IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

HUMBOLDT COUNTY ADULT PROTECTIVE SERVICES,

Petitioner and Respondent,

vs.

JUDITH C. MAGNEY,

Defendant and Appellant.

_____/

Appellate No. A145981

Humboldt County
Superior Court
No. CV150159

RESPONDENT'S BRIEF

[Service on Attorney General Required by Rule 8.29]

Appeal from Superior Court, County of Humboldt
Honorable Dale A. Reinholtsen, Judge

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TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL, FIRST APPELLATE DISTRICT, DIVISION One	Court of Appeal Case Number: A145981
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): JEFFREY S. BLANCK, COUNTY COUNSEL/CA SB # 115447 BLAIR ANGUS, ASSISTANT COUNTY COUNSEL/CA SB # 210160 825 FIFTH STREET, ROOM 110 EUREKA, CA 95501 TELEPHONE NO.: (707) 445-7236 FAX NO. (Optional): (707) 445-6297 E-MAIL ADDRESS (Optional): Countycounsel@co.humboldt.ca.us ATTORNEY FOR (Name): Humboldt County Adult Protective Services	Superior Court Case Number: CV150159 FOR COURT USE ONLY
APPELLANT/PETITIONER: Humboldt County Adult Protective Services, RESPONDENT/REAL PARTY IN INTEREST: Judith C. Magney	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS (Check one): ☑ INITIAL CERTIFICATE ☐ SUPPLEMENTAL CERTIFICATE	

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1. This form is being submitted on behalf of the following party (*name*): Humboldt County Adult Protective Services

2. a. ☑ There are no interested entities or persons that must be listed in this certificate under rule 8.208.

   b. ☐ Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
(1)	
(2)	
(3)	
(4)	
(5)	

☐ Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: January 26, 2016

Blair Angus
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STATUTES

Respondent respectfully submits this brief in opposition to Appellant's appeal from the order of the trial court denying attorney's fees.

I.
FACTUAL BACKGROUND AND STATEMENT OF THE CASE.

On March 10, 2015, Public Health Nurse Heather Ringwald, R.N. commenced an Adult Protective Services (APS) investigation into the events leading to the hospitalization of Dick Magney (age 73). [1AA[1] 8] APS was concerned because Mr. Magney reported that he was confined to the bathroom of his residence for a period of several weeks to two months prior to his admission to St. Joseph's Hospital. Mr. Magney's wife, and surrogate pursuant to an Advanced Health Care Directive, confirmed that her husband remained in the bathroom for eight weeks. [2AA 202, 203] Mrs. Magney did not think to call an ambulance or to seek treatment for her husband. [1 AA 8]

On February 21, 2015,[2] Mr. Magney was transported by ambulance to Redwood Memorial Hospital. Upon arrival, he was diagnosed with sepsis secondary to severe decubitus ulcers and possible endocarditis. [1AA 8, 2AA 188-189, 224] Redwood Memorial Hospital had no inpatient beds

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[1] Appellant's Appendix is referred to hereinafter as AA.

[2] All subsequent dates are in 2015 unless otherwise indicated.

available and Mr. Magney was transferred to St. Joseph's Hospital. [2AA 188-189]

Attending physicians at St. Joseph's Hospital noted that Mr. Magney was emaciated and suffering from severe malnutrition. [2AA 198, 227] There was an obvious lesion on his left lower extremity. [2AA 194] In addition, Mr. Magney presented with stage 2-3 decubitus ulcers that were apparently caused because he remained sitting on the commode for a long period of time. [2AA 197] Mr. Magney was suffering from sepsis that was attributed to contamination from his stay in the bathroom.[3] He had terrible hygiene. [2AA 194] The patient reported he had been taking his meals on the commode as he was too weak to walk. [2AA 203] Upon admission to St. Joseph's Hospital, he voiced no complaints other than hunger and pain.[4] [2AA 193]

Doctors prescribed a six to eight week course of intravenous (IV) antibiotic treatment to address the endocarditis. This long-term therapy would require the patient to be discharged to a Skilled Nursing Facility (SNF) for a period of several weeks. [2AA 217] Mr. Magney accepted

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[3]His wounds were infected with several bacteria including e-coli and MRSA. [2AA 194, 217]

[4]A toxicology screen obtained by Redwood Memorial Hospital indicated that Mr. Magney was positive for numerous controlled substances. That screening report was made in error. Although he has received treatment for opioid dependency, there is no indication that Mr. Magney uses illegal substances. [2AA 194]

treatment on February 21.

