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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

BRENDA ALLEN,

Plaintiff,

vs.

JEANNE WOODFORD, et al,

Defendants.

CASE NO. CV-F-05-1104 OWW LJO

**ORDER ON PLAINTIFF’S MOTION TO
COMPEL DOCUMENTS FROM THE
INDIVIDUAL DEFENDANTS**

Plaintiff brings three motions to compel documents from each defendant:

- (1) First Set RPD to Muhommad Anwar, M.D.
- (2) First Set RPD to Madera Community Hospital
- (3) First Set RPD to Jeanne Woodward, Richard Rimmer, Rosanne Campbell, Gwendolyn Mitchell, Sampath Suryadevara, M.D., and Juan Jose Tur, M.D.

This order addresses the motion to compel the individual defendants to supplement responses and produce documents. The individual defendants, sued in their individual capacities, are Jeanne Woodford, Richard Rimmer, Rosanne Campbell, Gwendolyn Mitchell, Sampath Suryadevara, and Juan Jose Tur (the “California Department of Corrections and Rehabilitation Defendants” or “CDCR Defendants”). The positions held by the individual defendants, in their official capacities, are: Jeanne Woodford is the Director of the California Department of Corrections; Richard Rimmer is the Acting Director of the California Department of Corrections; Rosanne Campbell is the Deputy Director of Health Care Services of the California Department of Corrections; Gwendolyn Mitchell is the Warden

1 of the Central California Women’s Facility; Sampath Suryadevara, M.D. is the Chief Medical Officer
2 of CCWF; Juan Jose Tur, M.D. is a physician employed by CCWF and/or the California Department
3 of Corrections.

4 Plaintiff filed her notice of motion on December 22, 2006. The parties filed a joint statement
5 re discovery dispute pursuant to Local Rule 37-251 on January 9, 2007. The Court took this matter under
6 submission without oral argument on January 17, 2007. Having considered the joint statement, and
7 supplemental papers filed, as well as the Court’s file, the Court issues the following order.

8 **BACKGROUND ALLEGATIONS**

9 Plaintiff is a prisoner at Central California Women’s Facility (CCWF). She alleges that the
10 California Department of Corrections (“CDC”)/CCWF sent her to Madera Community Hospital for an
11 unnecessary surgery. Plaintiff requested and was denied non-surgical treatment to treat boils in her arm
12 pit region. Despite being notified of Dr. Anwar’s injury to another CCWF prisoner, the CDC Defendants
13 sent Plaintiff to Dr. Muhammad Anwar for surgery. Plaintiff received invasive, improper treatment from
14 Dr. Anwar and Madera Community Hospital. The surgery left Plaintiff with limited mobility, flexibility,
15 sensation and pain in her arms.

16 Plaintiffs served the RPD on August 16, 2006. Defendants responded and objected on October
17 13, 2006. The primary objections are the official information privilege and the deliberative process
18 privilege. They also state that the records are not within their possession custody or control of the
19 individual CDCR defendants.

20 **MAJOR OBJECTIONS BY THE INDIVIDUAL DEFENDANTS**

21 **Defendants are Not in Possession, Custody or Control**

22 Defendants supplemented their responses and stated that they were not in possession, custody
23 or control of the documents. Defendants raise a late objection that discovery is not permitted on the
24 CDCR Defendants in their individual capacities because they are not authorized by the State of
25 California to obtain custody, possession or control of responsive documents.

26 Rule 34 requests may be used to inspect documents, tangible things, or land in the possession,
27 custody, or control of another party. Property is deemed within a party's ‘possession, custody, or control’
28 if the party has actual possession, custody, or control thereof or the legal right to obtain the property on

1 demand. *In re Bankers Trust Co.*, 61 F.3d 465, 469 (6th Cir. 1995) (documents prepared by Federal
2 Reserve and bank during bank examination were subject to discovery despite Federal Reserve's
3 ownership of documents, in light of apparent relevance of documents and fact that bank had possession
4 of documents). A party having actual possession of documents must allow discovery even if the
5 documents belong to someone else; legal ownership of the documents is not determinative. *In re Bankers*
6 *Trust Co.*, 61 F.3d at 470 (Federal Reserve regulations prohibiting disclosure of confidential documents
7 in party's possession held invalid when conflicting with discovery order).

8 "Control" need not be actual control; courts construe it broadly as "the legal right to obtain
9 documents upon demand." *United States v. Int'l Union of Petroleum & Indus. Workers*, 870 F.2d 1450,
10 1452 (9th Cir.1989) (Ninth Circuit refused to compel an international union to produce documents
11 belonging to local union affiliates in response to a subpoena where the international union did not have
12 physical possession of the documents); *Scott v. Arax, Inc.*, 124 F.R.D. 39, 41 (D.Conn.1989) (party
13 controls document if it has right, authority, or ability to obtain documents on demand). "Legal right" is
14 evaluated in the context of the facts of each case. *In re Folding Carton Antitrust Litig.*, 76 F.R.D. 420,
15 423 (D.Ill.1977). The determination of control is often fact specific. Central to each case is the
16 relationship between the party and the person or entity having actual possession of the document. *Estate*
17 *of Young v. Holmes*, 134 F.R.D. 291, 294 (D.Nev.1991). The requisite relationship is one where a party
18 can order the person or entity in actual possession of the documents to release them. *Id.* This position
19 of control is usually the result of statute, affiliation or employment. *Id. In re Citric Acid Litig.* (9th Cir.
20 1999) 191 F3d 1090, 1107 (court cannot order production of documents held by a separate legal entity,
21 where requested party is not in actual possession or custody of the documents.)

22 "Control" may be established by the existence of a principal-agent relationship. In *Rosie D. v.*
23 *Romney*, 256 F.Supp.2d 115, 119 (D.C.Mass.2003), Defendant state officials would be required to
24 produce documents that were in the possession of non-party agencies. The state's Division of Medical
25 Assistance (MDA) delegated the delivery of health services to several entities that in turn were
26 authorized to engage subcontracted service providers. MDA's contracts required these entities to
27 maintain books and records and gave MDA the right to examine and copy these records. There was little
28 doubt, in light of these contractual provisions, that the state officials had the right to control and obtain

1 the documents that were in the possession of the non-parties. In *Clark v. Vega Wholesale Inc.*, 181
2 F.R.D. 470 (D. Nev. 1998), Vega sought discovery on Clark's allegations of physical injury by requesting
3 Clark's medical records and sought to compel Vega to execute a medical release. The court denied
4 Vega's motion, finding that Clark did not have control over the records.

5 Here, the defendants already produced documents responsive to the requests for contract
6 documents, establishing that the CDCR defendant have possession, custody or control of some of the
7 responsive documents. The documents requested in the RPD, involving contracts, investigations,
8 complaints of medical care would seem to be within the possession, custody or control of the individual
9 defendants in their employment relationship. Further, defendants do not identify by what they are “not
10 authorized” – by statute, policy, or merely convenience.

11 **Eleventh Amendment**

12 In relation to the possession, custody and control issue, defendant argues that the Eleventh
13 Amendment precludes the production of State documents. They rely on *Estate of Gonzalez v. Hickman*,
14 --- F.Supp.2d — 2006 WL 3770978 (E.D. Cal. Dec. 21, 2006).

15 In *Estate of Gonzalez v. Hickman*, --- F.Supp.2d — 2006 WL 3770978 (E.D. Cal. Dec. 21, 2006),
16 estate and minor children of state correctional officer filed § 1983 action alleging that state officials
17 deprived officer of his civil rights. The Magistrate Judge entered on order compelling the State to
18 produce documents pursuant to federal subpoena. On reconsideration, District Judge England denied the
19 motion to compel, holding that State could not be compelled to respond to subpoenas issued in § 1983
20 action against state officials. *Estate of Gonzalez* stands for the proposition that when a plaintiff issues
21 a third party subpoena *to the state* which is not a party to the action, the state may oppose discovery
22 based on sovereign immunity as provided by the 11th Amendment.

23 Courts focus on the 11th Amendment's purpose to prevent federal court judgments that would
24 have to be paid out of a State's treasury: ‘(T)he vulnerability of the State's purse (is) the most salient
25 factor in Eleventh Amendment determinations.’ *Hess v. Port Authority Trans–Hudson Corp.* (1994) 513
26 US 30, 47, 115 S.Ct. 394, 404; *see also Alaska Cargo Transport, Inc. v. Alaska R.R. Corp.* (9th Cir.
27 1993) 5 F.3d 378, 380. Eleventh Amendment immunity depends on the State's potential legal liability,
28 regardless of the entity's ability to require indemnification from a third party. *Regents of Univ. of Calif.*

1 v. *Doe* (1997) 519 US 425, 430–431, 117 S.Ct. 900, 904–905 (breach of contract action against
2 University was barred by 11th Amendment because State was legally liable despite University's right
3 to indemnification from U.S. Government.) Suits against state officers in their individual capacity for
4 damages for violation of federal law (e.g., a federal civil rights suit) are not deemed actions against the
5 state, and hence are not barred by the 11th Amendment. *Scheuer v. Rhodes* (1974) 416 US 232, 237, 94
6 S.Ct. 1683, 1687.

7 In the Eastern District, the 11th Amendment precludes a federal subpoena to the state to obtain
8 documents in support of a §1983 claim. If this Court adopts the CDCR defendants' position, however,
9 the Eleventh Amendment would also bar discovery through them to the State for the same documents.
10 A Civil Rights plaintiff could, therefore, never obtain discovery in § 1983 actions. This is not a logical
11 inference and the Court declines to adopt such a wholesale preclusion of discovery in Civil Rights cases.

12 **Deliberative Process**

13 Defendants argue that the documents about the activities and decisions surrounding Dr. Anwar,
14 including the decision to terminate him, are protected by the deliberative process privilege.

15 "Deliberative process" privilege protects "documents reflecting advisory opinions,
16 recommendations and deliberations comprising part of a process by which governmental decisions and
17 policies are formulated." *Department of Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1,
18 8 (2001). Government decision makers cannot be compelled to testify about their mental processes in
19 reaching a decision or about their communications and consultations with subordinates. *Franklin Sav.*
20 *Ass'n v. Ryan*, 922 F.2d 209, 211 (4th Cir. 1991).

21 For the privilege to apply, the material sought to be disclosed must be: predecisional; and
22 deliberative. *United States v. Fernandez*, 231 F3d 1240, 1246 (9th Cir. 2000). Communications are
23 'deliberative' if they are part of the agency give-and-take by which the decision itself is made. The agency
24 must establish what deliberative process is involved, and the role played by the documents in issue in
25 the course of that process. *See Carter v. United States Dept. of Commerce*, 307 F.3d 1084, 1090-091
26 and n.6 (9th Cir. 2002). The deliberative process privilege does not protect material that simply states
27 or explains a decision the government has already made or material that is purely factual, unless it is so
28 inextricably intertwined with the deliberative sections of documents that its disclosure would inevitably

1 reveal the government’s deliberations. *In re Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997).

2 Assertion of the deliberative process privileges requires:

3 —a formal claim of privilege by the ‘head of the department’ having control over the requested
4 information;

5 —assertion of the privilege based on actual personal consideration by that official; and

6 —a detailed specification of the information for which the privilege is claimed, with an
7 explanation of why it properly falls within the scope of the privilege. *Landry v. F.D.I.C.* (DC Cir. 2000)
8 204 F3d 1125, 1131–1132; *United States v. O’Neill* (3rd Cir. 1980) 619 F2d 222, 225.

9 Here, the defendants did not provide the necessary declaration identifying the information they
10 contend are within the deliberative process privilege. Instead, they rely upon the “lack of possession,
11 custody or control” and assert that the department head does not need to address specific requests.

12 Nonetheless, the privilege is qualified. The court must balance the competing interests taking
13 into account the following factors:

- 14 - the relevance of the evidence;
- 15 - the availability of other evidence;
- 16 - the seriousness of the litigation;
- 17 - whether the government is a party to the litigation; and
- 18 - the possibility of future timidity by government employees. *In re Sealed Case, supra*,

19 121 F.3d at 737-738.

20 There is at least one applicable exception to the deliberative process. Where there is reason to
21 believe the documents may shed light on government misconduct, the privilege is routinely denied;
22 shielding government deliberations in this context does not satisfy the policy embodied by the privilege.
23 *In re Sealed Case*, 121 F.3d at 738; *Alexander v. F.B.I.* (D DC 2000) 193 FRD 1, 10 (deliberative
24 process privilege not available where White House obtained FBI files in violation of Privacy Act.); Jones
25 and Rosen, *Fed.Civ.Trials & Ev.*, CH. 8H, §8:4136 (The Rutter Group 2006).

26 The deliberative process privilege does not apply here because the deliberations were not policy
27 formulation. The deliberations involved one doctor, the care he provided, the risks imposed and the
28 contract for his services. The deliberations was an employment type decision, not policy formulation.

1 In addition, the plaintiffs challenge the exact government conduct involved in the decision to
2 use/continue use of Dr. Anwar’s medical services. This an exception to the deliberative process
3 privilege where the documents may shed light on the government misconduct.

