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20 Attorneys for Petitioner Geynna Levette Buffington

21 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
22 COUNTY OF ALAMEDA

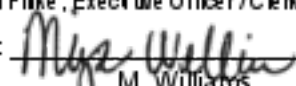
23 Geynna Levette Buffington

24 Petitioner,

25 v.

26 Linda Gledhill, Executive Officer, State of  
27 California Victim Compensation Board,

28 Respondent.

**FILED**  
Superior Court of California  
County of Alameda  
07/30/2024  
Clad Fluke, Executive Officer / Clerk of the Court  
By:  Deputy  
M. Williams

Case No.: 23CV051160

ASSIGNED FOR ALL PURPOSES TO  
Judge: Hon. Michael Markman  
Dept: 23

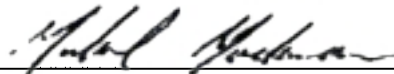
~~(PROPOSED)~~ JUDGMENT  
GRANTING PETITION FOR WRIT OF  
MANDATE

The Petition for Writ of Mandate or, alternatively, for a Writ of Administrative Mandate came on for final hearing on May 21, 2024. The Honorable Michael Markman, presided. John Douglas Moore and Wooksun Hong appeared on behalf of Petitioner Geynna Levette Buffington; Joel Kosh of the

1 Office of the Attorney General of the State of California appeared on behalf of Respondent Linda  
2 Gledhill, Executive Officer of the California Victims Compensation Board. After oral argument on May  
3 21, 2024, the Court took the matter under submission. On June 25, 2024, the Court issued its final  
4 decision in this action, a true copy of which is attached as Exhibit 1 hereto. Accordingly, IT IS  
5 HEREBY ADJUDGED, ORDERED, AND DECREED THAT:

- 6 1. The Petition for a Writ of Administrative Mandate is granted.
- 7 2. Respondent is commanded to set aside the decision and reconsider the appeal in light of the  
8 Court's June 25, 2024 Order granting the Petition.
- 9 3. Petitioner is deemed to be the prevailing party. Pursuant to Government Code section 68637,  
10 subdivision (b)(1), Respondent is to pay costs in the amount of \$495 to the Court.
- 11 4. The Court shall set a compliance hearing for U&AFCCG ASKHE for Respondent to report on its  
12 compliance with the Court's direction to vacate its determination that Petitioner is not eligible for  
13 benefits under Health and Safety Code Section 24210 et seq and to report what further action that  
14 Respondent has taken or will take in response to the Court's decision.
- 15 5. Petitioner is deemed to be the prevailing party and is awarded costs of suit.

16  
17 Dated 07/30/2024

  
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT  
**Michael Markman / Judge**

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# Exhibit 1

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# Exhibit 1

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA**  
Rene C. Davidson Courthouse

<p>Geynna Levette Buffington Plaintiff/Petitioner(s) VS. Linda Gledhill, Executive Officer, State of California Victim Compensation Board Defendant/Respondent (s)</p>	<p>No.        23CV051160</p> <p>Date:      06/25/2024 Time:     10:10 AM Dept:     23 Judge:    Michael Markman</p> <p style="text-align: center;">ORDER re: Ruling on Submitted Matter filed by John Douglas Moore (Attorney); Geynna Levette Buffington (Petitioner) on 11/13/2023</p>
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The Court, having taken the matter under submission on 05/21/2024, now rules as follows:

The Petition for Writ of Mandate filed by Geynna Levette Buffington, John Douglas Moore on 11/13/2023 is Granted.

**ORDER**

The Petition for Writ of Administrative Mandate is GRANTED and JUDGMENT entered for Petitioner. Respondent is commanded to set aside the decision and reconsider the appeal in light of this opinion. Petitioner is to file a proposed form of judgment after conferring with counsel for the Board within ten court days of this Order.

**BACKGROUND**

Petitioner Geynna Levette Buffington seeks a writ of mandate to compel Respondent Linda Gledhill, Executive Officer, State of California Victim Compensation Board, to pay benefits to Petitioner under the Forced or Involuntary Sterilization Compensation Program. (See Health & Saf. Code, § 24210.)