During the evening of February 27, Mr. Magney appeared weak and could only nod in answer to questions. He declined any further IV antibiotic treatment. Mrs. Magney was by his bedside and agreed with this decision. In conversation with nursing staff she said that it was time to let her husband go. She did not want to take him home for hospice care. By the next day, (February 28) Mr. Magney was feeling better. He clearly wanted medical management and declined hospice. His wife did not agree. Mrs. Magney told medical staff that she could not care for her husband at home and was worried that Medicare would not pay for placement at SNF for the duration of the antibiotic treatment. [2AA 217]

On March 4, Dr. Lei Han made a note that the patient preferred only medical management without surgery for valve repair, but his wife did not agree and stated that she could not take care of him at home. [2AA 226]

Mr. Magney continued his antibiotic treatment and, on March 6, Dr. Frank Zazueta noted that he was agreeable to begin physical therapy as tolerated. [2AA 232] However, on March 7, Dr. Stephanie Pham discussed the situation with Mr. Magney and his wife. The patient no longer desired intravenous antibiotic treatment. During this conversation Mr. Magney was oriented only to people, but not to place and time. [2AA 235]

The Public Health nurse did not believe that the patient had capacity to knowingly and intelligently participate in treatment decisions. On March 13, Ringwald received a declaration from Dr. Tanya Tom, Ph.D.[5] indicating that Mr. Magney was suffering moderate cognitive impairment and lacked capacity to give informed consent. In conversation with Dr. Ramil Francisco (Mr. Magney's primary care physician), nurse Ringwald learned that Mr. Magney could die within days if not provided with treatment immediately. The public health nurse became concerned that if Mr. Magney did not receive treatment immediately, he would die before she could begin an investigation to determine what his wishes were. [1AA 9]

Respondent filed an Ex Parte Petition for Temporary Order Prescribing Health Care on March 13, after receiving the capacity declaration that established the patient lacked capacity. [1AA 1-2] Attached to the Petition were Heather Ringwald's Declaration [1AA 8-10][6], Dick Magney's Advance Health Care Directive [1AA 13-17], a letter from Dr. Ramil Francisco, M.D., stating his opinion that the likely outcome for Mr. Magney with no clinical treatment would be worsening of his clinical

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[5]Dr. Tom is an associate of Mr. Magney's primary care physician and is affiliated with the Veteran's clinic in Eureka, California. [1AA 22]

[6]The supporting documents were exhibits to the Petition to Enforce Duties of Attorney-in-Fact for Health Care that was attached to the ex parte application. [1AA 1]

status, multisystem organ failure, and death [1AA 20], and the Judicial Council for GC 335 Capacity Declaration completed by Dr. Tanya Tom, PhD. [1AA 22-27]

After reviewing the materials, Judge Timothy Cissna issued an order stating:

> "It is hereby ordered that Dick R. Magney shall be treated with antibiotics for sepsis, decubitus ulcers, and endocarditis on a temporary basis until the disposition of the petition under Probate Code section 4766 filed herewith, or until further order of the Court." [1AA 3]

On the same date, Respondent filed a Petition to Enforce Duties of Attorney-In-Fact for Health Care (Probate Code section 4765). [1AA 4] The matter was scheduled for hearing on April 2, 2015. [1AA 1]

Appellant filed a response to the petition and supporting points and authorities [1AA 33-58] as well as objections to and a motion to strike evidence in support of the petition on March 26. [1AA 59-77] A declaration of Judith Magney and declaration of Allison Jackson were filed on March 26. [1AA 78-84].