4 Further, factual information in the documents is not protected.

5 **Official Information Privilege**

6 Federal common law recognizes a qualified privilege for ‘official information.’ Courts must
7 determine whether the potential benefits of disclosure outweigh the potential disadvantages. *Sanchez*
8 *v. City of Santa Ana*, 936 F2d 1027, 1033 (9th Cir. 1990); *see Miller v. Pancucci*, 141 FRD 292,
9 299–300 (CD CA 1992) (discussing procedure for claiming privilege).

10 A party asserting this privilege must provide an affidavit or declaration under penalty of perjury
11 from the head of the department that has control over the matter, stating: the agency generated or
12 collected the material in issue and has in fact maintained its confidentiality;

13 —the official has personally reviewed the material in question; and

14 —a specific identification of the governmental or privacy interests that would be threatened by
15 disclosure of the material to plaintiff and/or his or her lawyer. *See Miller v. Pancucci*, 141 FRD 292, 301
16 (CD CA 1992).

17 Again, defendant did not provide this information.

18 **DISPUTED DOCUMENT REQUESTS**

19 Herein below, the Court summarizes the document requests and the parties’ contentions and rules
20 on the requests. Other objections interposed by CDCR defendants are addressed in the Court’s
21 accompanying order compelling responses from Dr. Anwar.

22 1. **Document Request 1:** All documents referring to contracts with Anwar or Madera Multi-
23 Speciality group for provision of medical services to CDC.

24 **Defendants’ response to the Request:** compound, vague, ambiguous, overly broad,
25 burdensome, oppressive, documents equally available, irrelevant. Will produce all documents in their
26 possession, custody and control responsive to this request. In a supplemental response, defendants
27 stated: Responding parties, sued in their individual capacities, have no legal right to the documents
28 requested and thus have no documents in their possession, custody, or control responsive.

1 **Plaintiff contends:** Defendants produced 2 contracts. The production did not include any
2 unexecuted drafts, negotiations, or other documents referring to these contracts, such as emails or letters
3 or documents referenced in the contract, such as the HCSD Rate Approval Memo. These documents
4 are relevant they could also show whether any clause was deleted or added to the contract, whether the
5 compensation structure was revised, and who conducted the contract negotiations, and why Dr. Anwar
6 was terminated from the contract.

7 *Boilerplate objections* should be overruled. The grounds for objections were not stated with
8 specificity.

9 *Electronic Documents* were not produced. The CDCR Defendants did not produce a single email
10 or electronic document. Rule 34(a) states documents include electronically stored information.

11 *Not equally available.* These documents are not equally available as they are not publically
12 available and were produced with a “confidential” stamp on them.

13 *Possession, Custody or Control.* Defendants argue discovery is not permitted on the CDCR
14 Defendants in their individual capacities because they are not authorized by the state to obtain custody,
15 possession or control of responsive documents. First ,this objection should be waived because it was
16 not raised in the response and documents were produced. In *Blaylock v. Schwinden*, 862 F.2d 1352,
17 1354 (9th Cir. 1988), the Ninth Circuit explained that state immunity under the Eleventh Amendment
18 does not bar suits against state employees in their individual capacities and that the state cannot thwart
19 such suits by indemnifying state officials. The Ninth Circuit relied in part on *Duckworth v. Franzen*, 780
20 F.2d 645, 651 (7th Cir. 1985), *cert. denied*, 479 U.S. 816 (1986) which explained in turn that "it would
21 be absurd if all a state had to do to put its employees beyond the reach of section 1983 . . . was to
22 promise to indemnify. . . .”

23 They do not deny that responsive documents exist – two contracts were produced. The
24 documents are readily available to the individual defendants. The documents requested are in the
25 possession of the CDCR Defendants and they should be required to produce them. *See, e.g., In re Flag*
26 *Telecom Holdings, Ltd. Sec. Litig.*, 236 F.R.D. 177, 181 (S.D.N.Y. 2006) (Court granted a motion to
27 compel certain company documents from an employee defendant, rejecting the defendant’s argument
28 that the documents belonged to his company and holding “employees are permitted to utilize the

1 documents in the course of employment, as they must in order to perform their jobs, and therefore
2 [defendant] has the practical ability to obtain them.”) (emphasis added). The CDCR Defendants’
3 arguments should be rejected because they are: (I) based on inapplicable caselaw, (ii) ignore relevant
4 authority from this District requiring individual state employee defendants to produce state documents,
5 and (iii) were raised four months after responses were due and therefore are waived. Ms. Allen is
6 seeking documents created, received, reviewed -- and otherwise in the possession and custody of the
7 CDCR Defendants.

8 The CDCR Defendants’ sudden reliance on this objection that they do not have possession,
9 custody, or control of their own records is contrary to the representation made months ago that the
10 CDCR Defendants would not raise this objection.

11 **Defendant contends:** *Moot*. The motion to compel is moot because the notice of motion fails
12 to state grounds to compel in light of the supplemental responses. The supplemental responses were
13 not the subject of a meet and confer under Local Rule 37-251(b).

14 *Eleventh Amendment Immunity*. Eleventh amendment immunity precludes production by state
15 employees sued in their individual capacities. The CDCR Defendants have been sued in their individual
16 capacities only. The CDCR defendants are employed by the State. The State is not obligated, therefore,
17 to authorize its employees to obtain possession, custody or control of documents and information. The
18 CDCR defendants, in their official capacities, have no authorization from the State or other legal
19 grounds to procure any documents or information.

20 Defendants cite: *Clark v. Vega Wholesale Inc.*, 181 F.R.D. 470, 472 (1998) (party was not in
21 control of her medical records although she might obtain copy by signing release). A party is also not
22 in control of records that the requesting party has equal ability to obtain from public sources. *See Estate*
23 *of Young Through Young v. Holmes*, 134 F.R.D. 291, 294 (1991). The party seeking production of the
24 documents bears the burden of proving that the opposing party has such control. *U.S. v International*
25 *Union of Petroleum & Industrial Workers*, 870 F.2d 1450 (1989).

26 *Attorney Client Privilege*. Although the CDCR Defendants do not have possession, custody or
27 control of such documents, as reflected in their supplemental responses, this request seeks documents
28 protected by the attorney-client privilege.

1 **Order:**

2 *Moot and Good Faith Meet and Confer.* The motion is not moot. The notice of motion stated
3 that a Joint Statement “addressing the CDCR Defendants’ responses would be filed before hearing.”
4 This is adequate notice of what responses would be at issue in the motion. The supplemental responses
5 were served before the filing of the Joint Statement, and the Joint statement included the supplemental
6 responses.

7 The argument that there was inadequate meet and confer on the supplemental responses is
8 without merit. The supplemental responses all contain a statement that “Responding parties, sued in
9 their individual capacities, have no legal right to the documents requested and thus have no documents
10 in their possession, custody, or control responsive to this request other than those documents already
11 produced.” This objection was discussed by counsel. Accordingly, further meet and confer would be
12 fruitless.

13 *Possession, Custody or Control.* The Court DIRECTS the CDCR defendants to file a declaration
14 by the supervisor/s of the named individual defendants explaining the issue of access to documents: who
15 has access, who does not, the statute relied upon, the written policy relied upon, under what
16 circumstances is access granted, the process of getting access and why that process does not allow access
17 by these defendants. The declaration shall be filed within 10 days of the service of this order. The Court
18 finds that the declaration/s is/are a prerequisite to a further consideration/grant of the document request.

19 2. **Document Request 2:** Documents referred to any contract or agreement or negotiation with
20 Madera Community for the provision of medical services.

21 **Defendants’ response to the Request:** Same objections as Document request 1.

22 **Plaintiff contends:** Defendants’ response to this request consisted of one contract between the
23 CDCR and Madera Community Hospital did not include contracts before July 1, 2005 or any unexecuted
24 drafts, negotiations, or other documents referring to these contracts, such as emails or letters. Plaintiffs
25 will limit the request by time and scope to when Dr. Anwar was first contractually allowed to perform
26 surgeries on inmates.

27 These documents are relevant because they could show what steps were taken, if any, to
28 investigate the quality of prior care rendered at Madera. They could also show whether any clause was

1 deleted or added to the contract.

2 Response to other objections is the same as in Document request no. 1.

3 **Defendant contends:** Same arguments as in Document request no. 1.

4 **Order:**

5 *Possession, Custody or Control.* The Court DIRECTS the CDCR defendants to file a declaration
6 by the supervisor/s of the named individual defendants explaining the issue of access to documents: who
7 has access, who does not, the statute relied upon, the written policy relied upon, under what
8 circumstances is access granted, the process of getting access and why that process does not allow access
9 by these defendants. The declaration shall be filed within 10 days of the service of this order. The Court
10 finds that the declaration/s is/are a prerequisite to a further consideration/grant of the document request.

11 3. **Document Request 3:** Documents regarding complaint made by any person of Dr. Anwar's
12 medical treatment.

13 **Defendants' response to the Request:** compound, vague, ambiguous, overly broad,
14 burdensome, oppressive, seeks documents equally available, attorney client privilege, privacy rights of
15 non-party inmates, the safety and security of the institution, Personnel files contain privileged official
16 information. No possession custody or control.

17 **Plaintiff contends:** Defendants produced nothing. The privacy rights do not outweigh Plaintiff's
18 need for these documents, and the boilerplate objections are not sufficient.

19 *Relevance.* CDCR Defendants knew of a substantial risk of harm to inmates such as Ms.
20 Allen, and disregarded that risk, by the complaints made by inmates or CDCR employees about Dr.
21 Anwar's medical treatment. Plaintiff agreed to limit the request to the past 10 years.

22 Without evidence of prior knowledge about Dr. Anwar's conduct, Plaintiff cannot prove a
23 requisite element of her case. Defendants are the only source of this information. The CDCR did not
24 maintain the secrecy of Anwar's file. On November 18, 2005, Senior Staff Counsel for the CDCR's
25 Legal Affairs office sent Dr. Anwar's counsel a letter describing in detail some of the complaints lodged
26 against Dr. Anwar contained in the CDCR's file.

27 *Official Information Privilege.* The CDCR Defendants object based on both the Federal official
28 information privilege and on the State official information privilege found in California Evidence Code

1 section 1040. State privileges, however, are not applicable in federal question cases such as claims
2 involving section 1983. *Kerr v. District Court*, 511 F.2d 192, 197 (9th Cir. 1975) (refusing to apply
3 California Evidence Code section 1040 in section 1983 action).

4 To properly invoke the federal official information privilege, however, the asserting party
5 must make a “substantial threshold showing” by submitting, “at the time it files and serves its
6 response to the discovery request, a declaration or affidavit.” The CDCR Defendants made no such
7 threshold showing. No declaration was submitted. No assertion that the confidentiality of the material
8 has been maintained was made.

9 The official information privilege is not absolute, and will be set aside when the potential
10 benefits of disclosure outweigh the potential disadvantages. *Miller*, 141 F.R.D. at 299.

11 *Safety*. Defendants make a murky argument that the safety and security of the employees, the
12 institution, inmates, and other correction and medical personnel could be jeopardized. No effort is made
13 to elaborate on how their safety would be jeopardized, how a protective order would not cure these
14 concerns, general assertions of harm are not enough to justify the CDCR Defendants’ outright refusal
15 to produce responsive documents. *Soto v. City of Concord*, 162 F.R.D. 603, 614 (N.D. Cal. 1995).

16 *The Deliberative Process Privilege*. The deliberative process privilege, however, does not apply
17 here because these documents fall outside the scope of the privilege, the CDCR defendants did not
18 properly invoke the privilege, and Plaintiff’s need for this information outweighs any harm to the
19 government from disclosure. The privilege relates for policy formulation. Here, the communications and
20 deliberations (or lack thereof) at issue are about one doctor, whether he posed a risk to an inmate
21 population, and whether his contract should be terminated. This employment decision does not qualify
22 as policy formulation.

23 The deliberative process privilege only applies where the governmental decision-making is
24 collateral to the litigation. Plaintiff is attacking the very integrity of the decision-making process that
25 allowed Dr. Anwar to continue operating on inmates at CCWF and VSPW.

26 The deliberative process privilege does not apply to material that is purely factual. *In re Sealed*
27 *Case*, 121 F.3d 729, 737 (D.C. Cir. 1997). Plaintiff’s request seeks the when, how, and what certain
28 officials were informed of regarding problems with Dr. Anwar.

1 The privilege is not absolute, and will be overcome when, as here, a sufficient showing of need
2 exists. *In re Sealed Case*, 121 F.3d at 737.

3 *Federal Privacy Act.* The CDCR Defendants also assert that documents responsive to this request
4 are protected by the Federal Privacy Act, found at 5 U.S.C.A. section 552a. This Act, however, applies
5 only to federal agencies, and therefore does not provide a shelter for objection here, because the CDCR
6 is a state agency. *St. Michaels Convalescent Hosp. v. State of California*, 643 F.2d 1369, 1373 (9th Cir.
7 1981).

