 Health & Saf. Code Sec. 120370(a) by providing vaccine immunizations.
19

20 87. In fact, the Defendants are now using investigative subpoenas in such a manner
21 as to bypass Dr. Kennedy's Fourth Amendment right to judicial scrutiny of the same altogether.
22 The subpoenas are now directed to the school districts themselves seeking specific information
23 regarding Dr. Kennedy which is clearly privileged from disclosure by the school districts under
24 the provisions of Cal. health & Safety Code 120440(d)(2) and Cal. Education Code Sec. 49076.
25

26 88. It is also apparent that some sort of improper intimidation and conduct is taking
27 place where Mendocino District wrote to the parent of a child who objected to the disclosure of
the immunization exemptions provided by Dr. Kennedy that the same will be provided whether
the parents objected to the production of the documents or not. See exhibit "I" hereto.

1 89. For all of the foregoing reasons the three subpoenas issued to Dr. Kennedy should
2 be quashed in their entirety because: (1) the Board did not establish good cause to intrude on the
3 patients' privacy rights because their own information is limited to the fact that the Plaintiff
4 issues vaccine exemption, an act which is not professional misconduct and it is statutorily
5 permitted under Health and Safety Code Sec. 120370(a); (2) the overall question of whether
6 a subpoena meets the constitutional standards for enforcement is a question of law which cannot
7 be overcome by the Defendants ' receipt of the conclusory complaint regarding "blanket"
8 exemptions.

9 90. Nor can the legal insufficiency of the grounds for the issuance of the subpoena for
10 the "entire medical record" of SM, JM and IL be overcome by the sole presentation of vaccine
11 exemptions issued by Dr. Kennedy in accordance with Cal. health & Safety Code Sec.
12 120370(a).

13 91. For all of the foregoing reasons the subpoenas issued by the Defendants (Exhibits
14 "6" and "7") should be quashed as violative of plaintiff's Fourth Amendment rights and of the
15 California vaccine record privacy statute health & safety code Sec. 120440 and the California
16 Constitution Article I Sec. 1.

17
18 **THIRD COUNT- INJUNCTION PURSUANT TO 42 USC SEC. 1983**
19 **AND CAL. CODE CIV. PROC. SEC. 526 AGAINST THE DEFENDANTS.**

20 **(i) In general.**

21 92. In general state Courts can adjudicate federal claims brought under 42 USC Sec.
22 1983. When they have jurisdiction, state courts have been compelled to provide federal
23 remedies, notwithstanding the existence of less intrusive state-law remedies.

24 93. In order to state a claim under Sec 1983, a petitioner must allege the violation of
25 a right preserved by another federal law or by the Constitution. In general, it must be alleged
26 that the state officials acted and are about to act under the color of state law to deprive the
27 Plaintiff of constitutionally protected rights.

1 94. To establish liability under 42 U.S.C. § 1983, a petitioner must prove two
2 essential elements: (1) that the Respondents acted under color of state law and (2) that the
3 petitioner suffered a deprivation of a constitutional right as a result of that action.
4

5
6
7
8 **(i) Injunction against the Defendants -**
9 **irreparable harm and success on the merits.**

10 95. The Plaintiff has alleged in detail hereinabove how the Defendants have used
11 and continue to use the California investigative process and the issuance of subpoenas duces
12 tecum to violate: (a) Plaintiff's Fourth Amendment constitutional right to challenge the
13 subpoenas; (b) the parents' rights to confidentiality of their children's school and vaccine
14 registry records protected by the Cal. Constitution Article I Sec. 1 and Cal Health & Safety
15 Code Sec. 120440 and Cal. Education Code Sec. 49076. These privacy rights can be asserted
16 by the plaintiff on behalf of the parents when it comes to Plaintiff's specific medical records
17 sought by the Defendants .
18

19 96. Upon information and belief, the defendants are using and have been using the
20 subpoenas in the form and content similar to the one issued to the Mendocino District
21 (Exhibit "9" hereto) to illegally obtain privileged and confidential child immunization
22 documents and exemptions provided by Dr. Kennedy from school districts statewide.
23

24 97. In addition, for being protected against disclosure under Cal. Const Art. I Sec. 1,
25 the records sought by the subpoenas issued by the defendants to various school districts are
26 seeking privileged information protected under Health & Safety Code Sec. 120440, Cal.
27 Education Code Sec. 49076 and under the California Constitution Article I Sec. 1.