The declaration of Stephanie Phan, MD, was filed March 30. The doctor wrote that she was aware the patient had memory problems, but those were not of concern because the patient articulated his decision not to

undergo further treatment, and the surrogate agreed that further treatment was not warranted. [1AA 94-96]

On March 29, Doctor Robert Soper, M.D. evaluated Mr. Magney's capacity on behalf of St. Joseph's Hospital. The doctor noted that there were questions regarding the patient's capacity as well as that of his wife who had durable power of attorney and wanted to let the patient die. The doctor concluded there was good cause to question the competence of the patient's wife and noted that a probate conservatorship would be warranted unless it was possible to rely on the alternate Attorney-in-Fact. [1AA 101-102]

On April 1, Respondant filed a Notice of Intent to Withdraw Petition to Enforce Duties of Attorney-In-Fact for Health Care. Petitioner stated in part:

> " ... The decision to withdraw the petition is based, in part, on the medical progress report authored by Dr. Robert Soper, M.D., on March 29, 2015, and filed conditionally under seal as an exhibit to this notice .... "

The agency withdrew the Petition to Enforce Duties of Attorney-In-Fact for Health Care at the hearing conducted on April 2, and the temporary orders issued by Judge Cissna were vacated by the Court. [1AA 157-158]

II.
ARGUMENT

A. STANDARD OF REVIEW ON APPEAL

On review of an award of attorney fees ... the normal standard of review is abuse of discretion. However, de novo review of such a trial court order is warranted where the determination of whether the criteria for an award of attorney fees ... have been satisfied amounts to statutory construction and a question of law. (*Karuk Tribe of Northern California v. California Regional Water Quality Control Bd., North Coast Region* (2010) 183 Cal.App.4th 330, 363.)

In this case, the criteria for an award of attorney fees are established by Probate Code section 4771 which provides in pertinent part that "[i]n a proceeding [under Chapter 3, Part 3, Division 4.7 of the Probate Code] commenced by the filing of a petition by a person other than the agent or surrogate, the court may in its discretion award reasonable attorney's fees to . . . the agent or surrogate, if the court determines that the proceeding was commenced without any reasonable cause." (Prob. Code, § 4771(a).)

Reasonable cause is to be determined objectively, as a matter of law, on the basis of the facts known to the plaintiff when he or she filed or maintained the action. Once what the plaintiff (or his or her attorney) knew has been determined, or found to be undisputed, it is for the court to decide whether any reasonable attorney would have thought the claim tenable.

(*Hall v. Regents of University of California* (1996) 43 Cal.App.4th 1580, 1586.)

When the trial court has resolved a disputed factual issue, the appellate courts review the ruling according to the substantial evidence rule. If the trial court's resolution of the factual issue is supported by substantial evidence, it must be affirmed. *(Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 632 [as modified Jan. 7, 1999].)

B. THE TRIAL COURT'S USE OF THE CRIMINAL STANDARD FOR "REASONABLE CAUSE" WAS HARMLESS ERROR.

"A judgment may not be reversed on appeal . . . unless 'after an examination of the entire cause, including the evidence,' it appears the error caused a 'miscarriage of justice.' [Cal. Const., art. VI, § 13.] When the error is one of state law only, it generally does not warrant reversal unless there is a reasonable probability that in the absence of the error, a result more favorable to the appealing party would have been reached. [*People v. Watson* (1956) 46 Cal.2d 818, 835, 299 P.2d 243.]" (*Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 574.)