8 *Right to Privacy.* State privileges do not apply in Federal court. As for the privacy rights of third
9 parties, while there is no federal physician-patient privilege, federal courts do recognize a limited right
10 of privacy in one's medical information. See, e.g., *Soto v. City of Concord*, 162 F.R.D. 603, 618 (N.D.
11 Cal., 1995). This right is not absolute and the nature of the privacy right will be weighed against the
12 need for the information and interest in disclosure. *Oakes v. Halvorsen Marine Ltd.*, 179 F.R.D. 281,
13 284 (C.D. Cal. 1998). If there is a privacy concern, plaintiff agrees to a redaction of the indemnifying
14 information.

15 *Waiver of Privileges.* Defendants have not yet produced any privilege log in response to these
16 requests, and is 5 months late. Defendants have waived any claims to privilege.

17 **Defendant contends:**

18 *Deliberative process:* Government decisionmakers cannot be compelled to testify about their
19 mental processes in reaching a decision or about their communications and consultations with
20 subordinates. *Franklin Sav. Ass'n v. Ryan*, 922 F.2d 209, 211 (4th Cir. 1991). CDCR conducted an
21 investigation into complaints about Dr. Anwar. The CDCR is an executive agency of the State of
22 California. All documents and communications concerning this deliberative process are, therefore,
23 privileged.

24 *Official Information Privilege.* Federal common law recognizes a qualified privilege for official
25 information. *Sanchez v. City of Santa Ana*, 936 F.2d at 1033. A party asserting this privilege must
26 provide an affidavit or declaration under penalty of perjury from the head of the department. The official
27 information privilege is invoked by the CDCR Defendants' State agency employers, which are not a
28 party to this action. This is an issue, therefore, that needs to be resolved as part of a subpoena or motion

1 for protective order regarding discovery from non-party State of California. The CDCR Defendants have
2 been sued in their individual capacities and, therefore, have no authority or legal basis to procure
3 documents in the possession, custody or control of their employer.

4 *State law privileges.* Assuming the Court grants the motion to compel, defendants request a
5 protective order restricting use and dissemination of the information disclosed. A federal court is not
6 bound to recognize state privileges in federal question cases. *Garrett v. City & County of San Francisco*,
7 818 F.2d 1515, 1519, fn. 6 (9th Cir. 1987). Nevertheless, federal courts will usually attempt to
8 accommodate the policies reflected in the state law.

9 **Order:**

10 *Possession, Custody or Control.* The Court DIRECTS the CDCR defendants to file a declaration
11 by the supervisor/s of the named individual defendants explaining the issue of access to documents: who
12 has access, who does not, the statute relied upon, the written policy relied upon, under what
13 circumstances is access granted, the process of getting access and why that process does not allow access
14 by these defendants. The declaration shall be filed within 10 days of the service of this order. The Court
15 finds that the declaration/s is/are a prerequisite to a further consideration/grant of the document request.

16 4. **Document Request 4:** Documents reflecting Dr. Anwar's medical billing.

17 **Defendants' response to the Request:** Same objections as document request 1 and 3.

18 **Plaintiff contends:** Same as document request 1 and 3.

19 **Defendant contends:** Same as document request 1 and 3.

20 **Order:**

21 *Possession, Custody or Control.* The Court DIRECTS the CDCR defendants to file a declaration
22 by the supervisor/s of the named individual defendants explaining the issue of access to documents: who
23 has access, who does not, the statute relied upon, the written policy relied upon, under what
24 circumstances is access granted, the process of getting access and why that process does not allow access
25 by these defendants. The declaration shall be filed within 10 days of the service of this order. The Court
26 finds that the declaration/s is/are a prerequisite to a further consideration/grant of the document request.

27 1. **Document Request 5:** Documents reflecting Dr. Anwar's self-referrals, as mentioned in
28 "Attachment A."

1 **Defendants’ response to the Request:** Same objections as document request 1 and 3.

2 **Plaintiff contends:** Attachment A to Request for Production No. 6 is the letter from CDCR’s
3 Senior Staff Counsel to Dr. Anwar’s counsel that describes some of the complaints the CDCR received.
4 The letter describes complaints made by nine inmates but has not been produced. Nothing has been
5 produced.

6 Same as document request 1 and 3.

7 **Defendant contends:** Same as document request 1 and 3.

8 **Order:**

9 *Possession, Custody or Control.* The Court DIRECTS the CDCR defendants to file a declaration
10 by the supervisor/s of the named individual defendants explaining the issue of access to documents: who
11 has access, who does not, the statute relied upon, the written policy relied upon, under what
12 circumstances is access granted, the process of getting access and why that process does not allow access
13 by these defendants. The declaration shall be filed within 10 days of the service of this order. The Court
14 finds that the declaration/s is/are a prerequisite to a further consideration/grant of the document request.

15 6. **Document Request 6:** Documents relating to complaints against Dr. Anwar made by Inmate 1
16 as identified in attachment A.

17 **Defendants’ response to the Request:** Same objections as Document request 1 and 3.

18 **Plaintiff contends:** Plaintiff seeks the complaints made by a specific inmate. Same as Document
19 request 1 and 3.

20 **Defendant contends:** Same as Document request 1 and 3.

21 **Order:**

22 *Possession, Custody or Control.* The Court DIRECTS the CDCR defendants to file a declaration
23 by the supervisor/s of the named individual defendants explaining the issue of access to documents: who
24 has access, who does not, the statute relied upon, the written policy relied upon, under what
25 circumstances is access granted, the process of getting access and why that process does not allow access
26 by these defendants. The declaration shall be filed within 10 days of the service of this order. The Court
27 finds that the declaration/s is/are a prerequisite to a further consideration/grant of the document request.

28 7. **Document Request 7:** Documents relating to complaints against Dr. Anwar made by Inmate 2

1 as identified in attachment A.

2 **Defendants' response to the Request:** Same objections as Document request 1 and 3.

3 **Plaintiff contends:** Same as Document request 1 and 3.

4 **Defendant contends:** Same as Document request 1 and 3.

5 **Order:**

6 *Possession, Custody or Control.* The Court DIRECTS the CDCR defendants to file a declaration
7 by the supervisor/s of the named individual defendants explaining the issue of access to documents: who
8 has access, who does not, the statute relied upon, the written policy relied upon, under what
9 circumstances is access granted, the process of getting access and why that process does not allow access
10 by these defendants. The declaration shall be filed within 10 days of the service of this order. The Court
11 finds that the declaration/s is/are a prerequisite to a further consideration/grant of the document request.

12 8. **Document Request 8:** Documents relating to complaints against Dr. Anwar made by Inmate
13 3 as identified in attachment A.

14 **Defendants' response to the Request:** Same objections as Document request 1 and 3.

15 **Plaintiff contends:** Same as Document request 1 and 3.

16 **Defendant contends:** Same as Document request 1 and 3.

17 **Order:**

18 *Possession, Custody or Control.* The Court DIRECTS the CDCR defendants to file a declaration
19 by the supervisor/s of the named individual defendants explaining the issue of access to documents: who
20 has access, who does not, the statute relied upon, the written policy relied upon, under what
21 circumstances is access granted, the process of getting access and why that process does not allow access
22 by these defendants. The declaration shall be filed within 10 days of the service of this order. The Court
23 finds that the declaration/s is/are a prerequisite to a further consideration/grant of the document request.

24 9. **Document Request 9:** Documents relating to complaints against Dr. Anwar made by Inmate 4
25 as identified in attachment A.

26 **Defendants' response to the Request:** Same objections as Document request 1 and 3.

27 **Plaintiff contends:** Same as Document request 1 and 3.

28 **Defendant contends:** Same as Document request 1 and 3.

1 **Order:**

2 *Possession, Custody or Control.* The Court DIRECTS the CDCR defendants to file a declaration
3 by the supervisor/s of the named individual defendants explaining the issue of access to documents: who
4 has access, who does not, the statute relied upon, the written policy relied upon, under what
5 circumstances is access granted, the process of getting access and why that process does not allow access
6 by these defendants. The declaration shall be filed within 10 days of the service of this order. The Court
7 finds that the declaration/s is/are a prerequisite to a further consideration/grant of the document request.

8 10. **Document Request 10:** Documents relating to complaints against Dr. Anwar made by Inmate
9 5 as identified in attachment A.

10 **Defendants' response to the Request:** Same objections as Document request 1 and 3.

11 **Plaintiff contends:** Same as Document request 1 and 3.

12 **Defendant contends:** Same as Document request 1 and 3.

13 **Order:**

14 *Possession, Custody or Control.* The Court DIRECTS the CDCR defendants to file a declaration
15 by the supervisor/s of the named individual defendants explaining the issue of access to documents: who
16 has access, who does not, the statute relied upon, the written policy relied upon, under what
17 circumstances is access granted, the process of getting access and why that process does not allow access
18 by these defendants. The declaration shall be filed within 10 days of the service of this order. The Court
19 finds that the declaration/s is/are a prerequisite to a further consideration/grant of the document request.

20 11. **Document Request 11:** Documents relating to complaints against Dr. Anwar made by Inmate
21 6 as identified in attachment A.

22 **Defendants' response to the Request:** Same objections as Document request 1 and 3.

23 **Plaintiff contends:** Same as Document request 1 and 3.

24 **Defendant contends:** Same as Document request 1 and 3.

25 **Order:**

26 *Possession, Custody or Control.* The Court DIRECTS the CDCR defendants to file a declaration
27 by the supervisor/s of the named individual defendants explaining the issue of access to documents: who
28 has access, who does not, the statute relied upon, the written policy relied upon, under what

1 circumstances is access granted, the process of getting access and why that process does not allow access
2 by these defendants. The declaration shall be filed within 10 days of the service of this order. The Court
3 finds that the declaration/s is/are a prerequisite to a further consideration/grant of the document request.

4 1. **Document Request 12:** Documents relating to complaints against Dr. Anwar made by Inmate
5 7 as identified in attachment A.

6 **Defendants' response to the Request:** Same objections as Document request 1 and 3.

7 **Plaintiff contends:** Same as Document request 1 and 3.

8 **Defendant contends:** Same as Document request 1 and 3.

9 **Order:**

10 *Possession, Custody or Control.* The Court DIRECTS the CDCR defendants to file a declaration
11 by the supervisor/s of the named individual defendants explaining the issue of access to documents: who
12 has access, who does not, the statute relied upon, the written policy relied upon, under what
13 circumstances is access granted, the process of getting access and why that process does not allow access
14 by these defendants. The declaration shall be filed within 10 days of the service of this order. The Court
15 finds that the declaration/s is/are a prerequisite to a further consideration/grant of the document request.

16 13. **Document Request 13:** Documents relating to complaints against Dr. Anwar made by Inmate
17 8 as identified in attachment A.

18 **Defendants' response to the Request:** Same objections as Document request 1 and 3.

19 **Plaintiff contends:** Same as Document request 1 and 3.

20 **Defendant contends:** Same as Document request 1 and 3.

21 **Order:**

22 *Possession, Custody or Control.* The Court DIRECTS the CDCR defendants to file a declaration
23 by the supervisor/s of the named individual defendants explaining the issue of access to documents: who
24 has access, who does not, the statute relied upon, the written policy relied upon, under what
25 circumstances is access granted, the process of getting access and why that process does not allow access
26 by these defendants. The declaration shall be filed within 10 days of the service of this order. The Court
27 finds that the declaration/s is/are a prerequisite to a further consideration/grant of the document request.

28 ////

1 14. **Document Request 14:** Documents relating to the states investigation leading to the decision
2 to stop using Dr. Anwar as a service provider.

3 **Defendants' response to the Request:** Same objections as Document request 1 and 3.

4 **Plaintiff contends:** Same as Document request 1 and 3.

5 **Defendant contends:** Same as Document request 1 and 3.

6 **Order:**

7 *Possession, Custody or Control.* The Court DIRECTS the CDCR defendants to file a declaration
8 by the supervisor/s of the named individual defendants explaining the issue of access to documents: who
9 has access, who does not, the statute relied upon, the written policy relied upon, under what
10 circumstances is access granted, the process of getting access and why that process does not allow access
11 by these defendants. The declaration shall be filed within 10 days of the service of this order. The Court
12 finds that the declaration/s is/are a prerequisite to a further consideration/grant of the document request.

13 15. **Document Request 15:** Documents relating to the state's investigation that did NOT lead to the
14 decision to stop using Dr. Anwar as a service provider

15 **Defendants' response to the Request:** Same objections as Document request 1 and 3.

16 **Plaintiff contends:** Same as Document request 1 and 3.

17 **Defendant contends:** Same as Document request 1 and 3.

18 **Order:**

19 *Possession, Custody or Control.* The Court DIRECTS the CDCR defendants to file a declaration
20 by the supervisor/s of the named individual defendants explaining the issue of access to documents: who
21 has access, who does not, the statute relied upon, the written policy relied upon, under what
22 circumstances is access granted, the process of getting access and why that process does not allow access
23 by these defendants. The declaration shall be filed within 10 days of the service of this order. The Court
24 finds that the declaration/s is/are a prerequisite to a further consideration/grant of the document request.

