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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

STEPHEN CHAO,

Plaintiff and Appellant,

v.

KAWEAH DELTA DISTRICT HOSPITAL,

Defendant and Respondent.

F040430

(Super. Ct. No. 197141)

OPINION

APPEAL from a judgment of the Superior Court of Tulare County. Melinda M. Reed, Judge.

Wilson & Altschule, Joseph Altschule and James T. Wilson for Plaintiff and Appellant.

Law Offices of Dennis M. Lynch, Dennis M. Lynch and Richard D. Sigmund for Defendant and Respondent.

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After the Board of Directors of Kaweah Delta Health Care District, doing business as Kaweah Delta District Hospital (Kaweah Delta), terminated his medical staff privileges, Stephen Chao, M.D., filed a petition in superior court for a writ of mandate. The petition was denied. Dr. Chao contends the petition should have been granted because the board of directors applied an incorrect standard of review to the evidence. We will affirm.

FACTUAL AND PROCEDURAL BACKGROUND

HOSPITAL PROCEEDINGS

On September 21, 1999, the chief of staff of Kaweah Delta notified Dr. Chao, an obstetrician/gynecologist, that his clinical privileges and medical staff membership were summarily suspended effective immediately because of adverse proctor reports and the Medical Executive Committee's (MEC) determination that on numerous occasions Dr. Chao had failed to respond in a timely manner to patients' medical needs. Dr. Chao was advised that the MEC was prepared to recommend termination of his staff membership and clinical privileges and that the action would be reviewed at a special meeting to be held on September 24, 1999. Dr. Chao appeared at the meeting to present his side of the case. On September 27, 1999, he was notified that the MEC had recommended that his summary suspension remain in effect and his staff membership and privileges be terminated. Dr. Chao was also advised of his appeal rights.

Dr. Chao appealed this decision and, pursuant to hospital bylaws, requested a judicial review hearing.¹ The notice of hearing and charges dated November 2, 1999, specified the 30 cases which formed the basis of the charge that he had "demonstrated a general inability to use good judgement in the delivery of medical care to [his] patients, difficulties in appropriately managing complications, questionable overall case management skills, consent problems, and communications problems with patients, nursing staff and colleagues." By letter dated November 10, 1999, the MEC advised Dr. Chao that seven cases were being added to the list of charges.

The judicial review hearing began on January 18, 2000, before a judicial review committee (JRC) comprised of five physicians on staff at Kaweah Delta and was completed on July 14, 2000. Expert testimony was presented in the hearing by

¹On October 18, 2002, Dr. Chao filed with this court a request to take judicial notice of articles VII and VIII of Kaweah Delta's bylaws. We deferred ruling on this request pending consideration of the appeal on its merits. We now grant Dr. Chao's request. (Evid. Code, §§ 452, 459.)

Dr. Douglas Helm, an associate clinical professor in the department of obstetrics/gynecology at the University of California, San Francisco, who practices perinatology at Fresno Community Hospital. Dr. Helm reviewed a substantial number of cases Dr. Chao managed at Kaweah Delta. Other witnesses included Dr. Andrea Boone, an obstetrician/gynecologist on staff at Kaweah Delta; Dr. Rosemary Leon, the chair of the obstetrics/gynecology department at Kaweah Delta; Dr. Vincent Ward, an anesthesiologist at Kaweah Delta; Sue Kordell, R.N., the head nurse in obstetrics at Kaweah Delta; Julie Whitlock, a staff nurse at Kaweah Delta; and Dr. Chao.

On September 7, 2000, the JRC issued its written decision and findings. The JRC noted that 14 of the original 37 cases had been withdrawn. The JRC specifically discussed nine cases where the JRC either could not determine whether Dr. Chao acted inappropriately, found Dr. Chao did not compromise the patient's care, or concluded Dr. Chao acted appropriately. In seven other cases, however, the JRC found "failures of performance." Five of these cases involved problems of fetal monitoring and fetal distress, which raised concerns about Dr. Chao's failure to respond in a timely fashion to nursing concerns regarding fetal distress and his failure to appropriately proceed with the management of fetal distress once it had been recognized. The JRC's findings on these cases were:

The first case, exhibit 35 at the hearing, involved the admission of an eight months pregnant patient to the emergency department following a motor vehicle accident. An emergency room evaluation found the patient stable and fetal heart tones present and normal. Consult by an obstetrician was not requested to evaluate the patient in the emergency room. The patient was transferred to obstetrics to be triaged and arrived at approximately 2015 hours. The triage nurse testified that she was concerned about flat strips noted on the fetal monitor. Dr. Chao was paged twice, but did not respond. The triage nurse testified she called Dr. Chao at home at 2035 hours. When she finally contacted Dr. Chao, she requested that he come immediately to evaluate the patient. She called Dr. Chao again at 2100 hours (25 minutes later) to again request that he come to

evaluate the patient. Dr. Chao did not respond until 2135—60 minutes after he was initially contacted. The JRC concluded:

“Dr. Helm testified that if a nurse calls a physician regarding fetal distress, the MD must respond immediately or have appropriate coverage see the patient as soon as possible. When Dr. Chao arrived he did not appear to proceed with the evaluation and workup in a timely fashion. Dr. Chao tends to blame others for his delay, however, his explanation was not validated in the testimony. The cause of the fetal demise that occurred in this patient was never fully determined, but Dr. Chao’s failure to respond immediately to the nurses’ calls and proceed timely with appropriate treatment cannot be justified. It would appear that the only chance this fetus had of surviving would be early cesarean section. Dr. Chao’s ability to perform cesarean sections has never been called into question.”