In this case, the trial court analyzed the motion for attorney fees using the criminal standard for "reasonable cause." Specifically, the court addressed the question "whether the facts known to Petitioner would lead a person of ordinary caution or prudence to believe and conscientiously

entertain a strong suspicion that [Appellant] as Mr. Magney's health care agent, acted in a manner inconsistent with his best interests, failed to perform or is unfit to perform her duties and as a result should be removed as health care agent." [2AA 332]

"Reasonable cause," when used with reference to the prosecution of a claim, ordinarily is synonymous with 'probable cause' as used in the malicious prosecution context. (*Kobzoff v. Los Angeles County Harbor/UCLA Medical Center* (1998) 19 Cal.4th 851, 857; see also *Uzyel v. Kadisha* (2010) 188 Cal.App.4th 866, 926.) "Probable cause" to prosecute an action means an objectively reasonable belief that the action is legally tenable. *(Uzyel v. Kadisha, supra,* 188 Cal.App.4th at 926.) There is no probable cause to prosecute an action only if no reasonable attorney would believe that the action had any merit and any reasonable attorney would agree that the action was totally and completely without merit. *(Ibid.)*

At a minimum, the standard of reasonable cause requires that the plaintiff's attorney have some articulable facts on which he can conclude that a particular person should be named as a defendant. *(Ramsey v. City of Lake Elsinore* (1990) 220 Cal. App. 3d 1530, 1540.)

In this case, the trial court identified the circumstances of Mr. Magney's condition and treatment while at his residence prior to hospitalization, the divergence of opinions of health care providers while he

was hospitalized, and the patient's uncertain mental capacity as facts supporting the decision to seek judicial review of the surrogate's actions. [2AA 334] Each of the facts known to APS and to County Counsel provide ample support for the conclusion there was abundant cause to bring a Petition under either the criminal or the civil standard for reasonable cause.[7]

C IT WAS REASONABLE FOR APS TO CONCLUDE THEY HAD STANDING TO SEEK JUDICIAL REVIEW OF THE SURROGATE'S ACTION.

Taken together, Probate Code sections 4765 and 4766 provide that any interested person or friend of a patient may petition the court for a determination whether the patient has capacity to make health care decisions, and whether the acts or proposed acts of an agent or surrogate are in the patient's best interest. (Prob. Code, § 4766.)

There is no definition of "Interested Party" within Chapter 3 of Part 3 of Division 4.7 of the Probate Code. However, there is no reason to construe that section so as to exclude APS. To the contrary, "[t]he purpose of the Elder Abuse Act, (Welf. & Inst.Code, § 15600 et seq.) is essentially to protect a particularly vulnerable portion of the population from gross mistreatment in the form of abuse and custodial neglect." (*In re Estate of Lowrie* (2004) 118 Cal.App.4th 220, 226.) Indeed, it is the intent of the Legislature that APS have authority "to take any action deemed necessary

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[7] If anything, the applicable standard is more favorable to Respondent.

to protect an elder or dependent adult and correct the situation [so as] to ensure the individual's safety." (Welf. & Inst. Code, § 15600(i)[8].)

In this case, APS was an "Interested Party" given the ongoing investigation into allegations the surrogate neglected the medical needs of the patient.

Accordingly, in the context of an overarching public policy that APS have authority to take any action deemed necessary, APS had standing to seek judicial review of the surrogate's actions in order to preserve the status quo pending conclusion into the investigation as to the patient's wishes and the surrogate's actions. Moreover, even if this Court were to conclude APS does not have standing to bring a petition pursuant to Probate Code section 4766, the theory is legally tenable and supports the decision to bring the petition.

D. THE TRIAL COURT PROPERLY DENIED THE REQUEST FOR ATTORNEY FEES BECAUSE THERE WAS AMPLE CAUSE FOR APS TO SEEK A TEMPORARY ORDER PRESCRIBING MEDICATION.

Appellant urged the trial court, and now urges this Court, not to consider medical records introduced for the purpose of showing that APS

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Appellant avers that Respondent belatedly brought section 15600, subd., (i) to the attention of the court. In fact, Respondent cited to the section in the original opposition to the request for attorney fees that was signed on April 7, 2015. [1AA 166]

had reasonable cause to bring the Petition on grounds the records were inadmissible hearsay. The contention is misplaced.