25 16. **Document Request 16:** Documents relating to investigations of Anwar's billing practices.

26 **Defendants' response to the Request:** Same objections as Document request 1 and 3.

27 **Plaintiff contends:** Same as Document request 1 and 3.

28 **Defendant contends:** Same as Document request 1 and 3.

1 **Order:**

2 *Possession, Custody or Control.* The Court DIRECTS the CDCR defendants to file a declaration
3 by the supervisor/s of the named individual defendants explaining the issue of access to documents: who
4 has access, who does not, the statute relied upon, the written policy relied upon, under what
5 circumstances is access granted, the process of getting access and why that process does not allow access
6 by these defendants. The declaration shall be filed within 10 days of the service of this order. The Court
7 finds that the declaration/s is/are a prerequisite to a further consideration/grant of the document request.

8 17. **Document Request 17:** Documents relating to Dr. Anwar’s self’ referrals as mentioned in
9 Attachment A.

10 **Defendants’ response to the Request:** Same objections as Document request 1 and 3.

11 **Plaintiff contends:** Same as Document request 1 and 3.

12 **Defendant contends:** Same as Document request 1 and 3.

13 **Order:**

14 *Possession, Custody or Control.* The Court DIRECTS the CDCR defendants to file a declaration
15 by the supervisor/s of the named individual defendants explaining the issue of access to documents: who
16 has access, who does not, the statute relied upon, the written policy relied upon, under what
17 circumstances is access granted, the process of getting access and why that process does not allow access
18 by these defendants. The declaration shall be filed within 10 days of the service of this order. The Court
19 finds that the declaration/s is/are a prerequisite to a further consideration/grant of the document request.

20 18. **Document Request 18:** Documents prepared by Chrisman L. Swanberg in connection with the
21 state’s decision to discontinue suing Dr. Anwar.

22 **Defendants’ response to the Request:** Same objections as Document request 1 and 3.

23 **Plaintiff contends:** Chrisman L. Swanberg is the Senior Staff Counsel at the CDC and wrote
24 the letter to Dr. Anwar’s attorney advising that Dr. Anwar had been terminated. The letter has not been
25 produced.

26 Same as Document request 1 and 3.

27 **Defendant contends:** Same as Document request 1 and 3.

28 /////

1 **Order:**

2 *Possession, Custody or Control.* The Court DIRECTS the CDCR defendants to file a declaration
3 by the supervisor/s of the named individual defendants explaining the issue of access to documents: who
4 has access, who does not, the statute relied upon, the written policy relied upon, under what
5 circumstances is access granted, the process of getting access and why that process does not allow access
6 by these defendants. The declaration shall be filed within 10 days of the service of this order. The Court
7 finds that the declaration/s is/are a prerequisite to a further consideration/grant of the document request.

8 19. **Document Request 19:** Documents prepared by Renee Kanan in connection with the state’s
9 investigation of Dr. Anwar or the decision to stop using Dr. Anwar.

10 **Defendants’ response to the Request:** Same objections as Document request 1 and 3.

11 **Plaintiff contends:** Dr. Renee Kanan, an employee of the CDC, was a critic of Dr. Anwar and
12 may have prepared documents.

13 Same as Document request 1 and 3.

14 **Defendant contends:** Same as Document request 1 and 3.

15 **Order:**

16 *Possession, Custody or Control.* The Court DIRECTS the CDCR defendants to file a declaration
17 by the supervisor/s of the named individual defendants explaining the issue of access to documents: who
18 has access, who does not, the statute relied upon, the written policy relied upon, under what
19 circumstances is access granted, the process of getting access and why that process does not allow access
20 by these defendants. The declaration shall be filed within 10 days of the service of this order. The Court
21 finds that the declaration/s is/are a prerequisite to a further consideration/grant of the document request.

22 20. **Document Request 20:** Documents in connection with the decision to discontinue using Dr.
23 Anwar as a service provider, including documents created by Corey Pierini, Sampath
24 Suryadevara M.D., Renee Kanan, M.D., Randy Lewis, R.N. and Rene Roberts, R.N.

25 **Defendants’ response to the Request:** Same objections as Document request 1 and 3.

26 **Plaintiff contends:** Same as Document request 1 and 3.

27 **Defendant contends:** Same as Document request 1 and 3.

28 /////

1 **Order:**

2 *Possession, Custody or Control.* The Court DIRECTS the CDCR defendants to file a declaration
3 by the supervisor/s of the named individual defendants explaining the issue of access to documents: who
4 has access, who does not, the statute relied upon, the written policy relied upon, under what
5 circumstances is access granted, the process of getting access and why that process does not allow access
6 by these defendants. The declaration shall be filed within 10 days of the service of this order. The Court
7 finds that the declaration/s is/are a prerequisite to a further consideration/grant of the document request.

8 21. **Document Request 28:** Documents relating to bills submitted by Dr. Anwar relating to Inmate
9 1 as identified in Attachment A.

10 **Defendants’ response to the Request:** Same objections as Document request 1 and 3.

11 **Plaintiff contends:** Attachment A is the letter from CDCR’s Senior Staff Counsel to Dr.
12 Anwar’s counsel that describing some of the complaints the CDCR received against Dr. Anwar. “Inmate
13 1” complained that Dr. Anwar removed lymph nodes from her left armpit and left a large cut under her
14 arm. Same as Document request 1 and 3.

15 **Defendant contends:** Same as Document request 1 and 3.

16 **Order:**

17 *Possession, Custody or Control.* The Court DIRECTS the CDCR defendants to file a declaration
18 by the supervisor/s of the named individual defendants explaining the issue of access to documents: who
19 has access, who does not, the statute relied upon, the written policy relied upon, under what
20 circumstances is access granted, the process of getting access and why that process does not allow access
21 by these defendants. The declaration shall be filed within 10 days of the service of this order. The Court
22 finds that the declaration/s is/are a prerequisite to a further consideration/grant of the document request.

23 22. **Document Request 29:** Documents relating to bills submitted by Dr. Anwar relating to Inmate
24 2 as identified in Attachment A.

25 **Defendants’ response to the Request:** Same objections as Document request 1 and 3.

26 **Plaintiff contends:** “Inmate 2” complained that Dr. Anwar performed a lymph node resection
27 even though a CDCR doctor found her lymph nodes to be normal and a later pathology report showed
28 that the lymph nodes were benign. Same as Document request 1 and 3.

1 **Defendant contends:** Same as Document request 1 and 3.

2 **Order:**

3 *Possession, Custody or Control.* The Court DIRECTS the CDCR defendants to file a declaration
4 by the supervisor/s of the named individual defendants explaining the issue of access to documents: who
5 has access, who does not, the statute relied upon, the written policy relied upon, under what
6 circumstances is access granted, the process of getting access and why that process does not allow access
7 by these defendants. The declaration shall be filed within 10 days of the service of this order. The Court
8 finds that the declaration/s is/are a prerequisite to a further consideration/grant of the document request.

9 23. **Document Request 30:** Documents relating to bills submitted by Dr. Anwar relating to Inmate
10 3 as identified in Attachment A.

11 **Defendants’ response to the Request:** Same objections as Document request 1 and 3.

12 **Plaintiff contends:** “Inmate 3” had a history of boils and complained that Dr. Anwar removed
13 sweat glands and cut nerves during a procedure that was more invasive than was ever explained to her
14 and to which she did not consent. Same as Document request 1 and 3.

15 **Defendant contends:** Same as Document request 1 and 3.

16 **Order:**

17 *Possession, Custody or Control.* The Court DIRECTS the CDCR defendants to file a declaration
18 by the supervisor/s of the named individual defendants explaining the issue of access to documents: who
19 has access, who does not, the statute relied upon, the written policy relied upon, under what
20 circumstances is access granted, the process of getting access and why that process does not allow access
21 by these defendants. The declaration shall be filed within 10 days of the service of this order. The Court
22 finds that the declaration/s is/are a prerequisite to a further consideration/grant of the document request.

23 24. **Document Request 31:** Documents relating to bills submitted by Dr. Anwar relating to Inmate
24 4 as identified in Attachment A.

25 **Defendants’ response to the Request:** Same objections as Document request 1 and 3.

26 **Plaintiff contends:** “Inmate 4” had several small abscesses that were resolved with antibiotics.
27 Nevertheless, Dr. Anwar performed surgery, making a 15cm incision (to which “Inmate 4” never
28 consented), resulting in a major loss of range of motion. Same as Document request 1 and 3.

1 **Defendant contends:** Same as Document request 1 and 3.

2 **Order:**

3 *Possession, Custody or Control.* The Court DIRECTS the CDCR defendants to file a declaration
4 by the supervisor/s of the named individual defendants explaining the issue of access to documents: who
5 has access, who does not, the statute relied upon, the written policy relied upon, under what
6 circumstances is access granted, the process of getting access and why that process does not allow access
7 by these defendants. The declaration shall be filed within 10 days of the service of this order. The Court
8 finds that the declaration/s is/are a prerequisite to a further consideration/grant of the document request.

9 25. **Document Request 32:** Documents relating to bills submitted by Dr. Anwar relating to Inmate
10 5 as identified in Attachment A.

11 **Defendants' response to the Request:** Same objections as Document request 1 and 3.

12 **Plaintiff contends:** "Inmate 5" had an excision/biopsy of tumor performed by Dr. Anwar in
13 2001. Two days later, Dr. Anwar recommended a radical left mastectomy, telling the patient she did not
14 have time for a second opinion. Dr. Anwar performed the radical left mastectomy the next day. an
15 oncological physician later criticized Dr. Anwar for the lack of an oncological consultation prior to the
16 surgery, told "Inmate 5" that the radical mastectomy may not have been necessary, and that the tissue
17 and muscle had been sewn together incorrectly, and that her arm and chest would not function correctly
18 without corrective plastic surgery. Same as Document request 1 and 3.

19 **Defendant contends:** Same as Document request 1 and 3.

20 **Order:**

21 *Possession, Custody or Control.* The Court DIRECTS the CDCR defendants to file a declaration
22 by the supervisor/s of the named individual defendants explaining the issue of access to documents: who
23 has access, who does not, the statute relied upon, the written policy relied upon, under what
24 circumstances is access granted, the process of getting access and why that process does not allow access
25 by these defendants. The declaration shall be filed within 10 days of the service of this order. The Court
26 finds that the declaration/s is/are a prerequisite to a further consideration/grant of the document request.

27 26. **Document Request 33:** Documents relating to bills submitted by Dr. Anwar relating to Inmate
28 6 as identified in Attachment A.

1 **Defendants’ response to the Request:** Same objections as Document request 1 and 3.

2 **Plaintiff contends:** “Inmate 6” complained that Dr. Anwar performed several surgeries without
3 her informed consent and that left her disfigured. Same as Document request 1 and 3.

4 **Defendant contends:** Same as Document request 1 and 3.

5 **Order:**

6 *Possession, Custody or Control.* The Court DIRECTS the CDCR defendants to file a declaration
7 by the supervisor/s of the named individual defendants explaining the issue of access to documents: who
8 has access, who does not, the statute relied upon, the written policy relied upon, under what
9 circumstances is access granted, the process of getting access and why that process does not allow access
10 by these defendants. The declaration shall be filed within 10 days of the service of this order. The Court
11 finds that the declaration/s is/are a prerequisite to a further consideration/grant of the document request.

12 27. **Document Request 34:** Documents relating to bills submitted by Dr. Anwar relating to Inmate
13 7 as identified in Attachment A.

14 **Defendants’ response to the Request:** Same objections as Document request 1 and 3.

15 **Plaintiff contends:** “Inmate 7” complained that Dr. Anwar performed an unnecessary surgery
16 that did not address her medical needs. Same as Document request 1 and 3.

17 **Defendant contends:** Same as Document request 1 and 3.

18 **Order:**

19 *Possession, Custody or Control.* The Court DIRECTS the CDCR defendants to file a declaration
20 by the supervisor/s of the named individual defendants explaining the issue of access to documents: who
21 has access, who does not, the statute relied upon, the written policy relied upon, under what
22 circumstances is access granted, the process of getting access and why that process does not allow access
23 by these defendants. The declaration shall be filed within 10 days of the service of this order. The Court
24 finds that the declaration/s is/are a prerequisite to a further consideration/grant of the document request.

25 28. **Document Request 35:** Documents relating to bills submitted by Dr. Anwar relating to Inmate
26 8 as identified in Attachment A.

27 **Defendants’ response to the Request:** Same objections as Document request 1 and 3.

28 **Plaintiff contends:** “Inmate 8” complained that Dr. Anwar performed three surgeries in 2004

1 and 2005 for an abscess on her arm. “Inmate 8” complained that the surgeries did not help her problem,
2 and she is critical of the treatment she received from Dr. Anwar. Same as Document request 1 and 3.

3 **Defendant contends:** Same as Document request 1 and 3.