1 98. In this case, the only apparent information which the Board is acting upon to issue
2 blanket subpoenas is that Dr. Kennedy issued vaccine exemptions to children in various school
3 districts. Any records subsequently obtained by the Defendants through the illegal subpoenas
4 must be returned to the school districts as the same were obtained in violation of Dr. Kennedy's
5 Fourth Amendment rights and in further violation of the parents' constitutional rights protected
6 by Cal. Const. Article I Sec. 1 in the privacy of the children's medical records.

7 99. As it can be seen from the memorandum of law in support of this verified
8 complaint/petition and the accompanying motion to quash subpoenas and for a preliminary
9 injunction, the information based upon which the subpoenas were issued is insufficient to
10 support a showing of good cause countervailing the physician's and the patient's privacy interest
11 in the medical records.

12 100. Moreover, while no provision of California law makes the physician-patient
13 privilege immune from state investigations, both the California Constitution Article I Sec. 1 and
14 the statutory provisions of Cal Health & safety Code Sec. 120440 and Cal. Education Code Sec.
15 49076 provide a separate and distinct rights to privacy in the medial records and school records
16 which include vaccination records. These right to privacy are unrelated to the physician and
17 client privilege and can be invoked by the Plaintiff on behalf of himself and his patients and/or
18 guardians of the minor patients. The Plaintiff could not do that in this case simply because he
19 was not afforded notice of the subpoenas issued to the school districts in violation of his Fourth
20 Amendment rights.

21 101. In addition, to be valid under the Fourth Amendment of the US Constitution (1)
22 relates to an inquiry which the administrative agency is authorized to make; (2) seeks
23 information reasonably relevant to that inquiry; and (3) is not too indefinite.

24 102. The defendants provided no basis for the relevancy of the subpoenas issued to the
25 school districts, nor have they shown the mere issuance of vaccine exemptions under the
26 provisions of Cal. Health & Saf. Code Sec. 120370(a) gives them subject matter jurisdiction to
investigate the Petitioner for acting in accordance with the law.

27

1 103. As it can be seen from the accompanying memorandum of law in support of this
2 pleading than the accompanying motion, the mere existence of vaccine exemptions legally
3 written by Dr Kennedy under the provisions of Cal. Health & Saf. Code Sec. 120370(a) coupled
4 with conclusory allegations of the accusations of the issuance of such exemptions are insufficient
5 as a matter of law to warrant a general inquiry into Plaintiff's affairs and the issuance of general
6 subpoenas for entire medical records addressed both to Dr. Kennedy and to various school
7 districts.

8 104. The use of subpoenas by the Defendants for the purposes of collecting
9 information regarding the identity of the parents who are seeking vaccine exemptions and for the
10 purposes of intimidating Dr. Kennedy from providing such vaccine exemptions under the
11 provisions of Health & Safety Code Sec. 120370(a) and Education Code Sec. 49076 is not a
12 valid authorized use of the Board's investigative powers under Cal Bus & Prof Code Sec. 2220
13 and Cal Govt Code Sec. 11181 through 11187.

14 105. In addition, because the subpoenas on their face, including the one served on
15 Mendocino Unified School District (exhibit "9" hereto) are seeking medical records which are
16 privileged under Health and Safety Code Sec. 120440, Education Code Sec. 49076 and Bus &
17 Prof Code Sec. 2225(b)(1) for lack of authorizations, they are not issued for a legitimate
18 investigation but rather for the purpose of harassing Dr. Kennedy for providing vaccine
19 exemptions and for the further purposes of harassing parents for seeking those vaccine
20 exemptions from Dr. Kennedy.

21
22 106. In short, in addition for violating the medical record privacy provisions of the Cal
23 Const. Article I Sec. 1 and those of Health and Safety Code Sec. 120440 and Education Code
24 Sec. 49076 the subpoenas also appear that have been issued for no legitimate reason authorized
25 by Bus & Prof Code Sec. 2220 and Cal Govt Code Secs. 11180 through 11188 but for
26 harassment purposes aimed at parents' seeking vaccine exemptions and Dr. Kennedy having
27 issued them.