Petitioner contends she is a “a survivor of coercive sterilization of imprisoned populations.” (Health & Saf. Code, § 24210, subd. (3).) There is no dispute that Petitioner underwent an ablation procedure while incarcerated. The Board denied Petitioner’s application because “a

ORDER re: Ruling on Submitted Matter filed by John Douglas Moore  
(Attorney); Geynna Levette Buffington (Petitioner) on  
11/13/2023

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

sterilization did not occur,” and Petitioner’s appeal of that decision was denied on the grounds that “cryotherapy ablation does not meet the criteria for forced or coercive sterilization as defined by the Legislature.” (AR 276; AR 348–55 at CalVCB 000349.) LEGAL STANDARD

Petitioner seeks a writ of mandate under Code of Civil Procedure section 1085 or, in the alternative under Code of Civil Procedure section 1094.5.

“Mandamus under section 1085 is used to compel a ministerial duty or to correct an abuse of discretion,” and may be “used to review administrative decisions that do not meet the requirements for review under section 1094.5.” (Manderson-Saleh v. Regents of Univ. of California (2021) 60 Cal.App.5th 674, 692.) Traditional 1085 mandamus, however, is unavailable where, as here, “an administrative agency holds an evidentiary hearing and is vested with discretion to determine the facts (and hence does not have a ministerial duty to act in a certain way).” (Gonzales v. California Victim Comp. Bd. (2023) 98 Cal.App.5th 427, 440, fn. 5, review denied (Apr. 17, 2024).)

Petitioner argues that no administrative hearing was conducted and that the Board does “not have the discretion to deny compensation to any claimant who is a qualified recipient.” (Health & Saf.

Code, § 24211, subd. (a)(2)(G).) “Section 1094.5 contemplates an adversarial hearing grounded in due process.” (300 DeHaro St. Invs. v. Dep’t of Hous. & Cmty. Dev. (2008) 161 Cal.App.4th 1240, 1251.) In addition to conducting its own review and verification of applications, the Victim Compensation Board is required to “allow a claimant to submit evidence” and to evaluate such evidence in determining whether an applicant is qualified. (Health & Saf., Code § 24211, subd. (a)(2)(F).) Petitioner’s briefing and evidentiary submission were considered on administrative appeal. (See AR 345–55.) This tracks the process contemplated by section 1094.5: “hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior [] board.” (Civ. Proc. Code § 1094.5, subd. (a).) Thus, the court evaluates the petition based on the the rules for an administrative writ of mandate.

The court’s reviews the administrative decision to determine “whether the respondent has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion.” (Civ. Proc. Code § 1094.5, subd. (b).) “Abuse of discretion is established if the respondent has not proceeded in the manner required by law.” (Ibid.)

### DISCUSSION

The material facts are undisputed in the Board’s final decision. In its briefing, the Board belatedly explains its view that Petitioner “wrongly claims that she received an endometrial ablation, even though the record shows that she received a cervical ablation.” (Opp’n at p. 14.) As the court understands it, a cervical ablation treats cervical precancer by removing the abnormal cells, while an endometrial ablation reduces or stops menstrual bleeding by destroying uterine lining. Petitioner alleges that she went a cryogenic ablation that “destroys endometrial

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

cells of the uterus lining by freezing.” (Pet., ¶ 1.) Petitioner submitted expert evidence on the effect endometrial ablations with her both her application and appeal to the Board. (See generally AR 277–345; AR 117–128.) The Board decided Petitioner’s appeal on the grounds that while Petitioner underwent an ablation—a “procedure that destroys the lining of the uterus and may reduce or stop menstruation”—such a procedure does “not eliminate fertility.” (AR 352.) The appellate ruling assumed an endometrial ablation, and the court accepts that fact as undisputed.