4 **Order:**

5 *Possession, Custody or Control.* The Court DIRECTS the CDCR defendants to file a declaration
6 by the supervisor/s of the named individual defendants explaining the issue of access to documents: who
7 has access, who does not, the statute relied upon, the written policy relied upon, under what
8 circumstances is access granted, the process of getting access and why that process does not allow access
9 by these defendants. The declaration shall be filed within 10 days of the service of this order. The Court
10 finds that the declaration/s is/are a prerequisite to a further consideration/grant of the document request.

11 29. **Document Request 36:** Documents relating to bills submitted by Dr. Anwar for excision of
12 boils and medical treatment around the armpit area.

13 **Defendants’ response to the Request:** Same objections as Document request 1 and 3.

14 **Plaintiff contends:** Same as Document request 1 and 3.

15 **Defendant contends:** Same as Document request 1 and 3.

16 **Order:**

17 *Possession, Custody or Control.* The Court DIRECTS the CDCR defendants to file a declaration
18 by the supervisor/s of the named individual defendants explaining the issue of access to documents: who
19 has access, who does not, the statute relied upon, the written policy relied upon, under what
20 circumstances is access granted, the process of getting access and why that process does not allow access
21 by these defendants. The declaration shall be filed within 10 days of the service of this order. The Court
22 finds that the declaration/s is/are a prerequisite to a further consideration/grant of the document request.

23 30. **Document Request 37:** Documents relating to bills submitted by Dr. Anwar for treatment of
24 Regina Boyce, Brenda Allen, Genea Scott, and/or Julie Holmes.

25 **Defendants’ response to the Request:** Same objections as Document request 1 and 3.

26 **Plaintiff contends:** Same as Document request 1 and 3.

27 **Defendant contends:** Same as Document request 1 and 3.

28 **Order:**

1 *Possession, Custody or Control.* The Court DIRECTS the CDCR defendants to file a declaration
2 by the supervisor/s of the named individual defendants explaining the issue of access to documents: who
3 has access, who does not, the statute relied upon, the written policy relied upon, under what
4 circumstances is access granted, the process of getting access and why that process does not allow access
5 by these defendants. The declaration shall be filed within 10 days of the service of this order. The Court
6 finds that the declaration/s is/are a prerequisite to a further consideration/grant of the document request.

7 31. **Document Request 38:** Documents relating to an investigation by any other office or agency
8 relating to Dr. Anwar.

9 **Defendants' response to the Request:** Same objections as Document request 1 and 3.

10 **Plaintiff contends:** Same as Document request 1 and 3.

11 **Defendant contends:** Same as Document request 1 and 3.

12 **Order:**

13 *Possession, Custody or Control.* The Court DIRECTS the CDCR defendants to file a declaration
14 by the supervisor/s of the named individual defendants explaining the issue of access to documents: who
15 has access, who does not, the statute relied upon, the written policy relied upon, under what
16 circumstances is access granted, the process of getting access and why that process does not allow access
17 by these defendants. The declaration shall be filed within 10 days of the service of this order. The Court
18 finds that the declaration/s is/are a prerequisite to a further consideration/grant of the document request.

19 IT IS SO ORDERED.

20 **Dated:** January 30, 2007
b9ed48

/s/ Lawrence J. O'Neill
UNITED STATES MAGISTRATE JUDGE

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FACTUAL AND PROCEDURAL BACKGROUND

General Allegations

Plaintiff is a prisoner at Central California Women’s Facility (CCWF). She alleges that the California Department of Corrections (“CDC”)/CCWF sent her to Madera Community Hospital for an unnecessary surgery. Plaintiff requested and was denied non-surgical treatment to treat boils in her arm pit region. Despite being notified of Dr. Anwar’s injury to another CCWF prisoner, the CDC Defendants sent Plaintiff to Dr. Muhammad Anwar for surgery. Plaintiff received invasive, improper treatment from Dr. Anwar and Madera Community Hospital. The surgery left Plaintiff with limited mobility, flexibility, sensation and pain in her arms.

Plaintiff alleges that each of the Defendants exhibited a deliberate indifference to her medical needs by subjecting her to surgery that mutilated her body and caused severe and permanent disfigurement and disability. Plaintiff further contends that Defendants’ actions constitute cruel and unusual punishment. Plaintiff additionally contends that subjecting Plaintiff to the surgical treatment without her informed consent and by performing surgery far more invasive and than necessary or proper without apprising her of the risks of surgery constituted battery. Plaintiff also alleges that all Defendants engaged in gross negligence when they breached their duty of care to Plaintiff with reckless disregard or deliberate indifference to harm Allen.

Plaintiff alleges claims for:

- 42 U.S.C. § 1983 - all defendants
- Eighth and Fourteenth Amendments - all defendants
- Professional Negligence - against Anwar, Madera, Tur, Suryadevara
- Civil Battery - all defendants
- Gross Negligence - all defendants
- Intentional Misrepresentation & Negligent Misrepresentation - all defendants
- Intentional Infliction of Emotional Distress- all defendants
- Negligent Infliction of Emotional Distress - all defendants

Plaintiffs served the Requests for Production of Documents on August 16, 2006. Defendant responded with objections on September 18, 2006, and produced some documents. The motion to compel was filed

1 on December 22, 2006 and Dr. Anwar supplemented with more objections on January 9, 2007.

2 **Consolidation**

3 This case has been consolidated with other women inmates on whom Dr. Anwar performed boil
4 excisions – Ms. Boyce, Ms. Holmes and Ms. Scott - for discovery purposes by District Judge Oliver W.
5 Wanger.

6 **SCOPE OF DISCOVERY**

7 The purpose of discovery is to make trial “less a game of blind man’s bluff and more a fair
8 contest with the basic issues and facts disclosed to the fullest practicable extent possible,” *United States*
9 *v. Procter & Gamble*, 356 U.S. 677, 683, 78 S.Ct. 983, 987 (1958), and to narrow and clarify the issues
10 in dispute, *Hickman v. Taylor*, 329 U.S. 495, 501, 67 S.Ct. 385, 388 (1947).

11 Fed.R.Civ.P. 26(b) establishes the scope of discovery and states in pertinent part:

12 Parties may obtain discovery regarding any matter, not privileged, that is relevant
13 to the claim or defense of any party, including the existence, description, nature, custody,
14 condition, and location of any books, documents, or other tangible things and the identity
15 and location of persons having knowledge of any discoverable matter. For good cause,
the court may order discovery of any matter relevant to the subject matter involved in the
action. Relevant information need not be admissible at trial if the discovery appears
reasonably calculated to lead to the discovery of admissible evidence.

16 “The party who resists discovery has the burden to show that discovery should not be allowed,
17 and has the burden of clarifying, explaining, and supporting its objections.” *Oakes v. Halvorsen Marine*
18 *Ltd.*, 179 F.R.D 281, 283 (C.D. Cal. 1998); *Nestle Foods Corp. v. Aetna Casualty & Surety Co.*, 135
19 F.R.D. 101, 104 (D. N.J. 1990).

20 **REQUEST FOR PRODUCTION STANDARDS**

21 Fed.R.Civ.P. 34(b) requires a written response to a request for production to “state, with respect
22 to each item or category, that inspection and related activities will be permitted as requested, unless the
23 request is objected to, in which event the reasons for the objection shall be stated.” The request is
24 sufficient if the documents or things to be produced are of a *category* described with 'reasonable
25 particularity' in the request. *Id.* A party is obliged to produce all specified relevant and nonprivileged
26 documents or other things which are in its “possession, custody or control” on the date specified in the
27 request. F.R.Civ.P. 34(a); *Norman Rockwell Int’l Corp. v. H. Wolfe Iron & Metal Co.*, 576 F.Supp. 511,
28 512 (W.D. Pa. 1983). The propounding party may seek an order for further disclosure regarding “any

1 objection to or other failure to respond to the request or any part thereof, or any failure to permit
2 inspection requested.” F.R.Civ.P. 34(b).

3 **MAJOR OBJECTIONS MADE BY ANWAR**

4 **California Evid. Code § 1157 - Peer Review Privilege**

5 Dr. Anwar argues that documents requested are protected by the peer review privilege.

6 Except as otherwise provided by federal law, testimonial privileges in federal question cases are
7 governed by federal common law. Fed.R.Evid. 501; *United States v. Zolin* (1989) 491 US 554, 562, 109
8 S.Ct. 2619, 2625 (attorney-client privilege). No specific privileges or requirements are provided in the
9 Federal Rules. Rather, testimonial privileges in federal question cases are governed by principles of the
10 common law as interpreted by federal courts ‘in the light of reason and experience.’ Fed.R.Evid. 501.
11 This provides federal courts ‘with the flexibility to develop rules of privilege on a case-by-case basis.’
12 *Trammel v. United States* (1980) 445 US 40, 47, 100 S.Ct. 906, 911; *University of Penn. v. E.E.O.C.*
13 (1990) 493 US 182, 189, 110 S.Ct. 577, 582 (declining to recognize privilege for academic peer review
14 proceedings).

15 Dr. Anwar argues that the documents requested from him are protected by California Evidence
16 code §1157. Cal. Evid. Code § 1157(a) states:

17 “Neither the proceedings nor the records of organized committees of
18 medical . . . staffs in hospitals, or of a peer review body . . . having the
19 responsibility of evaluation and improvement of the quality of care
rendered in the hospital, . . . shall be subject to discovery.”

20 In medical malpractice cases, medical peer review materials (e.g., minutes of hospital staff meetings
21 discussing treatment given and procedures to improve patient care) may be protected from disclosure
22 under this privilege. Jones and Rosen, *Fed.Civ.Trials & Ev.*, CH 8; §8:42409 (The Rutter Group 2006).
23 Courts have recognized that there is an important public interest in having hospitals critically evaluate
24 the quality of the care they provide. (Id.) In addition, most states have statutes protecting medical peer
25 review conferences from disclosure. *See Bredice v. Doctors Hosp., Inc.* (DC Cir. 1970) 50 F.R.D. 249,
26 250–251; and *Weekoty v. United States* (D NM 1998) 30 F.Supp.2d 1343, 1347–1348.

27 However, there is no privilege for medical peer review records in federal discrimination actions.
28 Most federal courts that have considered the existence of a federal peer review privilege have rejected

1 it. *See e.g., Nilavar v. Mercy Health System–Western Ohio* (SD OH 2002) 210 FRD 597, 602–610
2 (collecting cases).

3 The parties did not discuss or cite a controlling Ninth Circuit case on the issue. *See Agster v.*
4 *Maricopa County*, 422 F.3d 836, 838–839 (9th Cir. 2005). In *Agster*, parents of a prisoner who died in
5 custody of county sheriff's department brought action against county. Plaintiffs sought discovery of the
6 mortality review and defendant declined asserting the peer review privilege. The Ninth Circuit declined
7 to create peer review privilege for county correctional health services' 'mortality review' of
8 circumstances of prisoner's death. The reason asserted by the Ninth circuit is compelling in the instant
9 case:

10 “Whereas in the ordinary hospital it may be that the first object of all
11 involved in patient care is the welfare of the patient, in the prison context
12 the safety and efficiency of the prison may operate as goals affecting the
13 care offered. In these circumstances, it is peculiarly important that the
14 public have access to the assessment by peers of the care provided.” *Id.*
15 At 839.

16 Thus, the Ninth Circuit denied the peer review privilege in the prison context for the reasons plaintiff
17 has argued - to have access to the assessment of the care provided. In *Leon v. County of San Diego*, 202
18 F.R.D. 631 (S.D.Cal. 2001), a § 1983 action against the county, sheriff's department, and sheriff, alleging
19 deliberate indifference to detainee's medical condition, failure to train and supervise, and existence of
20 policy, practice or custom creating constitutional violations, the court held (1) nursing peer review
21 records from county detention facility were relevant to municipal liability and, therefore, were
22 discoverable; (2) provision of California Evidence Code privileging medical peer review records did not
23 apply to protect records from discovery; and (3) self-critical analysis privilege under federal common
24 law did not apply to protect records from discovery.

25 Thus, this privilege is not recognized by the Ninth Circuit in the context of the instant case.

26 **Privilege Log**

27 Dr. Anwar produced a privilege log, which plaintiff argues is inadequate under Fed.R.Civ.P. 26.
28 Fed.R.Civ.P. 26(b)(5) addresses claims of privilege and provides:

When a party withholds information otherwise discoverable under these rules by
claiming it is privileged or subject to protection as trial preparation material, the party
shall make the claim expressly and shall describe the nature of documents,

1 communications or things not produced or disclosed in a manner that, without revealing
2 information itself privileged or protected, will enable other parties to assess the
applicability of the privilege or protection.

3 Fed.R.Civ.P. 26(b)(5) requires parties to provide a log or its equivalent when they withhold information
4 on grounds of privilege or work product protection. *Etienne v. Wolverine Tube, Inc.*, 185 F.R.D. 653,
5 656 (D. Kan. 1999). To facilitate its determination of privilege, a court may require “an adequately
6 detailed privilege log in conjunction with evidentiary submissions to fill in any factual gaps.” *United*
7 *States v. Construction Products Research, Inc.*, 73 F.3d 464, 473 (2nd Cir.), *cert. denied*, 519 U.S. 927,
8 117 S.Ct. 294 (1996) (quoting *Bowne of New York City, Inc. v. AmBase Corp.*, 150 F.R.D. 465, 471
9 (S.D.N.Y. 1993)).