A litigant will lack probable cause for his action if he relies upon facts which he has no reasonable cause to believe to be true, or seeks recovery upon a legal theory which is untenable under the facts known to him. (*Franklin Mint Co. v. Manatt, Phelps & Phillips, LLP* (2010) 184 Cal.App.4th 313, 333.) Where the reasonableness of a person's conduct is at issue, statements of others on which he acted are admissible. (*Silva v. Lucky Stores, Inc.* (1998) 65 Cal.App.4th 256, 265; see also *People v. Smith* (2009) 179 Cal.App.4th 986, 1003 [If a fact in controversy is whether certain words were spoken or written and not whether the words were true, evidence that these words were spoken or written is admissible as nonhearsay evidence.])

In this case, at issue is whether the patient's medical records supplied a reasonable basis for the nurse to seek judicial intervention. In that context is was proper to introduce the records showing (1) that the patient made conflicting statements to his doctors, (2) that the surrogate did not agree when the patient stated he wanted treatment, and (3) there was evidence the surrogate failed to act in her husband's medical interest. The records were not proffered to prove the patient's diagnosis or to demonstrate that the

patient wanted continued treatment, but rather to establish the basis for the nurse's decision to seek judicial intervention.

As set forth below, the medical records corroborate Nurse Ringwald's declaration and show that the agency reasonably believed there was cause to question the surrogate's actions.

1. The Patient's Desires Were Unclear

Appellant protests that attorney fees are warranted in part because APS nurse Ringwald "sought to, and did, . . . deliberately create an "end run" around Mr. Magney's constitutionally and statutorily protected fundamental right to determine his own end-of-life medical care." [Appellant's Opening Brief (AOB) 31] This contention is contradicted by the record which establishes that the patient made conflicting statements when asked whether he wished to continue antibiotic therapy and/or transition to palliative care. In fact, although Mr. Magney refused surgical intervention, on multiple occasions, he also clearly expressed his wish to continue medical treatment. [2AA 209, 214, 217, 219, 224, 226][9]

[9]The medical records appear to contradict Appellant's contention that Dr. Phan made the decision to withdraw antibiotic therapy in consultation with a cardiologist, a subspecialist, and three other treating physicians. [1AA 45] The only evidence that other doctors were in agreement with Dr. Phan's treatment decision, is that a physician made a note in the medical record that a palliative care consultation "should be considered," and another doctor wrote that hospice "should be considered." [2AA 224, 233] In fact, Dr. Phan's record from March 7, states she made the decision to withdraw treatment after discussion with the patient and his wife and after reviewing Dr. Sarna's note in which in wrote that a palliative care consultation should be considered. Significantly, it appears the doctor was unaware that her patient's drug test was a false positive as she wrote that it was her impression that the patient had a history of "impressive substance

2. The patient lacked capacity to make a decision to terminate treatment.

"A medical doctor, being the expert, appreciates the risks inherent in the procedure [s]he is prescribing, the risks of a decision not to undergo the treatment, and the probability of a successful outcome of the treatment. But once this information has been disclosed, that aspect of the doctor's expert function has been performed. The weighing of these risks against the individual subjective fears and hopes of the patient is not an expert skill. Such evaluation and decision is a nonmedical judgment reserved to the patient alone." (*Cobbs v. Grant* (1972) 8 Cal.3d 229, 243.) If a patient is found to be incompetent, the authority to consent is transferred to the . . . closest available relative, a conservator, or to a surrogate pursuant to a health care directive. (Prob. Code, §§ 4781.5, 4714; *Cobbs v. Grant, supra,* 8 Cal.3d at 244; see also *Conservatorship of Wendland* (2001) 26 Cal.4th 519, 544.) The determination of capacity is a medical decision to be rendered by the patient's primary care physician. (Prob. Code, § 4658.)

Here, the question of capacity was readily apparent. Not only did nurse Ringwald identify the patient's obvious deficits, but Dr. Phan also questioned whether her patient had memory problems and suffered cognitive deficits. [1AA 09, 94-96]

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abuse" as well as a history of clinic noncompliance. [2AA 235]

In light of these concerns, APS requested a capacity examination from Mr. Magney's primary health care provider, the Veteran's Administration (VA). A VA psychologist conducted the necessary testing and a capacity declaration attesting to the patient's inability to make medical decisions was subsequently attached to the Petition.[10] Dr. Robert Soper, on behalf of St. Joseph's Hospital, subsequently found Mr. Magney to lack capacity to make his medical decisions and affirmed the findings of the VA psychologist. [1AA 101-102.]

