

Protecting Tax and Public Benefit

V

irtually all litigators are, or should be, familiar with the evidentiary privileges contained within the Evidence Code (attorney-client, clergy-penitent, spousal, physician-patient, etc.).

Because Evidence Code section 911 expressly establishes the general rule that privileges are a creature of statute¹, many practitioners believe that the Evidence Code is the sole source of evidentiary or discovery privileges. This is simply wrong: privilege-creating statutes are not restricted to those set forth in the Evidence Code, or even state law. Indeed, there are multiple sources of evidentiary and/or discovery privileges located throughout the codes.

Those engaged in personal injury practice should also be aware of the mighty and expansive Right of Privacy (Article I, Section 1 of the State Constitution), which has been the subject of innumerable discovery cases. See cases collected at “Discovery,” *California Practice Guide/Civil Procedure Before Trial*, Weil & Brown, ¶ 8:293-339.8. See, e.g., *Britt v. Superior Court* (1978) 20 Cal.3d 844, 143 Cal.Rptr. 695 (lead case).

In addition, the work product protection is set forth in the Discovery Act, not in the Evidence Code. C.C.P. § 2018.

What is less widely known, is that even more powerful privileges also exist which can bar the discovery of otherwise discoverable materials — including government-required medical examinations of potentially relevant conditions — which are not set forth on the face of the Evidence Code. This article focuses on those privileges.

General Rules

A number of privileges are implicitly incorporated into the Evidence Code by the “official information” privilege in Evidence Code section 1040. This statute is based on the notion that “some kinds of governmental secrecy must be locked away from the most necessitous litigant.” *People v. Superior Court* (1971) 19 Cal.App.3d 522, 530, 97 Cal.Rptr. 118. Indeed, it is the very purpose of a privilege — by its very definition — that it reflects a legislative determination that, within the ambit of that privilege, confidentiality is more important to society than disclosure. In fact, the attorney general is obliged to assert the privilege (*Procurner v. Superior Court* (1973) 35 Cal.App.3d 211, 212, 110 Cal.Rptr. 531²), although the privilege “should not be dependent on the happenstance of a

public official’s familiarity with Evidence Code section 1040 or his assertion of the privilege therein provided.” *Id.* at 212-213.

Section 1040 creates both an absolute privilege — which cannot be waived — and a conditional privilege. “It essentially establishes two different privileges — an absolute privilege if disclosure is forbidden by a federal or state statute (subd. (b)(1)), and a conditional privilege in all other cases pursuant to which privilege attaches when the court determines, in accordance with precise statutory standards, that disclosure is against the public interest.” *Shepherd v. Superior Court* (1976) 17 Cal.3d 107, 123, 130 Cal.Rptr. 257. The Supreme Court, in footnote 12, cited to Official Comment to Evidence Code section 1040.³

Therefore, the threshold question is whether there is a statute prohibiting disclosure, directly or by implication, as in *Webb*; these materials are always and powerfully protected from disclosure, in any context. While this article focuses on the statutorily-prohibited disclosure statutes (i.e., absolutely privileged), brief mention will also be made of the conditional privileges even though the case law on conditionally privileged information is almost invariably in favor of allowing discovery in the “liberal spirit of discovery.”⁴ Thus, the threshold question is to identify a statutory source for an absolute privilege; if such a statute exists. Counsel should not allow opposing counsel to recast the argument to the irrelevant, but legally appealing, issue of the adverse litigant’s purported justification for disclosure. In absolute privilege cases, the interests of the litigants *qua* litigants is completely irrelevant: the statutorily-declared legislative policy in confidentiality of that class of records is all that matters and the court has no power to compel disclosure.