10 The privilege log should provide as to a document for which privilege is claimed:

- 11 1. The document’s general nature and description;
- 12 2. Identity and position of its author;
- 13 3. Date it was written;
- 14 4. Identity and position of all addressees and recipients;
- 15 5. Document’s present location; and
- 16 6. Specific reasons it was withheld, that is, privilege invoked and grounds thereof.

17 *See Construction Products*, 73 F.3d at 473-474.

18 The sole privilege log provided by Dr. Anwar consists of five entries which groups documents
19 by correspondence, pleadings, billing, research and expert witness. The individual documents are not
20 itemized or in any way described according to the requirements of Rule 26(b)(5). In *In re Grand Jury*
21 *Investigation*, 974 F.2d 1068, 1071 (9th Cir. 1992), the Ninth Circuit held an adequate logs identifies,
22 at a minimum, (a) the persons involved, (b) the nature of the document, (c) all persons or entities shown
23 on the document to have received or sent the document, (d) all persons or entities known to have been
24 furnished the document or informed of its substance, and (e) the date the document was generated,
25 prepared, or dated. Here, a concomitant requirement with a claim of privilege is an adequate privilege
26 log. Dr. Anwar’s privilege log does not meet the requirements of the Rule. He will be compelled to
27 provide an adequate log or face waiving the privilege.

28

1 **Boilerplate Objections**

2 The Federal Rules of Civil Procedure contemplate that the party responding to requests for
3 documents will provide as much information as possible event to an objectionable document request,
4 setting forth the reason for objection, including claims of privilege or work product protection.
5 Fed.R.Civ.P. 34(b); *see Eureka Financial Corp. v. Hartford Acc. & Indem. Co.* (ED CA 1991) 136 FRD
6 179, 185 (counsel has to identify specifically the evidence requested for which a privilege applies.).

7 The Rule requires that the “reasons” for the objection be stated, which Dr. Anwar did not state.
8 Certainly, standardized objections interposed by defendants do not satisfy the obligation under the Rules.
9 These objections are overruled.

10 Equally Available: The objection is overruled. A party is not in 'control' of records that the
11 requesting party has equal ability to obtain from public sources. *See Estate of Young Through Young v.*
12 *Holmes*, 134 FRD 291, 294 (D NV 1991). “However, the Court can see no justifiable reason why
13 Plaintiffs should not produce, or at least identify, documents that support Plaintiffs' allegations in the
14 FAC, whether they are in Defendants' possession or in the public domain.” *Plumbers & Pipefitters*
15 *Local 572 Pension Fund v. Cisco Systems, Inc.*, 2005 WL 1459555, *6 (N.D.Cal. 2005); *See, e.g., St.*
16 *Paul Reinsurance Co. V. Commercial Fin. Corp.*, 198 F.R.D. 508, 513 (N.D.Iowa 2000) ("It is not
17 usually a ground for objection that the information is equally available to the interrogator or is a matter
18 of public record."). *Compare In re Pintlar Corp.*, 1995 WL 472117, *5 (Bkrctcy.D.Idaho,1995)
19 (information which consists of decisions by the courts and other tribunals is public information equally
20 available to the Plaintiffs; however, Cigna has collected opinions or other reference material regarding
21 the exclusion may be relevant to Cigna's interpretation of the exclusion at issue and therefore should be
22 produced.)

23 **HIPAA**

24 The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. 104-191, 110
25 Stat. 1936, (“HIPAA”) restricts health care entities from disclosure of “protected health information”
26 (“PHI”). Regulations authorized by the HIPAA, 42 USC § 1320d et seq., prohibit ex parte
27 communications with health care providers regarding patients' medical condition without their consent
28 or a "qualified protective order" (45 CFR § 164.512). HIPAA's privacy provisions allow for disclosure

1 of medical information in the course of administrative or judicial proceedings; however, the Act places
2 certain requirements on both the medical professional providing the information and the party seeking
3 it. See 45 C.F.R. § 164.512(e) (2004). Under HIPAA, disclosure is permitted, inter alia, pursuant to a
4 court order, subpoena, or discovery request when the healthcare provider “receives satisfactory assurance
5 from the party seeking the information that reasonable efforts have been made by such party to secure
6 a qualified protective order.” 45 C.F.R. § 164.512(1)(e)(ii)(b). The protective order must prohibit “using
7 or disclosing the protected health information for any purpose other than the litigation,” and “[r]equire
8 [] the return to the [physician] or destruction of the protected health information … at the end of the
9 litigation or proceeding.” 45 C.F.R. § 164.512(1)(e)(v).

10 Here, the parties have stipulated to a protective order which protects the third parties’ medical
11 records. (Doc. 131.) The protective order satisfies the requirements of HIPAA because it (1) Prohibits
12 the parties from using or disclosing the protected health information for any purpose other than the
13 litigation or proceeding for which such information was requested; and (2) requires the return of the
14 protected material at the conclusion of the litigation. 45 C.F.R. § 164.512 (e)(v). Thus, the protective
15 order is adequate under HIPAA to protect third party medical records.

16 **Right of Privacy in Medical Records**

17 Federal courts generally recognize a right of privacy that can be raised in response to discovery
18 requests. *Johnson by Johnson v. Thompson*, 971 F2d 1487, 1497 (10th Cir. 1992); *DeMasi v. Weiss*, 669
19 F2d 114, 119–120 (3rd Cir. 1982). Unlike a privilege, the right of privacy is not an absolute bar to
20 discovery. Rather, courts balance the need for the information against the claimed privacy right. *Ragge*
21 *v. MCA/Universal Studios* (CD CA 1995) 165 FRD 601, 604 (right of privacy may be invaded for
22 litigation purposes). A patient's constitutional right of privacy in receiving medical treatment may be
23 an alternative source of protection to the physician-patient privilege. However, this right is not absolute.
24 *Doe v. Southeastern Pennsylvania Transp. Authority (SEPTA)* 72 F3d 1133, 1138 (3rd Cir. 1995)
25 (privacy right in patients' prescription records); see *Caesar v. Mountanos* (9th Cir. 1976) 542 F2d 1064,
26 1067.

27 In federal civil rights action, law of California, as forum state, did not inform federal privilege
28 law. *Jackson v. County of Sacramento*, 175 F.R.D. 653 (E.D.Cal.,1997) (overruling cases that held as

1 a “matter of comity” state privacy privilege controls.)

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“Despite defendant's repeated assertions to the contrary, the law of California, the forum state, does not inform federal privilege law. See *Jaffee v. Redmond*, 518 U.S. 1, 116 S.Ct. 1923, 135 L.Ed.2d 337 (1996) (finding a federal psychologist-patient privilege without mention of the law of the forum state vis-a-vis the law of the whole 50 states). In this respect, *Cook v. Yellow Freight System, Inc.*, 132 F.R.D. 548 (E.D.Cal.1990), *Martinez v. City of Stockton*, 132 F.R.D. 677 (E.D.Cal.1990), and *Pagano v. Oroville Hospital*, 145 F.R.D. 683 (E.D.Cal.1993), cited by defendant, have been overruled.”

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Jackson v. County of Sacramento, 175 F.R.D. at 654.

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Thus, the privacy involves a balancing of interests under federal law.

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In the instant case, privacy has been argued for medical records. Dr. Anwar also argues privacy for limited financial records requested by plaintiff. For these records, the Court finds, on balance, the need for the documents outweighs the privacy issues. The case involves alleged abuse of medical treatment for financial gain. Plaintiff seeks comparable medical records for third parties and financial records for the procedures. One opportunity to show deliberate indifference is by a pattern and practice of medical abuse, as alleged by plaintiff. The Court finds that a protective order and proper redaction will safeguard third parties’ privacy issues. The Court has very wide discretion in handling pretrial discovery. Under F.R.Civ.P. 26(c), this Court “may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense,” including:

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1. Prohibiting disclosure or discovery;
2. Conditioning disclosure or discovery on specified terms, “including a designation of the time or the place”;
3. Permitting discovery be had by a method other than selected by the party seeking discovery; or
4. Limiting the scope of disclosure or discovery to certain matters.

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To enforce the limit on discovery, a parties may seek a protective order under Fed.R.Civ.P.26(c) or the court may act upon its own initiative.

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Here, the Court will direct the parties to meet and confer on a suitable protective order to protect the relevant privacy interests.

DISPUTED DOCUMENT REQUESTS

DOCUMENT REQUESTS TO DEFENDANT ANWAR

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3 Plaintiff contends that Dr. Anwar improperly treated her and other inmates for financial gain and
4 that he exploited the terms of the contract with the CDC which allowed him to charge whatever he
5 wanted for unlisted procedures.

6 Herein below, the Court summarizes the document requests and the parties' contentions and rules
7 on the requests.

8 1. **Document Request 1:** Documents related to Dr. Anwar's contract and agreement with the CDC.
9 **Anwar's response to the Request:** Broad, Irrelevant, attorney-client attorney/work¹, product,
10 privacy. Plaintiff produced the contract and correspondence.

11 **Plaintiff contends:** Dr. Anwar produced one contract while the CDCR defendants produced an
12 amendment. Dr. Anwar's production is missing key documents (1) the HCSD Rate Approval Memo,
13 (2) contracts before 2001, (3) negotiations, (4) electronic versions.

14 Relevant to the issue of financial gain to Dr. Anwar for performing unnecessary procedures,
15 because the contract allowed Dr. Anwar to charge increased fees for procedures not coded in the
16 contract. The boilerplate objections are not made with specificity and he does not provide any reason
17 for the litany of objections.

18 Dr. Anwar provided a privilege log, after a meet and confer. The log lumps broad categories of
19 correspondence together into five entries. The court should order Dr. Anwar to produce a privilege log
20 that complies with Rule 26(b)(5).

21 No electronic documents were produced, although several hard copies were clearly electronically
22 prepared. Dr. Anwar should be compelled to conduct a thorough electronic review and to produce all
23 responsive documents in electronic format.

24 It is impossible to discern the basis of Dr. Anwar's various privacy objections because he simply
25 objects on "violation of privacy under the California and US Constitution." Objections based on state
26

27 ¹ Dr. Anwar did not specifically argue the attorney client and work product privilege in the parties' joint statement
28 of discovery disputes. Dr. Anwar submitted a supplemental letter brief arguing these issues. (Doc. 125.) Plaintiff requests
the letter brief be stricken. The Court has considered Dr. Anwar's points.

1 law privileges have no place in federal court. See, e.g., *Burrows v. Redbud Commun. Hosp. Dist.*, 187
2 F.R.D. 606, 610-611 (N.D. Cal. 1998). There is no privacy right which could be implicated by the
3 request for contractual documents.

4 **Defendant contends:** Plaintiff requests copies of all documents relating to negotiations and
5 potential contracts, as well as contracts in effect prior to and after Plaintiff's surgery. A full and
6 complete and unredacted copy of the final contract in effect at the time of Plaintiff's care and treatment
7 has been produced, including correspondence.

8 **Order:** The Court GRANTS the motion to compel and requires production of documents
9 described in Rule 34(a), and production of a detailed privilege log as required by Rule 26(b)(5).

10 2. **Document Request 3:** Documents showing Dr. Anwar lost \$100,000/mth from the loss of his
11 CDC contract.

12 **Anwar's response to the Request:** Same objections.

13 **Plaintiff contends:** Dr. Anwar alleges in a different lawsuit that he lost this amount of money
14 from the cancellation of his contract with the CDC. How much income Dr. Anwar made by performing
15 improper surgeries is directly relevant to Ms. Allen's claim. She is alleging that Dr. Anwar performed
16 improper and unnecessary surgeries on her and other inmates for financial gain. His privilege log is
17 insufficient -as described above. State based privacy is inapplicable in federal court. In any event, any
18 privacy implicated is outweighed by the need for the information.

19 **Defendant contends:** Defendant's right to privacy is protected under the California constitution.
20 Cal. Const. art. I, § 1. A defendant's right to privacy in his financial information has specifically been
21 recognized by federal courts. *See Soto v. City of Concord*, 162 F.R.D. 603, 616 (N.D. Cal. 1995).
22 Plaintiff's unfounded allegations do not warrant inquiry into Dr. Anwar's private and protected financial
23 affairs. Dr. Anwar's filing of a complaint against the CDC for, among other things, damages for lost
24 income, does not operate as a wholesale waiver in this action of his right to privacy in his personal
25 financial information.

26 **Order:** The scope of the document requests will be limited to the documents indicating the
27 monies lost as a result of the termination of his contract with the CDC. In this limited respect, the Court
28 GRANTS the motion to compel and requires production of documents described in Rule 34(a).

1 3. **Document Request 4:** Documents reflecting your employment status.

2 **Anwar's response to the Request:** vague and ambiguous, over broad.