In any event, there is no question that Dr. Phan understood she could not rely on the patient to make the decision. The doctor's declaration and testimony establish that she explained to Heather Ringwald that the standard of care sometimes involves making decisions to withdraw care regardless of a patient's own ability to make such decisions for him/herself:

> "Mr. Magney appeared to have short-term memory loss and trouble with recall of the content of specific conversations. . .In this case, [the patient's] memory issues may have been perceived as a limiting

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Appellant raises questions whether Dr. Tom was licensed to conduct the capacity evaluation. [AOB 17] Probate Code section 4658 provides that a determination that a patient lacks or has recovered capacity, or that another condition exists that affects an individual health care instruction or the authority of an agent or surrogate, shall be made by the primary physician. Mr. Magney's primary physician as defined by Probate Code section 4611 was Dr. Ramil Francisco with the VA. APS requested the VA conduct a capacity examination and Dr. Tom performed that service for the VA and APS as requested. In any event, the conclusion that it was reasonable to rely on the psychologist's opinion is supported by the fact that Dr. Robert Soper subsequently ratified Dr. Tom's findings. [1AA 101-102]

factor, but was in fact not, given that his wife was his designated decision maker."[11] [1AA 95-96.]

In this context, it was reasonable for APS to question whether the patient had capacity and to seek court intervention to address the question whether the surrogate was acting in her husband's interests.

3. There was a reasonable question whether the surrogate was acting in her husband's interest.

"A surrogate . . . shall make health care decisions in accordance with the patient's individual health care instructions, if any, and other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in accordance with the surrogate's determination of the patient's best interest. In determining the patient's best interest, the surrogate shall consider the patient's personal values to the extent known to the surrogate." (Prob. Code, §4714.)

The requirements of section 4714 are specifically addressed by paragraph D. of section 4. of Mr. Magney's Advance Health Care Directive which authorizes Mrs. Magney to make health care decisions only after attempting to ascertain his desires. If the surrogate determines that her husband is unreachable, she has authority to make her decisions based on his personal values, any preferences that he has previously expressed,

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11 The doctor wrote in her declaration that "in the setting of many other medical problems that were difficult to treat concomitantly, there was concern for his having a meaningful recovery even if the treatments were pursued." [1AA 95] The California Legislature has adopted a "due process" approach to medical standards that utilize the concept of futility. Thus, a health care provider may legally decline to comply with an individual instruction or health-care decision that requires medically ineffective health care. However, the statutory scheme requires that a physician or provider who elects to refuse treatment on the basis of futility first secure the participation and agreement of a patient with capacity (or an authorized surrogate). (Prob. Code §4735; See also Unif. Health-Care Decisions Act.)

preferences stated herein, and information received from the attending physicians concerning her husband's prognosis, all the while having her husband's best interest in mind. [1AA 14.]

The Petition was necessary in this case because (1) Mrs. Magney was medically incorrect in her belief that her husband had capacity to make his own health care decisions; and (2) there was reason to question Mrs. Magney's willingness and/or ability to act either in her husband's interests and/or in accordance with his personal values.[12]

The medical records evidence established that Mr. Magney willingly accepted antibiotic therapy and was able to make his wish to continue taking the antibiotics clear to three doctor's at St. Joseph's Hospital. Indeed, the physicians (hospitalists) treating Mr. Magney during the period immediately prior to Dr. Phan's shift on March 7, 2015, noted that the