While the absolute versus conditional distinction is well-established, many courts have had difficulty with cases where the litigant seeking discovery is a member of a favored class. In, for example, *In re Lynna B.* (1979) 92 Cal.App.3d 682, 705, 155 Cal.Rptr. 256, welfare records were found to be conditionally privileged where “the interests of the child” were at stake; that Court distinguished *Sinacore v. Superior Court* (1978) 81 Cal.App.3d 223, 225, 146 Cal.Rptr. 302, which had held such records absolutely privileged from a defendant in wrongful death case. While the result was correct in *Lynna B.*, that holding was completely erroneous. Even the *Lynna B.* court itself

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Records During Discovery

noted (at 704-705) that the only requirement mandating application of the absolute privilege was the existence of a statute forbidding disclosure, which exists in welfare cases (*Welfare and Institutions Code* § 10850).⁵ Nonetheless, these cases demonstrate, as we discuss below, that the civil defendant is not a member of a favored class when arguing the various statutory privileges.

Many types of governmental records fall within the ambit of this protection. *See, e.g., Terzian v. Superior Court* (1970) 10 Cal.App.3d 286, 88 Cal.Rptr. 806 (adoption records), *Sinacore v. Superior Court* (1978) 81 Cal.App.3d 223, 225, 146 Cal.Rptr. 302 (welfare records not discoverable in wrongful death case), *People (Department of Transportation) v. Superior Court* (1976) 60 Cal.App.3d 352, 359-360, 131 Cal.Rptr. 476 (accident reports to highway patrol, except as to people involved in the subject accident),⁶ *In re Muszalski* (1975) 52 Cal.App.3d 475, 125 Cal.Rptr. 281 (prisoner information), 55 Ops.Atty.Gen. 122 (1972) (visual acuity testing for drivers' licenses), and 53 Ops.Atty.Gen. 10 (1970) (venereal disease records).

An absolute privilege exists for medical staff review committees (Evid. C. § 1157), even though it makes it virtually impossible to prove a case against a hospital for negligently screening its medical staff under *Elam v. College Park Hospital* (1982) 132 Cal.App.3d 332, 183 Cal.Rptr. 156. *Snell v. Superior Court* (1984) 158 Cal.App.3d 44, 204 Cal.Rptr. 200. This privilege appears to be unique in that it provides an absolute privilege to protect the activities of non-governmental entities.

There are many cases protecting law enforcement records. (Evid. C. § 1041 protects informant information; § 1043 protects peace officer records.) In fact, many widely-available practice guides focus extensively on the application of these privileges to law enforcement matters — which are of continuing interest to civil

rights lawyers — while largely ignoring its wider potential application in civil personal injury litigation. *See* “Discovery,” *California Practice Guide/Civil Procedure Before Trial*, Weil & Brown, ¶ 8:125-128.6; *but see* CJER, *California Judges Benchbook: Civil Proceedings — Discovery* (Bancroft-Whitney, 1994, with current supplement), § 4.86-4.87, page 64-65.

Evidence Code section 915(b) establishes a procedure to be followed “when the court is ruling on a claim of privilege [under § 1040 and others] and is unable to do so without requiring disclosure of the information claimed to be privileged,” allowing an *in camera* inspection with “person from whom disclosure is sought [i.e., the plaintiff or the agency] or the

person authorized to claim the privilege [i.e., the agency].” This provision — which implicitly recognizes the inherent and necessary standing of the involved agency, should be rarely used since the determination of a privilege is usually strictly implied by the nature of the demanded disclosure, not the details of the contents of the assertedly materials themselves.⁷

Finally, while the burden of showing that materials are within the scope of a privilege fall on the party seeking protection (*see, e.g., D.I. Chadbourne v. Superior Court* (1964) 60 Cal.2d 723, 729, 36 Cal.Rptr. 468), the party claiming waiver or an exception has the burden to show that those are present. *Alpha Beta Co. v. Super-*

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rior Court (1984) 157 Cal.App.3d 818, 825, 203 Cal.Rptr. 752. Since the scope of a privilege is invariably determined by the scope of the demand, that burden is usually satisfied as a matter of law. The issues of waiver or exception are, to the contrary, fact-oriented and cannot be proven by hopeful speculation that something useful might show up. *Vinson v. Superior Court* (1987) 43 Cal.3d 833, 840, 239 Cal.Rptr. 292; *Davis v. Superior Court* (1992) 9 Cal.App.4th 1008, 1017, 9 Cal.Rptr.2d 331 (privacy cases).

The remainder of this article will discuss these privileges in the context of income tax records, welfare benefits, social security (federal) and disability (state) records.