3 **Plaintiff contends:** Dr. Anwar refused to produce any documents in response to this request.
4 "Employment," is a common word with an ordinary definition and without ambiguity. any documents
5 reflecting any position(s) Dr. Anwar holds at Madera Community, the CDCR, or MMSG would be
6 responsive.

7 **Defendant contends:** Plaintiff clarified in the meet and confer that "employment" means his
8 positions in any medical group. This "clarification" of what documents she intended to seek reinforces
9 the ambiguity of her original request. Hospital privileges and medical licensing are different from
10 "employment." He responded that he is not employed.

11 **Order:** Dr. Anwar's position is well-taken. Employment is different from privileges Dr. Anwar
12 may enjoy or partnerships of which he may be a part. Therefore, the Court DENIES the request.

13 4. **Document Request 7:** Documents re Anwar's medical training to do excision axillae.

14 **Anwar's response to the Request:** broad, burdensome, oppressive.

15 **Plaintiff contends:** Plaintiff seeks discovery into Dr. Anwar's specific training in that particular
16 procedure. Further, Dr. Anwar has not made *any* objection with sufficient specificity.

17 **Defendant contends:** This request is so broad as to encompass text books, course outlines,
18 notes, research papers, certificates of completion, and other similar documents which Dr. Anwar may
19 have accumulated over the entire course of his medical studies and career as a physician and surgeon.
20 There is no allegation that he is improperly trained.

21 **Order:** The request is for training for a specific area of surgery, as opposed to general
22 experience. The request is therefore narrowly defined. In this limited respect, the Court GRANTS the
23 motion to compel and requires production of documents described in Rule 34(a).

24 5. **Document Request 8:** Document re Anwar's membership on a panel of approved healthcare
25 providers.

26 **Anwar's response to the Request:** Broad, Irrelevant, attorney-client attorney/work, product,
27 privacy; Evid Code 1157. **Anwar's Supplemental response:** same objections and some documents
28 were produced.

1 **Plaintiff contends:** The approved provider lists for 2000 and 2006 are responsive. His ability
2 to perform unnecessary procedures is connected to his membership on the CDC’s list of approved
3 providers and also why CDC removed him from those lists. His litany of conclusory and boiler plate
4 objections should fail.

5 **Defendant contends:** After a diligent search and reasonable inquiry, Dr. Anwar has produced
6 all known documents in his care, custody and control responsive to this request.

7 **Order:** Dr. Anwar states that he has produced all the documents. On that basis, the Court
8 DENIES the request.

9 6. **Document Request 9:** Documents re any medical investigation of Anwar by any medical
10 agency.

11 **Anwar’s response to the Request:** Broad, Irrelevant, attorney-client attorney/work, product,
12 privacy, HIPAA. **Anwar’s Supplemental response:** he produce correspondence to the Medical Board
13 by Ms. Scott and Ms. Holmes and some other correspondence.

14 **Plaintiff contends:** Documentation of investigations into Dr. Anwar is relevant. He produced
15 some documents but he did not produce copies of the correspondence from the Medical Board that Dr.
16 Anwar was responding to. He asserted boiler plate objections, and his privilege log is inadequate.

17 **Defendant contends:** Plaintiff already has the documents and he produced all known documents
18 in his care, custody and control, outside applicable privileges.

19 **Order:** While Dr. Anwar says that he has produced all documents he states that he has done so
20 except for privileged documents. The privilege log is inadequate for plaintiff to determine which
21 documents are being withheld on the basis of privilege, and on what privilege. Accordingly, the Court
22 GRANTS production of a detailed privilege log as required by Rule 26(b)(5).

23 7. **Document Request 10:** Documents re disciplinary actions re his medical services.

24 **Anwar’s response to the Request:** vague and ambiguous, broad, attorney/client/work product.
25 No documents are responsive.

26 **Plaintiff contends:** His response is inadequate. The common sense definition of “disciplinary
27 action” is not vague. Dr. Anwar’s response is insufficient because he attempts to omit any disciplinary
28 action that he may have been subject to (either by the CDC, Madera, or MMSG) such as reduced

1 compensation, written or verbal warnings, or being required to attend extra training.

2 **Defendant contends:** Dr. Anwar has no documents responsive to this request.

3 **Order:** Dr. Anwar says he has no documents, but with the broad definition of the term
4 “disciplinary actions,” he will be compelled to re-respond. Accordingly, the Court GRANTS this
5 request.

6 8. **Document Request 11:** All insurance policies.

7 **Anwar’s response to the Request:** privacy; produced certificate of insurance for his
8 professional liability insurance policy and in a supplemental response, his declarations page.

9 **Plaintiff contends:** Dr. Anwar’s objections based on privacy fail: any privileges based on the
10 California Constitution are irrelevant in federal court and any alleged privacy interest in one’s insurance
11 information is outweighed by Ms. Allen’s need for discovery. It is unclear whether this policy covers
12 incidents that occurred in calendar year 2005 or claims made policy.

13 **Defendant contends:** Dr. Anwar has produced the declaration page of his professional liability
14 insurance policy in effect.

15 **Order:** The Court GRANTS the request to compel only as to the extent of additional information
16 to indicate whether the policy period is a claims made or incidents occurred policy.

17 9. **Document Request 12:** Daily calendar/schedule from 2000 to the present.

18 **Anwar’s response to the Request:** Broad, Irrelevant, attorney-client attorney/work, product,
19 privacy, HIPAA.

20 **Plaintiff contends:** This request seeks documents that bear on the issue of Dr. Anwar’s motive.
21 Ms. Allen is claiming that Dr. Anwar implemented a pattern and practice of deliberately performing
22 unnecessary surgeries on her and others for financial gain. If Dr. Anwar’s calendar shows that he
23 performed 100 excision axillae operations on the 200 inmates he saw since 2000, this evidence tends
24 to support a finding that Dr. Anwar was over-diagnosing this condition and performing unnecessary
25 surgeries.

26 None of Dr. Anwar’s general objections have merit. No privacy rights are implicated and even
27 if they are, the documents should be produced. The information called for is relevant and should be
28 produced despite any claims of undue burden and expense by Dr. Anwar.

1 **Defendant contends:** Aside from information relating to any named Plaintiff, the information
2 is irrelevant to any material issue in the case. Dr. Anwar's other patient's privacy in their medical
3 information outweighs the alleged need for this information. First, the information in such calendars,
4 appointment books and office visit lists, etc., related to medical care rendered by Dr. Anwar, and patient
5 medical conditions and treatment choices are protected by the physician-patient privilege. There is no
6 compelling public interest in requiring production of Dr. Anwar's daily calendars, appointment books
7 or office visit lists.

8 The burden and expense involved in the production of Defendant's daily calendars and/or
9 appointment books from 2000 to present outweigh the benefit that will be derived. A conservative
10 estimate is in the range of 150 to 375 hours (0.10 to 0.25 hours to redact each work day).

11 **Order:** The Court DENIES this request. The request is overly broad, implicates other's personal
12 information and requests information that far exceeds the express purpose of the Request for Production
13 of Documents. In addition, there are more direct and less intrusive ways to obtain the requested
14 information.

15 10. **Document Request 13:** His bills, invoices for his procedures dealing with boils and folliculitis.

16 **Anwar's response to the Request:** Broad, Irrelevant, attorney-client attorney/work, product,
17 privacy, HIPAA.

18 **Plaintiff contends:** The documents go to Dr. Anwar's motive and practice of performing
19 improper surgeries on CDCR inmates for financial gain. None of Dr. Anwar's general objections have
20 merit. No privacy rights are implicated and even if they are, the documents should be produced. The
21 information called for is relevant and should be produced despite any claims of undue burden and
22 expense by Dr. Anwar. His medical bills are maintained in computerized format, which include both
23 procedure and diagnosis codes. Dr. Anwar or his staff could run a simple search of his medical billing
24 system to sort for specific procedures and diagnosis codes.

25 Dr. Anwar does — albeit generally — raise three objections which may relate to third party
26 privacy concerns: (i) rights under the California Constitution, (ii) rights under the U.S. Constitution,
27 and (iii) rights under HIPAA.

28 HIPAA does not create substantive rights that act as a bar on discovery. It merely establishes

1 procedural mechanisms which have been complied with in the instant case. HIPAA regulations is
2 purely procedural in nature and does not create a federal physician-patient or hospital-patient
3 privilege. *Northwestern Memorial Hospital v. Ashcroft*, 362 F.3d 923, 925-926 (7th Cir. 2004). The
4 private information could be redacted. HIPAA does not preclude production where an adequate
5 protective order is in place. 45 C.F.R. § 164.512(e). Here, the parties entered a protective order
6 designed explicitly to protect the interests of third parties.

7 While there is no federal physician-patient privilege, federal courts do recognize a limited
8 right of privacy in one's medical information. Ms. Allen is seeking medical information regarding
9 third parties — but in redacted form only.

10 **Defendant contends:** The production of medical bills for procedures dealings with boils,
11 folliculitis, and hidradenitis, is unduly burdensome and outweighs the benefit derived. First, there is
12 no time limit to the request. As of January 8, 2007, Dr. Anwar has over 17,700 patient charts.
13 Billings after the date of plaintiff's surgery are irrelevant.

14 An electronic search can be performed for those years when Dr. Anwar's medical bills were
15 computerized, but the bills from 1989 to 1993 are not computerized and will require a manual
16 search. This is estimated to be 650 man hours.

17 **Order:** The Court GRANTS the motion to compel for years 1994 to July 2004, with
18 redaction. The parties are DIRECTED to meet and confer as to an appropriate protective order, or
19 amendment of the existing protective order.

20 11. **Document Request 14:** Documents re diagnosis and treatment of Ms. Boyce.

21 **Anwar's response to the Request:** Broad, attorney-client attorney/work, product, privacy,
22 Evid. Code 1157. Produced the medical chart.

23 **Plaintiff contends:** It is not clear from his response whether he has produced all responsive
24 documents in his custody and possession — which he is required to do regardless of whether the
25 documents may already be in Ms. Allen's possession.

26 **Defendant contends:** Dr. Anwar has no other non-privileged documents relating to Regina
27 Boyce's diagnosis and treatment.

28 **Order:** While Dr. Anwar states he as produced non-privileged documents, the privilege log

1 needs to be supplemented with specific documents in compliance with Rule 26(b)(5).

2 The Court GRANTS the motion to compel and requires production of documents described
3 in Rule 34(a), and production of a detailed privilege log as required by Rule 26(b)(5).

4 12. **Document Request 15:** Documents re diagnosis and treatment of Ms. Allen.

5 **Anwar's response to the Request:** Broad, attorney-client attorney/work, product, privacy,
6 Evid. Code 1157. Produced the medical chart.

7 **Plaintiff contends:** Same as Document Request 14.

8 **Defendant contends:** Same as Document Request 14.

9 **Order:** While Dr. Anwar states he as produced non-privileged documents, the privilege log
10 needs to be supplemented with specific documents in compliance with Rule 26(b)(5).

11 The Court GRANTS the motion to compel and requires production of documents described
12 in Rule 34(a), and production of a detailed privilege log as required by Rule 26(b)(5).

13 13. **Document Request 16:** Documents re diagnosis and treatment of Julie Holmes.

14 **Anwar's response to the Request:** Broad, attorney-client attorney/work, product, privacy,
15 Evid. Code 1157. Produced the medical chart.

16 **Plaintiff contends:** Same as Document Request 14.

17 **Defendant contends:** Same as Document Request 14.

18 **Order:** While Dr. Anwar states he as produced non-privileged documents, the privilege log
19 needs to be supplemented with specific documents in compliance with Rule 26(b)(5).

20 The Court GRANTS the motion to compel and requires production of documents described
21 in Rule 34(a), and production of a detailed privilege log as required by Rule 26(b)(5).

22 14. **Document Request 17:** Documents re diagnosis and treatment of Genea Scott.

23 **Anwar's response to the Request:** Broad, attorney-client attorney/work, product, privacy,
24 Evid. Code 1157. Produced the medical chart.

25 **Plaintiff contends:** Same as Document Request 14.

26 **Defendant contends:** Same as Document Request 14.

27 **Order:** While Dr. Anwar states he as produced non-privileged documents, the privilege log
28 needs to be supplemented with specific documents in compliance with Rule 26(b)(5).

1 The Court GRANTS the motion to compel and requires production of documents described
2 in Rule 34(a), and production of a detailed privilege log as required by Rule 26(b)(5).

3 15. **Document Request 18:** All documents not already produced relating to consent for treatment
4 from Brenda Allen, Regina Boyce, Julie Holms or Genea Scott.

5 **Anwar's response to the Request:** Broad, attorney-client attorney/work, product, privacy,
6 Evid. Code 1157. Referred plaintiff to Madera Community Hospital.

7 **Plaintiff contends:** The attorney-client privilege, attorney work product doctrine is
8 improperly asserted. Dr. Anwar's privilege log is insufficient. Dr. Anwar has not produced all the
9 responsive documents in his possession, custody or control - regardless of whether the documents
10 may already be in Ms. Allen's possession.

11 **Defendant contends:** Dr. Anwar has no other non-privileged documents in his care,
12 custody, or control responsive to this request.