Thus, the key issue in this case is whether an endometrial ablation constitutes sterilization under section 24210. “ ‘In construing a statute, our task is to ascertain the intent of the Legislature so as to effectuate the purpose of the enactment.’ ” (Adolph v. Uber Technologies, Inc. (2023) 14 Cal.5th 1104, 1120.) “We look first to ‘the words of the statute, which are the most reliable indications of the Legislature’s intent.’ ” (Ibid.) “ ‘The statute’s plain meaning controls the court’s interpretation unless its

words are ambiguous.’ ” (Imperial Merchand Servs., Inc. v. Hunt (2009) 47 Cal.4th 381, 387–388.) “We decline to insert any additional restrictions into an otherwise unambiguous provision.” (Rudick v. State Bd. of Optometry (2019) 41 Cal.App.5th 77, 85.) We construe the language of the statute “in its full statutory context, keeping in mind the nature and purposes of the statutory scheme as a whole.” (California Med. Assn. v. Aetna Health of California Inc. (2023) 14 Cal.5th 1075, 1087; Dyna-Med, Inc. v. Fair Employment & Housing Comm. (1987) 43 Cal.3d 1379, 1386–1387.)” (People v. Shah (2023) 96 Cal.App.5th 879, 895.)

Sterilization is not defined by the statute, but the parties agree that the term is unambiguous and that a sterilization procedure results in a permanent inability to reproduce. (See Opp’n at p.13; Reply at p.3) The parties disagree on whether the statute requires an intent on the part of the authorities involved in the procedure to sterilize someone. The Board argues that intent is required. It explains the statute was enacted to bar forced sterilization. Forced sterilization all but implemented a eugenics policy often associated with Nazi Germany and which left a legacy of trauma across many parts of our own country in the last century. Petitioner argues that the language of the statute does not demand intent, as all procedures that result in sterilization are barred where there is a lack of informed consent.

The court must reject the Board’s view that a sterilization procedure must be undertaken “for the purpose of birth control” as foreclosed by the statutory text. “Eligibility as a survivor of coercive sterilization of imprisoned populations requires,” among other things not at issue on this writ, that the procedure was either “not medically necessary,” “for the purpose of birth control,” or “without demonstrated informed consent.” (Health & Saf. Code, § 24210, subd. (c)(3)(B)(iv).) As relevant to Petitioner’s claims, a lack of informed consent, which is alleged here, entitles a claimant to compensation even if the procedure is medically necessary or was for the purpose of birth control.

The Board has not pointed to contrary legislative history that would require the informed consent requirement be paired with an intent to pursue eugenics or even a more generalized intent to sterilize a patient. While the statute was certainly enacted in the context of barring pursuit of a eugenics policy, or forced sterilization generally, the text is not so narrow. Informed consent is a

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA**  
Rene C. Davidson Courthouse

linchpin of the statute.

At the hearing, the Board argued that the court was placing too much emphasis on informed consent, and that the court's interpretation would mean that compensation might need to be provided for all manner of medical procedures based on any potential risk to reproductive health. The court disagrees again with the Board. A significant body of California law informs the definition of informed

consent, and that law would govern the interpretation of "demonstrated informed consent" in subdivision (c)(3)(B)(iv). There is no reason to believe that the law would lead to absurd results in connection with the statute.

The writ is granted because the Board relied on erroneous statements of the law that an "applicant must be sterilized for the purpose of birth control to qualify as a recipient of benefits" and that Petitioner was not eligible because she did not offer evidence that "the procedure was performed for reasons other than medical necessity." (AR 352–53.) The Board does not identify evidence of informed consent in the administrative record.

The court considers the Board's alternative reasoning, specifically, that an endometrial ablation "does not eliminate fertility." Petitioner provided expert testimony that endometrial ablation results in similar subsequent pregnancy rates as do procedures explicitly intended for sterilization. (see AR 128.) If 100% success were required for any procedure to count as sterilization, the statute would be meaningless, and the Board cited was no evidence refuting the sterilization effects of endometrial ablation.