The Income Tax Privilege

The income tax privilege has long been a well-accepted protection in civil litigation since *Webb v. Superior Court* (1957) 49 Cal.2d 509, 319 P.2d 621. It remains an indisputably valid objection. "Discovery," *California Practice Guide/Civil Procedure*

Before Trial, Weil & Brown, ¶ 8:112. Indeed, *Webb* is the motherlode case for the entire class of governmental-interest privileges.

The income tax privilege covers both state and federal returns (*Webb*), protects all kinds of taxpayers (*Sav-On Drugs, Inc. v. Superior Court* (1975) 15 Cal.3d 1, 123 Cal.Rptr. 283) and all forms of tax returns. *Id.* Moreover, it covers documents integral to income tax filings, such as W-2 forms. *Brown v. Superior Court* (1977) 71 Cal.App.3d 141, 142, 139 Cal.Rptr. 327. It does not appear, however, to protect the accountant's working papers (*United States v. Arthur Young* (1984) 465 U.S. 805, 816, 104 S.Ct. 1495), although the parameters of this rule, and the applicability of *Arthur Young* to the unique California scheme is debatable. (Since there is no statutory accountant's privilege, the privilege, if any, would be limited to income tax preparation.) See "Discovery," *California Practice Guide/Civil Procedure Before Trial*, Weil & Brown, ¶ 8:122-123. The tax privilege is *absolute*. CJER, *California*

Judges Benchbook: Civil Proceedings — Discovery (Bancroft-Whitney, 1994, with current supplement), § 4.95, page 68.⁸

The purpose for the protection is not the same as that for the Right of Privacy or other common law privileges (protection of some aspect of the litigant's privacy). This privilege is "to facilitate tax enforcement by encouraging a taxpayer to make full and truthful declarations in his return, without fear that his statements will be revealed or used against him for any other purposes." *Webb* at 828; *Schnabel v. Superior Court* (1993) 21 Cal.4th 704, 719-720, 719, 21 Cal.Rptr.2d 200. This distinction is important to the issues of scope and implied waiver of any asserted governmental privilege. Thus, for example, while a party is deemed to waive the physician-patient privilege to the extent that he or she "tendered" the subject matter into the litigation (*In re Lifschütz* (1970) 2 Cal.3d 415, 435, 85 Cal.Rptr. 829), the same does not apply to the governmental information privilege.⁹ Indeed, the lack of an implied waiver-by-litigation is a hallmark of any *absolute privilege*.

Here, the statutorily-declared interests of the government preclude a simple argument-by-analogy to force waiver of matters implicitly "tendered" by the litigant. Indeed, if a tender-waiver were implied in the ordinary personal injury context, the exception would immediately swallow up the general rule of privilege. This rule is stated, in no uncertain terms, in the civil discovery context, in *Webb* at 513 (and quoted and followed more recently by the Supreme Court in *Schnabel v. Superior Court* (1993) 21 Cal.4th 704, 719, 21 Cal.Rptr.2d 200).

In the analogous context of disability medical examinations, it has been held that a personal injury claimant does have the power to invoke the privilege (see authorities collected in CJER, *California Judges Benchbook: Civil Proceedings — Discovery* (Bancroft-Whitney, 1994, with current supplement), § 4.93, page 67) however, the claimant does not have the right to waive the privilege, since it belongs to the governmental agency. *Richards v. Superior Court* (1968) 258 Cal.App.2d 635, 638, 65 Cal.Rptr. 917. This is a powerful privilege for many personal injury claimants who are compelled to seek public assistance due to their injuries.

However, the privilege does not preclude disclosure to statutorily-favored litigants, such as child and spousal support claimants, since disclosure is generally required by other specific statutes. "Discovery," *California Practice Guide/Civil Procedure Before Trial*, Weil & Brown, ¶ 8:120.