13 **Order:** While Dr. Anwar states he as produced non-privileged documents, the privilege log
14 needs to be supplemented with specific documents in compliance with Rule 26(b)(5).

15 The Court GRANTS the motion to compel and requires production of documents described
16 in Rule 34(a), and production of a detailed privilege log as required by Rule 26(b)(5).

17 16. **Document Request 19:** All documents not already produced relating to medical billing for
18 treatment of Brenda Allen, Regina Boyce, Julie Holms or Genea Scott.

19 **Anwar's response to the Request:** Broad, attorney-client attorney/work, product, privacy,
20 Evid. Code 1157. Referred plaintiff to Madera Community Hospital.

21 **Plaintiff contends:** Dr. Anwar only produced one version of paper bills with hand-marked
22 revisions. It is unclear whether Dr. Anwar has produced all responsive documents.

23 **Defendant contends:** Dr. Anwar has produced all non-privileged documents in his care,
24 custody, or control responsive to this request.

25 **Order:** Since it is unclear whether Dr. Anwar has produced all responsive documents, he
26 will be compelled to re-respond. The Court GRANTS the motion to compel and requires production
27 of documents described in Rule 34(a), and if Dr. Anwar withholds documents based on privilege,
28 production of a detailed privilege log as required by Rule 26(b)(5).

1 17. **Document Request 20:** All documents re any patient who received treatment for boils,
2 folliculitis, or hidradenitis.

3 **Anwar's response to the Request:** Broad, attorney-client attorney/work, product, privacy,
4 Evid. Code 1157, HIPAA.

5 **Plaintiff contends:** Ms. Allen is entitled to discovery into the medical conditions at issue.
6 His litany of general objections should not be considered. His privilege log is inadequate. Plaintiff
7 alleges Dr. Anwar treated her and other inmates for improper financial reasons. The records
8 regarding his treatment and diagnoses of those conditions—including before and after Ms. Allen's
9 surgery was performed—are relevant. Such evidence would demonstrate that Dr. Anwar had a long
10 history of deliberately performing unnecessary surgeries for financial gain. Any burden is
11 outweighed by the need for this information.

12 **Defendant contends:** unduly burdensome and outweighs the benefit derived. There is no
13 time limit to the request. Dr. Anwar has 17,700 patient charts. An electronic search can be
14 performed for those years when Dr. Anwar's medical bills were computerized, but the bills from
15 1989 to 1993 are not computerized and will require a manual search. This is estimated to be 804
16 man hours.

17 Patient charts subsequent to the date of Plaintiff's surgery are irrelevant to Plaintiff's claims.
18 The number of same or similar surgeries Defendant performed on other patients with these
19 conditions is irrelevant to the issue of whether Dr. Anwar performed the appropriate procedure on
20 Plaintiff or if he had an alleged financial motive to perform a more complex surgery than was
21 medically necessary.

22 The information is subject to privacy.

23 **Order:** Care provided to non-incarcerated patients is not relevant. The care was given under
24 different contractual arrangements from that of an incarcerated patient. Therefore, the Court
25 DENIES the request for further production as to non-incarcerated patients.

26 For incarcerated patients, the Court GRANTS the motion to compel and requires production
27 of documents described in Rule 34(a), for years 1994 to July 2004, and production of a detailed
28 privilege log as required by Rule 26(b)(5). The parties are DIRECTED to meet and confer as to an

1 appropriate protective order, or amendment of the existing protective order.

2 18. **Document Request 21:** All documents re billing for any patient who received treatment from
3 Anwar for boils, folliculitis, or hidradenitis.

4 **Anwar's response to the Request:** Broad, attorney-client attorney/work, product, privacy,
5 Evid. Code 1157, HIPAA.

6 **Plaintiff contends:** Same as Document Request 20.

7 **Defendant contends:** Same as Document Request 20

8 **Order:** Care provided to non-incarcerated patients is not relevant. The care was given under
9 different contractual arrangements from that of an incarcerated patient. Therefore, the Court
10 DENIES the request for further production as to non-incarcerated patients.

11 For incarcerated patients, the Court GRANTS the motion to compel and requires production
12 of documents described in Rule 34(a), for years 1994 to July 2004, and production of a detailed
13 privilege log as required by Rule 26(b)(5). The parties are DIRECTED to meet and confer as to an
14 appropriate protective order, or amendment of the existing protective order.

15 19. **Document Request 22:** All documents re complaints made against Anwar by Brenda Allen,
16 Regina Boyce, Julie Holms or Genea Scott.

17 **Anwar's response to the Request:** attorney-client attorney/work, product, privacy, Evid.
18 Code 1157. **Supplemental Response** all known documents have been produced or are already in
19 plaintiff's possession.

20 **Plaintiff contends:** the work product doctrine and attorney-client privilege are improperly
21 asserted and Dr. Anwar's privilege log is insufficient. State law privileges should not be recognized.

22 His response points to possible other sources of the documents requested and curiously notes
23 that "[d]iscovery is continuing," it not clear whether Dr. Anwar has produced all the responsive
24 documents in his possession.

25 **Defendant contends:** Dr. Anwar has clearly stated that all responsive non-privileged
26 documents have been produced in discovery or are already in Plaintiff's possession. Complaints, if
27 any lodged subsequent to Plaintiffs care and treatment by Dr. Anwar cannot serve to demonstrate
28 that Dr. Anwar acted with deliberate indifference as to Plaintiff.

1 **Order:** While Dr. Anwar says that he has produced all documents he states that he has done
2 so except for privileged documents. The privilege log is inadequate for plaintiff to determine which
3 documents are being withheld on the basis of privilege, and on what privilege. Accordingly, the
4 Court GRANTS production of a detailed privilege log as required by Rule 26(b)(5).

5 20. **Document Request 23:** All documents re complaints made against Anwar by any inmate
6 from 1995 to the present.

7 **Anwar's response to the Request:** Overbroad, burdensome, oppressive, attorney-client
8 attorney/work, product, privacy, Evid. Code 1157, HIPAA. Supplemental Response: reasonable
9 search performed but no documents in his custody, care and control.

10 **Plaintiff contends:** Same as Document request 13. Briefly: The documents go to Dr.
11 Anwar's motive and practice of performing improper surgeries on CDCR inmates for financial gain.
12 None of Dr. Anwar's general objections have merit. No privacy rights are implicated and even if
13 they are, the documents should be produced. The information called for is relevant and should be
14 produced despite any claims of undue burden and expense by Dr. Anwar. His medical bills are
15 maintained in computerized format, which include both procedure and diagnosis codes. Surely Dr.
16 Anwar or his staff could run a simple search of his medical billing system to sort for specific
17 procedures and diagnosis codes.

18 Dr. Anwar does — albeit generally — raise three objections which may relate to third party
19 privacy concerns: (i) rights under the California Constitution, (ii) rights under the U.S. Constitution,
20 and (iii) rights under HIPAA.

21 **Defendant contends:** Complaints by other patients, if any, arising after Dr. Anwar's care and
22 treatment of named Plaintiffs have no relevance to the claims asserted by Plaintiff. The complaint
23 alleges events “[o]n or around 1996 through the events of this complaint.”

24 Patient complaints, if any, relating to surgeries performed for medical conditions other than
25 those suffered by Plaintiffs are also not relevant to the claims or defenses in this action.

26 **Order:** Documents should not be limited to just similar medical conditions. Complaints by
27 inmates for unnecessary medical treatment of conditions may show that Dr. Anwar had a practice of
28 treating inmates as plaintiffs allege. Events, however, after the last of the injury to plaintiff are not

1 relevant to show deliberate indifference to this plaintiff. Accordingly, the Court GRANTS the
2 motion to compel for years 1996 to July 2004, with redaction. The parties are DIRECTED to meet
3 and confer as to an appropriate protective order, or amendment of the existing protective order.

4 21. **Document Request 24:** All documents re complaints made against Anwar by any non-
5 incarcerated patient from 1995 to the present.

6 **Anwar's response to the Request:** Overbroad, burdensome, oppressive, attorney-client
7 attorney/work, product, privacy, Evid. Code 1157, HIPAA.

8 **Plaintiff contends:** Same as document request 23.

9 **Defendant contends:** Same as document request 23.

10 **Order:** Care provided to non-incarcerated patients is not relevant. The care was given under
11 different contractual arrangements from that of an incarcerated patient. Therefore, the Court
12 DENIES the request for further production as to non-incarcerated patients.

13 22. **Document Request 25:** Documents relating to written policies and procedures concerning
14 medical care: patient assessment, treatment, referrals, self-referrals, notification to patients.

15 **Anwar's response to the Request:** Overbroad, attorney client/work product, Evid. Code
16 1157. No documents within his possession, custody or control.

17 **Plaintiff contends:** The objections based on the work product doctrine and attorney-client
18 privilege is improperly asserted, and Dr. Anwar's privilege log is insufficient. Dr. Anwar's response
19 is insufficient. Dr. Anwar merely points to the (partial) contract that he has provided, which does not
20 cover the relevant time period. Same as Document Request no. 1.

21 **Defendant contends:** Dr. Anwar has responded that he has no documents responsive to this
22 request, except to the extent the contract for provision of medical care to inmates which was in effect
23 during the events in issue in the action could be construed as responsive.

24 **Order:** Anwar states that he has produced all the documents. On that basis, the Court
25 DENIES the request.

26 23. **Document Request 26:** Documents on medical treatment on any nonincarceratent patient for
27 boils, folliculitis hiradenitis or for lancing.

28 **Anwar's response to the Request:** Overbroad, burdensome, oppressive, attorney-client

1 attorney/work, product, privacy, Evid. Code 1157, HIPAA.

2 **Plaintiff contends:** Same as document request 23.

3 **Defendant contends:** Communications relating to non-incarcerated patients are not relevant.
4 Dr. Anwar has 17,700 patient charts. An electronic search can be performed for those years when Dr.
5 Anwar's medical bills were computerized, but the bills from 1989 to 1993 are not computerized and
6 will require a manual search. This is estimated to be 804 man hours.

7 **Order:** Care provided to non-incarcerated patients is not relevant. The care was given under
8 different contractual arrangements from that of an incarcerated patient. Therefore, the Court
9 DENIES the request for further production as to non-incarcerated patients.

10 24. **Document Request 27:** All documents re how Anwar charged the CDC and non-
11 incarcerated patients for lancements, and related surgeries.

12 **Anwar's response to the Request:** Overbroad, burdensome, oppressive, attorney-client
13 attorney/work, product, privacy, Evid. Code 1157, HIPAA.

14 **Plaintiff contends:** Same as document request 23. If the rates Dr. Anwar charged CDCR
15 for unlisted procedures were much higher than the rates he charged in other contexts, that would tend
16 to show that he exploited the MMSG Contract.

17 **Defendant contends:** Communications relating to charges for nonincarcerated patients are
18 not relevant to the claims and defenses in this action and, thus, this request is overly broad. Dr.
19 Anwar's charges for non-incarcerated patients necessarily depends on his negotiated rates with
20 various providers and insurers. This is proprietary information not subject to disclosure.

21 **Order:** Care provided to non-incarcerated patients is not relevant. The care was given under
22 different contractual arrangements from that of an incarcerated patient. Therefore, the Court
23 DENIES the request for further production as to non-incarcerated patients.

24 For incarcerated patients, the Court GRANTS the motion to compel and requires production
25 of documents described in Rule 34(a), for years 1994 to July 2004, and production of a detailed
26 privilege log as required by Rule 26(b)(5). The parties are DIRECTED to meet and confer as to an
27 appropriate protective order, or amendment of the existing protective order.

28 25. **Document Request 28:** Documents relating to bill schedules for patients.

1 **Anwar’s response to the Request:** Overbroad, burdensome, oppressive, attorney-client
2 attorney/work, product, privacy, irrelevant.

3 **Plaintiff contends:** Same as document request no. 23.

4 **Defendant contends:** Dr. Anwar produced the billing statement for all plaintiffs which
5 shows the amount charged for incarcerated patients. Communications relating to charges for
6 nonincarcerated patients are not relevant to the claims and defenses in this action and, thus, this
7 request is overly broad. Dr. Anwar’s charges for non-incarcerated patients necessarily depends on his
8 negotiated rates with various providers and insurers. This is proprietary information not subject to
9 disclosure.

10 **Order:** The Request is vague in that the Court cannot determine what is being requested.
11 Accordingly, the request is DENIED. To the extent the request seeks billing statements, the
12 statements for plaintiffs have been produced. Non-incarcerated patient billing statements are not
13 relevant.

14 26. **Document Request 29:** Documents of medical bills for patients who received identical
15 procedures to Brenda Allen, Regina Boyce, Julie Holmes, and Genea Scott within the past 11
16 years.

17 **Anwar’s response to the Request:** Overbroad, burdensome, oppressive, attorney-client
18 attorney/work, product, privacy, Evid. Code 1157, HIPAA.

19 **Plaintiff contends:** Same as document request 23.

20 **Defendant contends:** Same as document request 23.

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