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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

AUG 17 2004

GARY M. BLAIR, Executive Officer
BY *Carric L. Wagner*
CARRIE L. WAGNER, Deputy Clerk

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION

18 THE PEOPLE OF THE STATE OF
19 CALIFORNIA,
20 Plaintiffs,

21 vs.

22 MICHAEL JOSEPH JACKSON,
23 Defendant.

) Case No. 1133603
)
) PSYCHOTHERAPIST-PATIENT PRIVILEGE
) MEMORANDUM
)
) ~~UNDER SEAL~~
) Honorable Rodney Melville
)
) Date: August 17, 2004
) Time: 1:30 PM
) Dept: SM 8

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 IN THIS CASE, THE IDENTITY OF DR. KATZ'S PATIENT IS NOT PROTECTED BY
4 THE PSYCHOTHERAPIST-PATIENT PRIVILEGE.

5 The psychotherapist-patient privilege may apply to prevent the compelled disclosure of
6 confidential communications between a patient and his psychotherapist. (Evid. Code, § 1014.) The
7 patient's very identity may sometimes be protected by a judicial expansion of the privilege. (*County*
8 *of Alameda v. Superior Court (Darlene W.)* (1987) 194 Cal.App.3d 254, 260.) This rule should not
9 rigidly apply in every case, however. (*Id.* at p. 261.) Rather, the Court has discretion to reveal the
10 patient's identity in cases where "the state's interest in facilitating the ascertainment of truth in
11 connection with legal proceedings" outweighs the potential harm to the patient's privacy interest
12 upon revelation of his identity as a patient. (*Id.* at pp. 260-261.) Because the state's interest in
13 ensuring that Mr. Jackson only be convicted on true facts greatly outweighs the patient's privacy
14 interest in the present case, the court should hold that Dr. Katz may not invoke the psychotherapist-
15 patient privilege to prevent the disclosure of his patient's identity.

16 In *County of Alameda*, a civil case, the plaintiff was a patient in a locked mental health
17 facility who was allegedly raped by a male patient of the same facility. (*County of Alameda v.*
18 *Superior Court (Darlene W.)*, *supra*, at p. 257.) The plaintiff sought discovery of the identities of
19 the other patients in the facility in an effort to identify the assailant. (*Ibid.*) The defendant asserted
20 the privilege, citing an earlier civil appellate decision holding that the identity of a patient was
21 privileged as a "confidential communication" under Evidence Code, section 1014. (*Ibid.*; see *Smith*
22 *v. Superior Court (Smith)* (1981) 118 Cal.App.3d 136.) On the one hand, the *Alameda* court
23 considered that the disclosure of a patient's identity, apart from any discussion of the cause of his
24 consultations, could carry the stigma of a "mental or emotional problem. (*Alameda, supra*, at p.
25 259.) On the other hand, the court considered the plaintiff's compelling need for disclosure of the
26 identities, without which she might have been "deprived of her day in court, stymied in her efforts
27 at meaningful discovery and perhaps hampered in proving that the assault took place." (*Id.* at p.

1 261.) Accordingly, the court held that the privilege had to give way to the plaintiff's need. (*Id.* at
2 pp. 263-264.)

3 Mr. Jackson's need for disclosure is at least as compelling as that of the plaintiff in *Alameda*.
4 As an initial matter, Mr. Jackson's liberty is at stake in the present criminal action, not merely a
5 pursuit for damages. Additionally, the disclosure of the patient's identity in this case will not
6 actually allow either party to discover information that it does not already know. Dr. Katz has
7 already disclosed his patient's name to the state.

8 Moreover, the weight of the patient's right under the privilege is, if anything, even less
9 substantial than that in *Alameda*. The *Alameda* court recognized that the potentially negative
10 inference remains, at best, static from one case to another. (*Id.* at p. 261.) However, over 17 years
11 ago, that same court also realized that "with growing understanding and acceptance of psychotherapy
12 by the public in general, the mere fact of having sought or received psychotherapy will someday lose
13 all negative connotations." (*Id.* at p. 259.) Mr. Jackson respectfully contends that that day has
14 arrived.

15 **CONCLUSION**

16 For the above reasons, because Mr. Jackson's need for disclosure of Dr. Katz's patient's
17 name outweighs that patient's interest in the privilege, the court should exercise its discretion to deny
18 Dr. Katz's assertion of the psychotherapist-patient privilege.

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1 Dated: August 17, 2004

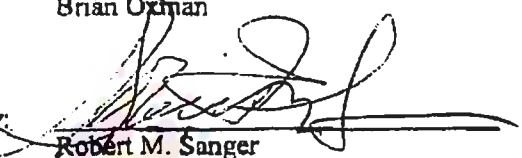
2 Respectfully submitted,

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