The Board incorrectly rejected the expert testimony as not a "sworn statement by the survivor or another individual with personal knowledge of the sterilization" (Health & Saf. Code, § 24211, subd. (a)(2)(B).) Subdivision (a)(b)(2) does not require exclusion of Petitioner's expert evidence. First, the subdivision applies specifically to "records of the State Department of State Hospitals and the State Department of Developmental Services" used "to verify the identity of an individual claiming to have been sterilized pursuant to eugenics laws during the period of 1953 to 1979, inclusive." (Ibid.) Second, the information discussed in the subdivision, "may include, but is not limited to" the listed types of records. (Ibid.) And, most importantly, under subdivision (a)(2)(F), the Board must allow a claimant like Petitioner to submit evidence that proves she "was coercively sterilized while under the custody and control of the Department of Corrections and Rehabilitation after 1979." (Health & Saf. Code, § 24211, subd. (a)(2)(B).) "The board shall evaluate this evidence by a preponderance of the evidence standard to determine whether it is more likely than not that the claimant is a qualified recipient." (Ibid.) The Board did not proceed in the manner required by law when it excluded Petitioner's evidence based on an inapplicable statutory provision.

The Board also relied on an online medical source which explains that after an endometrial ablation, "the endometrial lining, where the egg implants after being fertilized, has been removed," that while pregnancies may occur afterward they "are not normal," and that "it is important to use a reliable form of birth control." (AR 350 [citing




**SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA**

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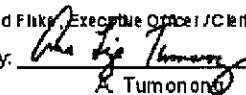
<https://www.hopkinsmedicine.org/health/treatment-tests-and-therapies/endometrial-ablation>].)  
This excerpt does not suggest that fertility is maintained after the procedure.

Petitioner should at least get a hearing without mistakes of law. The writ is granted, and the Board must set aside its prior order. If the Board, in reconsidering the case in light of this order, revisits the questions of what procedure she actually received (since that appears to be in dispute), the risk the procedure caused concerning her reproductive health such that informed consent would be required under California law, and whether the procedure actually caused Petitioner's sterilization or whether something else is/was the cause of the inability to conceive, Petitioner must be allowed to introduce new evidence.

Dated : 06/25/2024



**Michael Markman / Judge**

<b>SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA</b>		Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612		<b>FILED</b> Superior Court of California County of Alameda 06/25/2024
PLAINTIFF/PETITIONER: Geynna Levette Buffington		Chad Finke, Executive Officer / Clerk of the Court By:  Deputy A. Tunonong
DEFENDANT/RESPONDENT: Linda Gledhill, Executive Officer, State of California Victim Compensation Board		
<b>CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6</b>		CASE NUMBER: 23CV051160

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the Order re: Ruling on Submitted Matter filed by John Douglas Moore (Attor... entered herein upon each party or counsel of record in the above entitled action, by electronically serving the document(s) from my place of business, in accordance with standard court practices.

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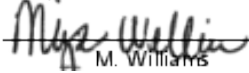
Chad Finke, Executive Officer / Clerk of the Court

Dated: 06/25/2024

By:



A. Tunonong, Deputy Clerk

<b>SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA</b>	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	<b>FILED</b> Superior Court of California County of Alameda 07/31/2024 Chad Finke, Executive Officer / Clerk of the Court
PLAINTIFF/PETITIONER: Geynna Levette Buffington	By:  Deputy M. Williams
DEFENDANT/RESPONDENT: Linda Gledhill, Executive Officer, State of California Victim Compensation Board	
<b>CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6</b>	CASE NUMBER: 23CV051160

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the Judgment entered herein upon each party or counsel of record in the above entitled action, by electronically serving the document(s) from my place of business, in accordance with standard court practices.

Joel Kosh  
Attorney General - State of California  
joel.kosh@doj.ca.gov

John Douglas Moore  
LAW OFFICE OF JOHN DOUGLAS MOORE  
jmoore@recyclelaw.com

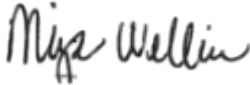
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Dated: 07/31/2024

Chad Finke, Executive Officer / Clerk of the Court

By:

  
M. Williams, Deputy Clerk