1 107. In the present case, for all of the reasons articulated hereinabove the Plaintiff
2 can establish that his rights against unconstitutional unreasonable constructive searches
3 safeguarded by the Fourth Amendment of the US Constitution will be further violated under
4 the appearance of the provisions state law. Specifically, the lack of notice and opportunity
5 given to the Plaintiff to challenge the Board subpoenas in court violates Plaintiff's Fourth
6 amendment rights.
7

8 108. Consequently, the Plaintiff will be successful on his claims for a permanent
9 injunction pursuant to 42 USC Sec. 1983 seeking to prevent further violation of Fourth
10 Amendment rights though the use of the California license investigative process.
11

12 **(ii) Irreparable harm.**

13 109. Moreover, permanent injunctions pursuant to 42 USC Sec. 1983 are issued to
14 avoid the further violation of civil rights and irreparable harm. A permanent injunction may be
15 granted here the petitioner demonstrates that it will suffer irreparable harm absent the
16 injunction.
17

18 110. To be entitled to a permanent injunction, petitioner [is] required to establish not
19 only irreparable harm, but also the absence of an adequate legal remedy.
20

21 111. In the context of irreparable harm, a violation of constitutional rights amounts
22 to irreparable harm. Once a violation of constitutional rights is established, the Plaintiff does
23 not need to establish the lack of adequate remedies.
24

25 112. In this case, the Plaintiff has shown that the Defendants acted under the color of
26 state law and made and continue to make use of investigative subpoenas duces tecum to
27 obtain medical records which were generated by the Plaintiff from school districts without
affording the plaintiff an opportunity to challenge the subpoenas in violation of Plaintiff's
Fourth Amendment rights.

1 112. In addition, the Plaintiff has shown that he has the authority to invoke medical
2 records privilege on behalf of his patients. The confidentiality of medical records which are
3 included in school records is ensured by the Cal Const. Article I Sec. 1 as well as by specific
4 statutory provisions such as Health & safety Code Sec. 120440 and Cal. Education Law Sec.
5 49076.
6

7 113. The Defendants acted under the color of law by issuing the subpoenas duces
8 tecum to deprive Plaintiff's patients and the Plaintiff of their constitutionally given right to
9 maintain the privacy of medical and school records under Cal Const. Article I Sec. 1. Since
10 the Plaintiff can invoke the medical record privilege on behalf of his own patients, irreparable
11 harm has shown to exist and continues to exist by virtue of Defendants' violation of the
12 patients' right to privacy safeguarded by Cal Const. Article I Sec. 1 as well as by specific
13 statutory provisions such as Health & safety Code Sec. 120440 and Cal. Education Law Sec.
14 49076.
15

16 114. For all of the reasons set forth hereinabove the Plaintiff has shown that in the
17 absence of a permanent injunction the defendants will continue to violate his constitutionally
18 protected rights safeguarded by the Fourth Amendment of the US Constitution and under the
19 Cal. Cons Article I Sec. 1.
20

21 115. The extent that the defendants seized medical records from the school districts
22 pursuant to subpoena duces tecum, such seizures violate Plaintiff's Fourth Amendment rights

23 116. Such violation of constitutional rights is not compensable by money damages.
24 Because violation of constitutional rights amounts to irreparable harm, the Plaintiff is entitled to
25 the issuance of a permanent injunction. under 42 USC Sec. 1983.
26

27 117. Moreover, no adequate remedies at law exist to prevent the violation of Petitioner's
constitutional rights because the Plaintiff has an unfettered constitutional right to challenge the

1 administrative subpoena in court.

2 118. The issuance of an injunction in the form and substance set forth herein
3 against the Defendants is also appropriate pursuant to Cal. Code Civ. Proc. 526(a)(3)
4 because “it appears, during the litigation, that a party to the action is doing, or threatens, or is
5 about to do, or is procuring or suffering to be done, some act in violation of the rights of another
6 party to the action respecting the subject of the action, and tending to render the judgment
7 ineffectual.”
8

9 118. In this case it is alleged that the Defendants are making use of subpoenas duces
10 tecum and of the California medical investigative process in an illegal and unconstitutional
11 manner and in a fashion which deprives the Plaintiff of his Fourth Amendment right and of his
12 right to assert medical record privacy on behalf of his patients pursuant to Cal. Const. Article I
13 Sec. 1 and if allowed to continue, the judgment in this case after the fact will be ineffectual.
14