Three very narrow exceptions were discussed in *Schnabel v. Superior Court* (1993) 21 Cal.4th 704, 718-723, 21 Cal.Rptr.2d 200.¹⁰ The first exception, *supra* at 721, was for intentional waiver. Secondly — and this one is sometimes (erroneously) argued by defendants in personal injury cases — that "the gravamen of [the] lawsuit is so inconsistent with the continued assertion of the taxpayer's privilege as to compel the conclusion that the privilege has in fact been waived" (*supra* at 721). Finally, there is an exception where "a public policy greater than that of confidentiality of tax returns is involved." *Id.*

Despite the civil defendant's commonplace claim that any personal injury lawsuit compels the disclosure of whatever information is sought, implied waiver theory has never been applied to ordinary personal injury litigation. Indeed, the case invariably cited for this "general" proposition, *Wilson v. Superior Court* (1976) 63 Cal.App.3d 825, 134 Cal.Rptr. 130, illustrates this. In that case, a taxpayer sued her accountants for negligently advising her as to the tax consequences of a sale of real property; she then sought to avoid disclosure of the involved tax return. In that case, her tax returns were so obviously and *directly*¹¹ in issue that the claim of income tax privilege was disallowed.

Personal injury defendants will commonly cite to the narrow rule of *Wilson* as authority for an argument that they are entitled to discover the income tax records of a personal injury claimant claiming a wage loss where there are no records, or allegedly "insufficient" records, to prove prior earnings or other relevant facts. They will argue that they are not obliged to accept the plaintiff's testimony on earnings at face value.

This argument undoubtedly has a great deal of superficial appeal and may appear to be consistent with the normal rule of liberal discovery. It is also wrong. This common argument ignores the

longstanding explicit and important public policy that confidentiality of tax returns is a vital component to encourage taxpayers to pay their taxes. Moreover, the implicit waiver doctrine applied in many seemingly related contexts (e.g., the Constitutional right of privacy; *Britt v. Superior Court* (1978) 20 Cal.3d 844, 143 Cal.Rptr. 695) simply does not apply to these cases since the governmental interest in full and confidential disclosure is at stake. A desire to further verify a supposedly weak wage loss claim is no justification for setting aside the rule prohibiting disclosure.

It is important to note that *no case* has ever held that the income tax privilege is unavailable in a bodily injury context. Rather, "California courts have zealously guarded the confidentiality of information contained in various types of tax returns." CEB, 2 *Civil Discovery Practice in California* (1988), § 13.96, page 885. The fact that the rule is so well-established in case law, and has not been legislatively overruled in the four decades since it was announced, is further evidence that the judicially-

inferred privilege is consistent with legislative intent. The power and scope of this privilege is demonstrated by the fact that, in the 40 years since *Webb*, not one reported case has ever held that the privilege is waived by the mere assertion of a wage loss claim, no matter how "suspicious" or "undocumented" the claim may appear to be.

State Disability Records, Including Medical Examinations

Employment and disability records have long been held to be confidential by analogy to the income tax privilege (*Webb*) and pursuant to Unemployment Insurance Code section 1094, 2111, and 2714(a). In *Crest Catering Co. v. Superior Court* (1965) 62 Cal.2d 274, 277, 42 Cal.Rptr. 110, the Court held: "These provisions manifest a clear legislative purpose to preserve the confidentiality of information submitted to the Department of Employment."

Subsequently, the Second District, in

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Richards v. Superior Court (1968) 258 Cal.App.2d 635, 65 Cal.Rptr. 917, applied the same principles to state disability records, specifically the records of a state-retained physician-examiner who had evaluated plaintiff's medical condition relating to the lawsuit. See CJER, *California Judges Benchbook: Civil Proceedings — Discovery* (Bancroft-Whitney, 1994, with current supplement), § 4.87, page 64). In that case, plaintiff, a garden variety auto accident personal injury claimant, signed a disclosure waiver in favor of the defendant for the records of a physician who had examined plaintiff to determine her eligibility for state disability benefits "relative to the accident." The state then moved successfully to quash the defendant's subpoena for those records on the grounds that the nondisclosure requirements in Unemployment Insurance Code section 2714¹² created a "privilege . . . now made absolute by [Evid. C. § 1040(b)(1)]." *Id.* at 638-639. At 638, the court focused on the government's administrative need to know, which it held superseded that of the

claimant's civil adversary,

"Where, as in the instant case, the disclosure is, in fact, sought by and for the benefit of the personal injury defendant, the public agency has a real interest in nondisclosure. The agency wants its applicant to give the [agency-retained] doctor a full, complete and honest report; that report and examination should not be impeded by the applicant's fear that something she says there may be used against her in some later lawsuit. In such a case, whether a statute prohibits disclosure is a matter of interpretation of that statute, as applied to the case in which disclosure is sought."¹³

Richards is a powerful case in its strict — and statutorily-mandated — application to records which might be among the critical records a civil defendant might demand.

