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# Evaluating Privileges, Work Product, and Other Protections

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### §3.160 Privacy in Medical Records

In addition to the physician-patient privilege (see §§3.84–3.106) and the statutory Confidentiality of Medical Information Act (CC §§56–56.37), there is a constitutionally protected right to privacy regarding one’s medical records. In *Pettus v Cole* (1996) 49 CA4th 402, the court determined that a person does not forfeit his or her “right of medical self-determination by entering into an employment relationship, or by requesting paid leave under a benefit plan that is voluntarily provided by the employer.” Thus, an employer violates autonomy and informational privacy by terminating employment when the employee refuses to comply with the employer’s suggested medical treatment. 49 CA4th at 459. Somewhat similarly, a parent’s privacy interests have been found to preclude a court-ordered psychological evaluation of the parent for discovery purposes before his or her child has been found a dependent under Welf & I C §300. *Laurie S. v Superior Court* (1994) 26 CA4th 195. In *Snibbe v Superior Court* (2014) 224 CA4th 184, 195, the court held that the right to privacy did not preclude production of patients’ redacted postoperative orders in a wrongful death case when the orders did not disclose the patients’ identities and no disclosure of identifying medical information was requested. The right to privacy in medical records may be trumped when the state has a compelling interest in the records, such as promoting the best interests of a minor. See *In re R.R.* (2010) 187 CA4th 1264, 1281 (compelling interest in determining whether parent was unable to care for child due to substance abuse); *Manela v Superior Court* (2009) 177 CA4th 1139, 1150.

**Waiver.** A constitutional right of privacy with respect to medical records may be waived, however, if the patient voluntarily tenders the issue, *e.g.*, by filing a lawsuit alleging medical malpractice. See *Heller v Norcal Mut. Ins. Co.* (1994) 8 C4th 30, 42; *California Consumer Health Care Council v Kaiser Found. Health Plan, Inc.* (2006) 142 CA4th 21, 31 (once patient signals intent to bring malpractice claim against

health care provider, patient cannot reasonably expect to keep details of his or her professional relationship with that health care provider secret from health care provider's defense attorney).

At least one court has found that any waiver of the right to privacy in one's medical records must be construed narrowly. In *Bearman v Superior Court* (2004) 117 CA4th 463, the court found that simply presenting a peace officer with a physician's written recommendation for the medical use of marijuana did not constitute a waiver of the patient's privacy rights in his medical records, when the records were sought in connection with an investigation of the physician by a state medical licensing agency.

A privacy right may not be found in a medical study, however, when deletion of names or other information identifying individual participants is feasible. *Kizer v Sulnick* (1988) 202 CA3d 431, 439.



For further discussion, see [California Civil Discovery Practice](#): Evaluating Privileges, Work Product, and Other Protections, chapter 3 (Cal CEB). Available in print and through [OnLaw](#).

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