15 119. In this case it is also alleged that in the case of the three subpoenas issued by the
16 Defendants to the plaintiff, the Defendants failed to make a specific showing of the relevancy
17 of the documents sought to the subject matter of the investigation being conducted and in fact
18 they did not state what the subject matter of the investigation is at all.
19

20 120. In this case it has been shown that the Defendants are seeking to procure medical
21 records issued by the Plaintiff from various school districts through the use of subpoenas duces
22 tecum which were not served upon the Plaintiff in violation of his Fourth Amendment rights to
23 judicial review of the constitutionality and legality of the same subpoenas.

24 121. In short, in this case the elements of Cal. Code Civ. Proc. 526(a)(3) are present
25 and militate in favor of the issuance of injunctive relief.
26

**(iii) Balance of equities militates in favor
of the issuance of injunctive relief.**

27 122. In balancing the equities, the court must weigh the harm suffered by the plaintiff if

1 the injunction were denied against the harm suffered by the defendant if the injunction were
2 granted.

3 123. In the present case, the balance of equities tip in favor the Plaintiff and in favor of
4 the issuance of an injunction. If an injunction does not issue the Petitioner's Fourth Amendment
5 constitutional rights will be violated because his constitutionally given right to challenge al of the
6 Defendants ' subpoenas in court will be forever taken away once the school districts produce the
7 privileged medical records.
8

9 124. In addition, plaintiff's right to assert the medical record privilege on behalf of his
10 patients and to protect the constitutionally given right to such privacy under Cal. Const. Article I
11 Sec 1 will also forever be forfeited to the illegal subpoenas issued by the Board.
12

13 125. While the Defendants are undoubtedly charged with the protection of the public
14 and their interest in conducting and completing an investigation related to suspected medical
15 misconduct or related to a particular complaint is also of paramount importance, they simply
16 cannot dispense with the Fourth Amendment protections applicable to administrative searches. Nor
17 can they dispense with the privacy right to medical records imposed by the California Const. Article I Sec. 1.
18

19 126. For all of the reasons articulated hereinabove, the equities favor the issuance of
20 injunctive relief pursuant to 42 USC Sec. 1983 and Cal. Code Civ. Proc. 526(a)(3) should
21 issue.

22 **(iv) The issuance of injunctive relief**
is in the public interest.

23 127. When the court balances the equities in deciding upon injunctive relief, it must
24 consider the public interests involved.
25

26 128. The upholding of constitutional rights is in the public interest. A state is in no way
27 harmed by issuance of a preliminary injunction which prevents the state from enforcing restrictions
likely to be found unconstitutional. If anything, the system is improved by such an injunction.

1 129. For all of the foregoing reasons the Plaintiff is seeking an injunction against the
2 Defendants pursuant to 42 USC sec. 1983 and Cal. Code Civ. Proc. 526(a)(3), enjoining the
3 said defendants from further violating plaintiff's constitutional rights as follows: (a) enjoining
4 the defendants from obtaining or otherwise seeking to obtain from school districts through
5 subpoenas duces tecum medical records and medical vaccine exemptions generated by the
6 Plaintiff without affording the Plaintiff his Fourth Amendment right to judicially challenge
7 the subpoenas seeking his medical records in the California Courts and directing the
8 Defendants to withdraw the said subpoenas issued to the school districts and to properly re-
9 serve them upon the plaintiff; (b) enjoining the Defendants from using and causing to use
10 any medical records of Dr. Kennedy which were obtained by the illegal and unconstitutional
11 subpoenas issued to Mendocino District and any other school district and directing the
12 Defendants to either place such records in Court custody pending the hearing and
13 determination of this action and further enjoining them from submitting the same records for
14 any purpose to any individual employed or working for the Defendants in any function; (c)
15 mandatory injunction directing the Defendants to return all medical records obtained through
16 the illegal subpoenas issued to Mendocino District and any other school district to the school
17 districts from which these records were obtained; (d) enjoining the Defendants from
18 investigating or causing to investigate Dr. Kennedy or from commencing any disciplinary
19 actions against Dr. Kennedy based upon any of the medical records obtained from Mendocino
20 Unified School District and any other school district in response to the subpoenas which were
21 issued without notice to Dr. Kennedy.
22
23
24
25
26

**FOURTH COUNT – PRELIMINARY INJUNCTION
PURSUANT TO CAL. RULE OF COURT 3.1150 AND
CAL. CODE CIV. PROC. 527(a)
AGAINST THE DEFENDANTS AND THE
DISTRICT DEFENDANTS.**

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

130. The Plaintiff repeats reiterates and realleges each and every allegation set forth hereinabove with the same force and effect as if the same are set forth at length herein.