Welfare Records

Welfare records are absolutely privileged under Welfare and Institutions Code section 10850. In *Sinacore v. Superior*

Court (1978) 81 Cal.App.3d 223, 227, 146 Cal.Rptr. 302,¹⁴ the court of appeal found that the welfare department's records were absolutely privileged under section 10850 (and companion federal statutes) and precluded a wrongful death defendant from obtaining any of those records. The court noted that any official who disclosed the records would be subject to criminal prosecution. See also CJER, *California Judges Benchbook: Civil Proceedings — Discovery* (Bancroft-Whitney, 1994, with current supplement), § 4.87, page 64.

In *Welfare Rights Organization v. Crisan* (1983) 33 Cal.3d 766, 772, 190 Cal.Rptr. 919, the Supreme Court held that Welfare & Institutions Code section 10950, which permits the use of a non-attorney counselor at welfare hearings, implies a guaranty of confidentiality analogous to the attorney-client privilege. See also CJER, *California Judges Benchbook: Civil Proceedings — Discovery* (Bancroft-Whitney, 1994, with current supplement), § 4.80, page 62 (citing case).

Social Security Records

Social security records are also absolutely privileged because federal law explicitly provides for their confidentiality. See 42 U.S.C.A. §§ 1202 (9) (blindness) and § 1352(9) (other disabilities), providing in identical terms that the agency is to "provide safeguards which permit the use of disclosure of information concerning applicants or recipients only (A) to public officials, or (B) to other persons for purposes directly connected with the administration of the State plan."

By the terms of Evidence Code section 1040(b)(1), these federal confidentiality requirements mandate that these records be deemed absolutely privileged. There is an analogy to the *Webb* analysis, which held federal tax records privileged under state law (at 513-514). This federal/state interplay was reiterated and explained again in *Schnabel v. Superior Court* (1993) 21 Cal.4th 704, 719-720 (including footnote 3), 21 Cal.Rptr.2d 200. The analogy, however, is imperfect only because in this context (unlike the federal income tax rules), there are federal statutes requiring confidentiality.

Out-of-state federal and state authorities, despite the federal origins of this confidentiality, may be useless in this

context since absolute privilege is a creature of state law. Evid. C. § 1040(b)(1). Hence, it would be possible to compel, for example, California income tax returns in another jurisdiction that did not have an analogous statutory scheme. Furthermore, the statute does not, on its face, protect confidential official records from another state or even a local public entity. The statute relates to "disclosure. . . forbidden by an act of the Congress of the United States or a statute of this state" (emphasis added). There are no cases on point.¹⁵

Limits to Official Information Protection

This privilege applies only to the information and records of the state agency. The privilege was invoked unsuccessfully to prevent the testimony of a former state agency investigator where the expert did not investigate an accident and had no access to privileged information. *Lofleidir Icelandic Airlines v. McDonnell Douglas* (1984) 158 Cal.App.3d 83, 204 Cal.Rptr. 358. If the expert was bringing in agency records or had actually investigated the crash, the court likely would have prevented the testimony.

Further, it is restricted to actual statutes and not lesser administrative regulations. *McKillop v. Regents of University of California* (N.D.Cal. 1975) 386 F.Supp. 1270.

There are some authorities which have held that the scope of the absolute privilege (Evid. C. § 1040(b)(1)) is narrowly applied; the statute "must be construed restrictively to prohibit only what is expressly proscribed." *Department of Transportation v. Superior Court* (1996) 47 Cal.App.4th 852, 55 Cal.Rptr.2d 2. Anything less than express language in the statute results in the conditional protection of the balancing of the public interest against the necessity for disclosure under Evidence Code section 1040(b)(2). *Terzian v. Superior Court* (1970) 10 Cal.App.3d 286, 294, 88 Cal.Rptr. 806.

