

1 Amend 2 Cal. Code Regs. Section 18740 to read:

2 **§ 18740. ~~Privileged Information~~ Legally Prohibited Disclosure: Statement of Economic**
3 **Interests.**

4 ~~An official or candidate need not disclose under Government Code section 87207(b) the~~
5 ~~name of a person who paid fees or made payments to a business entity if disclosure of the~~
6 ~~person's name would violate a legally recognized privilege under California law. Such a person's~~
7 ~~name may be withheld in accordance with the following procedure:~~

8 ~~(a) An official or candidate who believes that a person's name is protected by a legally~~
9 ~~recognized privilege may decline to report the name, but shall file with his or her Statement of~~
10 ~~Economic Interests an explanation for such nondisclosure. The explanation shall separately state~~
11 ~~for each undisclosed person the legal basis for assertion of the privilege and, as specifically as~~
12 ~~possible without defeating the privilege, facts which demonstrate why the privilege is applicable.~~

13 ~~(b) With respect to each undisclosed person, the official or candidate shall state that to the~~
14 ~~best of his or her knowledge he or she has not and will not make, participate in making, or in any~~
15 ~~way attempt to use an official position to influence a governmental decision when to do so~~
16 ~~constituted or would constitute a violation of Government Code section 87100.~~

17 ~~(c) The Executive Director may request further information from the official or candidate~~
18 ~~and, if no legal or factual justification sufficient to support assertion of the privilege is shown,~~
19 ~~may order that the disclosure required by the Act be made. The official or candidate shall, within~~
20 ~~14 days after receipt of an order from the Executive Director, either comply with the order or, if~~
21 ~~he or she wants to challenge the determination of the Executive Director appeal the~~
22 ~~determination, in writing, to the Commission.~~

23 ~~(d) If the Executive Director determines that nondisclosure is justified because of the~~

1 ~~existence of a privilege, the matter shall be referred to the Commission.~~

2 ~~(e) The Commission shall review an appeal filed under paragraph (c) or a~~
3 ~~recommendation made by the Executive Director under paragraph (d) at a meeting held no less~~
4 ~~than 14 days after notice of the meeting is mailed to the official or candidate, the Attorney~~
5 ~~General and both the district attorney and the city attorney of the jurisdictions in which the~~
6 ~~official's or candidate's residence and principal place of business are located. The Commission~~
7 ~~shall decide whether nondisclosure is warranted by issuing an opinion under Government Code~~
8 ~~section 83114 and shall treat the explanation for nondisclosure accompanying the official's or~~
9 ~~candidate's Statement of Economic Interests as an opinion request. The procedures set forth in 2~~
10 ~~Cal. Code Regs. sections 18320-18324, however, shall not apply to opinions issued pursuant to~~
11 ~~this regulation.~~

12 ~~(f) If the Commission orders an official or candidate to disclose, the official or candidate~~
13 ~~must comply within 14 days. The Executive Director may, for good cause, extend any of the~~
14 ~~time periods established in this regulation.~~

15 ~~COMMENT: A person's name is not ordinarily protected from disclosure by the law of~~
16 ~~privilege in California. Under current law, for example, a name is protected by the attorney-~~
17 ~~client privilege only when facts concerning an attorney's representation of an anonymous client~~
18 ~~are publicly known and those facts, when coupled with disclosure of the client's identity, might~~
19 ~~expose the client to an official investigation or to civil or criminal liability. See, e.g., *Brunner v.*~~
20 ~~*Superior Court*, 51 Cal. 2d 616, 618 (1959); *Ex parte McDonough*, 170 Cal. 230 (1915); *Baird v.*~~
21 ~~*Koerner* 279 F.2d 623, 630 (9th Cir. 1960); and cases compiled in *re Grand Jury Proceedings*,~~
22 ~~517 F.2d 666, 670-71 (5th Cir. 1975). A patient's name has been protected by the physician-~~
23 ~~patient privilege only when disclosure of the patient's name would also reveal the nature of the~~

1 treatment received by the patient because, for example, the physician is recognized as a
2 specialist. See, e.g., *Marcus v. Superior Court*, 18 Cal. App. 3d 22, 24-25 (1971) and *Ascherman*
3 *v. Superior Court*, 254 Cal. App. 2d 506, 515-16 (1967). The names of business customers are
4 not protected by the trade secret privilege unless, because of surrounding circumstances,
5 disclosure of a particular customer's identity would also result in disclosure of special needs and
6 requirements of the customer that are not generally known to competitors. See, e.g., *King v.*
7 *Pacific Vitamin Corp.* 256 Cal. App. 2d 841, 846-49 (1967) and *Peerless Oakland Laundry Co.*
8 *v. Hickman*, 205 Cal. App. 2d 556, 559-60 (1962).

9 Note: Authority cited: Section 83112, Government Code. Reference: Section 87207(b),
10 Government Code.

11 (a) An official or candidate is not required to disclose the name of a person under
12 Section 87207 if disclosure would violate California or Federal law. A person's name may be
13 withheld in accordance with the following procedure:

14 (1) The official or candidate must file with his or her Statement of Economic Interests an
15 explanation for nondisclosure. The explanation must state for each undisclosed person the legal
16 basis and sufficient facts to support nondisclosure.

17 (2) With respect to each undisclosed person, the official or candidate must state in writing
18 signed under penalty of perjury of the laws of the State of California that he or she has not and
19 will not make, participate in making, or in any way attempt to use an official position to
20 influence a governmental decision in violation of Section 87100. In the event the official or
21 candidate is faced with a potential conflict of interest involving an undisclosed person, the
22 official or candidate should disclose the potential conflict to their agency's legal counsel and
23 must recuse themselves from participating in the matter.

1 (b) The General Counsel of the Commission will determine whether the nondisclosure is
2 warranted under California or Federal law. The General Counsel may request further
3 information from the official or candidate.

4 (1) If the General Counsel determines there is insufficient legal or factual justification
5 for nondisclosure, the General Counsel will notify the official or candidate in writing and order
6 disclosure. Within 14 days after issuance of an order, the official or candidate must comply with
7 the order or appeal the determination, in writing, to the Commission.

8 (2) If the General Counsel determines that nondisclosure is justified under California or
9 Federal law, the General Counsel will notify the Chair of the Commission. The Chair may: (A)
10 approve the determination and direct the General Counsel to issue a final order of nondisclosure;
11 or (B) request review of the General Counsel’s determination by the full Commission and place
12 the matter on the agenda for the next available Commission meeting.

13 (c) If the matter is reviewed by the Commission, the official or candidate will be notified
14 and allowed to present written or oral testimony. If the Commission determines that
15 nondisclosure is warranted, no further action need be taken. If the Commission orders
16 disclosures, the official or candidate must comply within 14 days of the order.

17 (d) The Executive Director may, for good cause, extend the time periods established in
18 this regulation.

19 Note: Authority cited: Section 83112, Government Code. Reference: Section 87207(b),
20 Government Code.