(i) In general.

131. Cal. Code Civ. Proc. 527(a) states that “A preliminary injunction may be granted at any time before judgment upon a verified complaint, or upon affidavits if the complaint in the one case, or the affidavits in the other, show satisfactorily that sufficient grounds exist therefor. No preliminary injunction shall be granted without notice to the opposing party.

133. The issuance of a preliminary injunction is dependent on a showing of: (a) immediate irreparable harm caused by the party against whom the injunction is sought; (b) likelihood of success (c) balance of the equities and (d) in the case where the preliminary injunction is sought against state officials the public interest must be taken into consideration.

134. The Plaintiff is seeking a preliminary injunction against the defendants pursuant to Cal. Code Civ. Proc. 527(a) pending the hearing and determination of the merits of this action preliminarily enjoining them as follows:

(a) preliminarily enjoining the defendants from obtaining or otherwise seeking to obtain from school districts through subpoenas duces tecum medical records and medical vaccine exemptions generated by the Plaintiff without affording the Plaintiff his Fourth Amendment right to judicially challenge the subpoenas seeking his medical records in the California Courts and directing the Defendants to withdraw the said subpoenas issued to the school districts and to properly re serve them upon the plaintiff;

(b) preliminarily enjoining the Defendants from using and causing to use any medical records of Dr. Kennedy which were obtained by the illegal and unconstitutional subpoenas issued to Mendocino Unified School District and any other school district and directing the Defendants to either place such records in Court custody pending the hearing and determination

1 of this action and further enjoining them from submitting the same records for any purpose to
2 any individual employed or working for the Defendants in any function;

3 (c) mandatory preliminary injunction directing the Defendants to return all medical
4 records obtained through the illegal subpoenas issued to Mendocino Unified School District and
5 any other school district to the school districts from which these records were obtained;

6
7 (d) preliminarily enjoining the Defendants from investigating or causing to investigate
8 Dr. Kennedy or from commencing any disciplinary actions against Dr. Kennedy based upon any
9 of the medical records obtained from Mendocino Unified School District and any other school
10 district in response to the subpoenas which were issued without notice to Dr. Kennedy.

11 135. In support of the request for a preliminary injunction and the accompanying
12 motion for a preliminary injunction the Plaintiff incorporates by reference herein all of the
13 allegations in support of the claim for injunctive relief pursuant to Cal. Code Civ. Proc.
14 526(a)(3) and 42 USC Sec. 1983 set forth hereinabove.

15
16 136. For all of the foregoing reasons and for all of the reasons articulated in the
17 accompanying motion for a preliminary injunction and memorandum of law, Plaintiff's
18 request for interim relief against the Defendants should be granted.

19
20 **FIFTH COUNT - DECLARATORY JUDGMENT**
PURSUANT TO CAL. CODE CIV. PROC. 1060 et.seq.

21
22 137. Plaintiff repeats reiterates and realleges each and every allegation set forth
23 hereinabove as if the same was set forth at length herein.

24 (i) **In general.**

25 138. A declaratory judgment action provides litigants with a quick, efficient means of
26 resolving a disputed issue. Under the California Declaratory Judgment Act a party may ask the
27 court for a declaration of rights or duties and the court may make a binding declaration of these
rights.