Even absolutely privileged records are discoverable if a court finds that the action itself relates directly to the administration of a state program. *County of Nevada v. Kinicki* (1980) 106 Cal.App.3d 357, 105 Cal.Rptr. 57 (father was sued by the county to determine paternity and for reimbursement of AFDC payments). A party was allowed access to records to be used against him, as a matter of due process, to

defend himself in an administrative hearing where his professional license was at stake. *Endler v. Schutzbank* (1968) 68 Cal.2d 162, 65 Cal.Rptr. 297.

Criminal cases raise entirely different concerns, including Constitutional due process concerns. This distinction may be important to the civil practitioner who is confronted with a citation to a criminal case allowing disclosure.

The conditional privilege is subject to waiver, imposes a balancing test and the state entity itself holds the privilege, although the litigant has the right to interpose the objection. The *Procunier* case, *supra*, imposes a duty upon the state agency to assert the privilege. A wise attorney should seek to involve the agency as much as possible to protect the client's interests. The overwhelming danger, of course, is waiver. One court found waiver when an agency failed to persist in objecting to disclosure after it was ordered to disclose the information by the court. *Markwell v. Sykes* (1959) 173 Cal.App.2d 642, 343 P.2d 769. This is an older case;

however, it does show how reluctant some courts can be to enforce confidentiality. The case stands for the proposition that once the information becomes public, it is no longer confidential and is not entitled to protection.

However, even under the balancing test, records can still be found privileged. In *Chronicle Publishing Co. v. Superior Court* (1960) 54 Cal.2d 548, 7 Cal.Rptr. 109, the Court found that the newspaper's interest in an attorney's complaint record held by the State Bar did not outweigh the attorney-litigant's interest in non-disclosure where the State Bar had not taken disciplinary action. A State University was found to have a greater interest in its personnel files than a professor who alleged that she had been illegally denied tenure. *McKillop v. Regents of University of California* (N.D.Cal. 1975) 386 F.Supp. 1270. Compare *Parnes v. Superior Court* (1978) 81 Cal.App.3d 831, 146 Cal.Rptr. 818 (court, in evaluating claim of condi-

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tional privilege of university's personnel records, must set forth reasoning on the record). While the courts generally favor the broad discovery rights of litigants, due consideration must be given to the public policy reasons for the privilege. Counsel is reminded to focus on protected governmental interests which, while they are more abstract and remote than the adversary's alleged need for disclosure, are still nonetheless important.

Conclusion

Personal injury attorneys should be alert to the possible existence of unusual or even unexpected privileges to clearly relevant discovery that are created or maintained by the state and/or federal governments to allow public agencies to carry out their administrative functions. Such privileges can be extraordinarily powerful and, since their purpose is to allow these agencies to do their job and not merely to protect the potential plaintiff's own interests, these statutory privileges

are made "absolute" by the terms of Evidence Code section 1040. Their protection, unlike the usual personal privileges — from the statutory physician-patient privilege to the all-encompassing Constitutional Right of Privacy — cannot be waived, explicitly or implicitly, by the plaintiff. This makes awareness and use of these privileges extremely important in the appropriate case.

Any time defense counsel seeks discovery of personal records in the hands of an administrative government agency, counsel should investigate the possibility that there is some statute, state or federal, which mandates confidentiality. If the practitioner is unfamiliar with the relevant administrative scheme, specific legal research should be done or perhaps contact should be made with a specialist or someone within the administrative agency. ■

¹"The courts are not free to create new privileges as a matter of judicial policy." *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, 539-540, 113 Cal.Rptr. 897.

Procurier was overruled "to the extent they are inconsistent herewith" on other grounds in *Shepherd v. Superior Court* (1976) 17 Cal.3d 107, 124, 130 Cal.Rptr. 257. Specifically, *Shepherd* held that the records of a public prosecutor were not protected by work product and were not absolutely privileged.