[12]Appellant urges this Court that APS, "through Nurse Ringwald, flatly admitted that it had deliberately withheld from the court facts that it knew directly contradicted the position it took in its Verified Petition and *Ex Parte* Application." [AOB 28-29] The allegation is based in part on the theory that the agency did not seek to introduce any evidence for the truth of the matter asserted at the hearing regarding attorney fees. APS denies that the agency, or Heather Ringwald personally, attempted to withhold any material information from the court. To the contrary, the agency attempted to demonstrate to the court (1) the patient was in immediate danger of death without treatment with antibiotics, (2) that the patient appeared to lack capacity to participate in a treatment decision, and (3) there were questions whether the patient's surrogate was acting in the best interest of the patient. Those were the facts that prompted the agency to seek a temporary order prescribing medication pending investigation as to the patient's wishes, and those were the facts that prompted the agency to seek judicial review of the surrogate's actions.

patient clearly stated his wish was to continue treatment. [2AA 209, 214, 217, 219, 224, 226.]

Nevertheless, Mrs. Magney disagreed with her husband and urged the doctors to withdraw the medicine. Significantly, it was also apparent to Heather Ringwald and APS that Mrs. Magney was experiencing some financial anxiety as the medical records indicate she expressed her fears that Medicare would not cover the cost of a Skilled Nursing Facility. [2AA 217, 226]

Under these circumstances, Heather Ringwald and APS had ample reason to conclude that the surrogate was acting contrary to the directive in section 4.D of the Health Directive, and contrary to the patient's express wishes.

In fact, the medical records indicated to APS that Appellant told her husband's physicians that she knowingly allowed him to remain in a bathroom for a period of eight weeks without seeking care. When Mr. Magney was finally admitted to the hospital emergency room, his hygiene was terrible, he was suffering from severe malnutrition, and he had sepsis, a MRSA endocarditis infection, as well as an e-coli infection all seeded from his decubitus ulcers. Significantly, each of these treatable conditions was attributable to Mr. Magney's extended stay in the bathroom, and, therefore, to Appellant's failure to obtain timely medical care for her husband. This

evidence of severe medical neglect raises serious questions as to the surrogate's capacity to take responsibility for her husband's medical care. When the neglect is placed in context with Appellant's open disagreement with her husband's express wish to refuse hospice, there was every reason to seek judicial review.

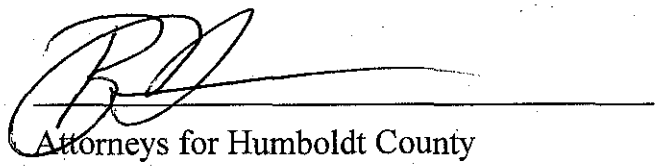
III.
CONCLUSION

For the foregoing reasons, the decision of the trial court should be affirmed.

Dated: January 26, 2016

Respectfully submitted,

JEFFREY S. BLANCK, County Counsel
BLAIR ANGUS, Deputy County Counsel



Attorneys for Humboldt County
Department of Health & Human Services,
Social Services Branch, Adult Protective Services

CERTIFICATE OF WORD COUNT

I, the undersigned, declare as follows:

I have personal knowledge of the following facts:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, to the best of my knowledge.

Executed on January 16, 2016, at Eureka, California.

Teri Gridley
Legal Office Services Manager

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF HUMBOLDT)

I, TERI GRIDLEY, say:

I am a citizen of the United States, over 18 years of age, a resident of the County of Humboldt, State of California, and not a party to the within action; that my business address is Humboldt County Courthouse, Eureka, California; that on **January 26, 2016**, I served a true copy of **RESPONDENT'S BRIEF**

XX by transmitting a PDF version of this document by eletronic mail to each of the following using the email address indicated below:

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XX by personally delivering a true copy thereof to the person as forth below.

Humboldt Superior Court
ATT: Dale A. Reinholtsen, Judge
825 Fifth Street
Eureka, CA 95501

XX by placing a true copy thereof enclosed in a sealed envelope and depositing the envelope at my place of business for same-day collection and mailing with the United States mail, following our ordinary business practices with which I am readily familiar, addressed as set forth below:

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 26th of January, 2016, at the City of Eureka, County of Humboldt, State of California.

Teri Gridley, Legal Office Services Manager