1 139. Unlike coercive relief (such as damages, specific performance, or an injunction)
2 in which a party is ordered by the court to do or to refrain from doing something, a declaratory
3 judgment merely declares the legal relationship between the parties. Under the provisions of the
4 Act, a declaratory judgment action may be brought to establish rights once a conflict has arisen,
5 or a party may request declaratory relief as a prophylactic measure before a breach occurs. To
6 further the purpose of providing a rapid means of resolving a dispute or a potential dispute
7 declaratory judgment actions are given precedence in setting trial dates. Like the doctrine of res
8 judicata, declaratory relief promotes judicial economy. A declaratory judgment action provides
9 parties with an efficient means of adjudicating a disputed issue. Often, a declaratory remedy will
10 end the controversy between the parties.
11

12 140. While a party may seek declaratory judgment before an actual invasion of rights
13 has occurred, it must still demonstrate that the controversy is justiciable. And to be justiciable
14 the controversy must be ripe.
15

16 141. In the present case a justiciable controversy exists between the Plaintiff and the
17 defendants on all levels. First the subpoenas issued to Dr. Kennedy are seeking medical records
18 without proper authorizations signed by both parents of the children and with respect which the
19 parent of the child IL specifically objected to their disclosure.
20

21 142. Second as set forth above, the Defendants are using the office of the investigative
22 subpoena duces tecum to obtain privileged school and medical records while violating Plaintiff's
23 Fourth Amendment right to judicially challenge the Defendants' subpoenas issued to school
24 districts but not served upon the Plaintiff.
25

26 143. Thus, the Defendants illegally and unconstitutionally used the subpoenas duces
27 tecum to obtain confidential school and medical records without affording the Plaintiff an

1 opportunity to assert the privacy rights of his patients under the California Constitution Article I
2 Sec. 1.

3 144. For all of the foregoing reasons the Plaintiff is seeking a declaratory judgment as
4 follows: (a) declaring Defendants ' actions in issuing subpoenas duces tecum and obtaining
5 privileged school and medical records without giving the Plaintiff notice of the existing
6 subpoenas duces tecum issued to the school districts as illegal and unconstitutional for all of the
7 reasons articulated hereinabove in this Verified Complaint; (b) declaring any and all medical and
8 school records obtained pursuant to the illegal and unconstitutional subpoenas duces tecum
9 issued to the school districts as documents which were obtained illegally and unconstitutionally
10 and further declaring the Defendants , further investigations and actions taken pursuant to the
11 same records as illegal and unconstitutional for all of the reasons articulated above in this
12 complaint; (c) declaring Plaintiff's right to challenge the subpoenas duces tecum in Court as a
13 right which is provided by the US constitution and which has been violated and continues to be
14 violated by the Defendants ; (d) declaring any and all acts and actions taken by the Defendants
15 against the Plaintiff pursuant to the illegally obtained privileged records as null and void and
16 unconstitutional as the same are predicated upon materials which were illegally and
17 unconstitutionally obtained.
18
19
20

21 WHEREFORE, the Plaintiff request that judgment be entered in favor of the Plaintiff and
22 against the Board and District defendants on all of the counts set forth in this Verified
23 Complaint.

24 Dated: October 30, 2018

25 Attorneys for the Plaintiff/Petitioner

26 Michael Machat Esq.
Bar No. 109475
Law Office of Michael Machat,
27 8730 W Sunset Blvd Ste 250,
West Hollywood, CA 90069-2281

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

Phone: (310) 860-1833
Email: michael@machatlaw.com
Attorney for the Plaintiff/Petitioner

Subject to admission pro hac vice
Jacques G. Simon, Esq.
Admitted in NY, CT, GA, DC and TX
100 Jericho Quadrangle Suite 208
Jericho, NY 11753
Tel: (516)378-8400
Email: jgs@jacquessimon.com
Attorneys for Plaintiff, Ron Kennedy M.D.

VERIFICATION

STATE OF CALIFORNIA)
SONOMA COUNTY)

Ron Kennedy M.D. Being duly sworn deposes and says:

1. I am over 18 years of age, I reside in Santa Rosa, CA and I am of sound mind and possess all qualifications to make this verification.
2. I have read the within petition/complaint and know all of the statement of facts to be true to the best of my knowledge except for those stated upon information and belief and as to those I believe them to be true. The source of my information based upon which my belief was formed are communications from my patient's guardians and parents regarding the facts stated in the above complaint.

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

RON KENNEDY M.D.

NOTARY ACKNOWLEDGEMENT

On this _____ day of November ,2018 before me came Ron Kennedy to me known and known to me to be the person who executed this acknowledgement and executed this acknowledgement before me.

Notary Public, State of California

Affix seal or stamp.