²*Official information is absolutely privileged if its disclosure is forbidden by either a federal or state statute.* Other official information is subject to a conditional privilege: The judge must determine in each instance the consequences to the public of disclosure and the consequences to the litigant of nondisclosure and then decide which outweighs the other. He should, of course, be aware that the public has an interest in seeing that justice is done in the particular cause as well as an interest in the secrecy of the information." (Emphasis added.)

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⁴See, generally, CJER, *California Judges Benchbook: Civil Proceedings — Discovery* (Bancroft-Whitney, 1994, with current supplement), §§ 4.86-4.93, page 64-67.

⁵The *Lynna B.* court used the "best interests of the child" argument (at 705) to reach the holding that the "conditionally" protected materials were subject to disclosure. This is not the standard or an excuse for ignoring the plain meaning of the absolute privilege. Rather, the answer was properly set forth in a footnote in *Richards v. Superior Court* (1968) 258 Cal.App.2d 635, 65 Cal.Rptr. 917 (quoted below in footnote), which found that when the absolute privilege might be set aside *if it served the interests of the claimant.* This is fully consistent with the purpose of the statutory confidentiality requirement that "that report and examination should not be impeded by the applicant's fear that something she says there may be used against her in some later lawsuit."

⁶In *Davies v. Superior Court* (1984) 36 Cal.3d 291, 298-300, 204 Cal.Rptr. 154, the Court, in a case asserting that the State had a dangerous public highway, partially overruled this case by permitting disclosure of data about prior accidents at the same location which did not identify the parties to the accident. The Court permitted disclosure of prior accident information except for the identities of the involved persons "and information that might disclosure." The case illustrates the importance of reading the specific statutory language involved and focusing on the precise administrative interests involved.

⁷The court may be precluded from conducting an *in camera* inspection because of the exist-

ence of other privileges, e.g., the Right of Privacy. See, e.g., *Grosslight v. Superior Court* (1977) 72 Cal.App.3d 502, 140 Cal.Rptr. 278 and *Carlson v. Superior Court* (1968) 261 Cal.App.2d 282, 67 Cal.Rptr. 658.

⁸But see discussion in *Schnabel v. Superior Court* (1993) 21 Cal.4th 704, 721, 21 Cal.Rptr.2d 200.

⁹See discussion below of the unique fact pattern and result in *Wilson vs. Superior Court* (1976) 63 Cal.App.3d 825, 134 Cal.Rptr. 130.

¹⁰The *Schnabel* case should be read and cited carefully as it contains some language permitting disclosure, *albeit* in a limited fashion. It collects and explicitly approves of *Webb* and its progeny and may be quoted at length on that. However, the case involved a marital dissolution action — which itself implies radically different policies and statutes — and the involved corporation was owed by the couple as community property. Thus, she not only had special rights as a divorcing spouse, but as a shareholder. Thus, the extensive language in that case favoring some disclosure was solely a function of her doubly unique status as spouse and shareholder; any personal injury claimant who cites this case as favorable to disclosure would be misapplying the case.

¹¹"Plaintiff's complaint alleges negligent and improper advice, computation and preparation of her taxes for the year 1972." *Id.* at 530.

¹²Unemployment Insurance Code section 2714 was substantially reenacted without substantive change effective January 1, 1998. The fact that the Legislature did not alter the relevant language is further evidence of a continuing legislative intent to preclude discovery of such records by civil defendants. *Robinson v. FEHC* (1992) 5 Cal.4th 226, 235, 5 Cal.Rptr.2d 782.

¹³The italicized portion here, which was also italicized in the original, was accompanied by footnote 2 indicating that its "as applied" limitation did not necessarily bar the claimant disclosure "where the personal injury plaintiff seeks disclosure for her own benefit (as, for example, to rebut a charge of recent fabrication or recent exaggeration)."

¹⁴See our discussion above of the purported limitations on this case in *In re Lynna B.* (1979) 92 Cal.App.3d 682, 705, 155 Cal.Rptr. 256.

¹⁵The use of the term "this state" clearly restricts the protection to the State of California (compare Evidence Code section 220, which defines "state"); moreover, the use of the term "state" would seem to exclude other "public entities," which term is broader in scope. See Evid. C. § 200 (defining "public entity").