The second case, exhibit 32 at the hearing, involved a patient with a history of amphetamine abuse who was admitted at 2210 hours with excessive vaginal bleeding. Dr. Chao was present at the time of admission. The fetal heart monitor revealed a nonreassuring pattern. Evidence presented at the hearing indicated a cesarean section should have been performed, but Dr. Chao did not proceed with the cesarean section until 40 minutes later. The JRC noted that Dr. Chao gave reasons to account for the delay, but found that after deciding to proceed with the cesarean section, Dr. Chao left the patient to perform a normal vaginal delivery elsewhere, resulting in an additional delay of 55 minutes. The JRC concluded:

“The Committee feels that Dr. Chao[’s] decision to leave was inappropriate and he should have proceeded with cesarean section immediately. The patient’s baby did not have an adverse outcome. Dr. Chao defended his case based on a lack of an adverse outcome. However, the Committee feels that his failure to respond appropriately cannot be justified based on the lack of an adverse outcome. Dr. Chao’s judgement and behavior in this cause [*sic*] were flawed.”

The third case, exhibit 33 at the hearing, involved a pregnant woman who presented to triage at 2200 hours. The triage nurses, believing there was an abnormal fetal heart rate tracing, notified Dr. Chao, but he failed to come in to assess the patient for one hour and 45 minutes. The fetal heart tracing remained abnormal. When Dr. Chao arrived, he failed to proceed in an expedient fashion to perform a cesarean section. The

JRC noted that Dr. Chao tried to justify his delay by saying he did not have a surgical assistant. The JRC concluded:

“The Committee concurs with Dr. Helm that in a true emergency that the MD should proceed with cesarean section without an assistant. The Committee feels that Dr. Chao’s delay potentially jeopardized the status of this fetus.”

The fourth case, exhibit 19 at the hearing, involved a 22-year-old patient who was admitted in active labor. Decelerations were noted on the fetal heart monitor. After trying twice to expedite delivery by using a vacuum device called a MityVac, the fetal heart rate dropped and Dr. Chao recognized that a cesarean section was necessary. Despite a nonreassuring fetal heart tracing, Dr. Chao left the patient with the MityVac in her vagina to deliver another baby. The nurses, who were concerned, contacted Dr. Leon. Dr. Chao then proceeded with the cesarean section. The JRC concluded:

“This is another example of Dr. Chao’s leaving a patient with concerns regarding fetal distress to perform a normal vaginal delivery elsewhere. The Committee concurs with Dr. Helm that Dr. Chao’s actions were inappropriate.”

The fifth case, exhibit 23 at the hearing, involved a 19-year-old patient admitted for induction. An abnormal fetal heart rate was noted and reported to Dr. Chao, who failed to respond to the call. Another physician was called, who came immediately to perform a cesarean section. The JRC concluded:

“The Committee feels that it was Dr. Chao’s responsibility to attend to this patient or to arrange for another physician to evaluate the patient. The fact that Dr. Chao was busy in the clinic was not a justification for his lack of responsiveness to the needs of his patient. In this particular case, the nurse called another MD because of her concerns regarding fetal distress. It would seem that this should be the standard of care to proceed with any patient on which the nurse has concerns. The Committee feels that all too often other physicians are not contacted in a timely fashion when Dr. Chao was not available.”

Another two cases where the JRC found “failures of performance” concerned Dr. Chao’s lack of appropriate contingency planning. The JRC’s findings regarding these cases were:

In the first case, exhibit 18 at the hearing, the nurse performed a pelvic exam on a 24-year-old patient and “notified Dr. Chao that she felt something ‘mushy.’” Dr. Helm testified the “mushy” tissue could represent placenta previa or prolapse of the umbilical cord. Dr. Chao performed a pelvic examination, which resulted in an acute rupture of the membranes and cord prolapse. Dr. Helm testified that Dr. Chao did not have an appropriate contingency plan to proceed with immediate cesarean section in the event of a problem, and that while Dr. Chao’s performance of a pelvic examination was “not an inappropriate thing to do,” Dr. Chao should have recognized that the presence of “mushy” tissue meant there was a high likelihood problems could develop. Dr. Helm testified that Dr. Chao should adequately foresee these potential problems and have appropriate contingency planning to proceed with immediate cesarean section, including having anesthesia available. In this case, an anesthesiologist was not present, therefore Dr. Chao proceeded with an emergency cesarean section using only local anesthesia. The JRC concluded:

“Although the patient’s and baby’s outcome were not compromised, the Committee does not feel this was an ideal situation for the patient. The Committee concurred that Dr. Chao did not appropriately plan for possible problems that may have resulted with this patient.”

The second case, exhibit 47 at the hearing, involved a 30-year-old patient, who was known to have a large fetus, admitted for elective induction. Dr. Chao ruptured the membranes while the fetus appeared to be in a very high station. Dr. Helm testified that with a large baby, a cesarean section may have been necessary. Dr. Chao, however, did not have adequate contingency plans to proceed with a cesarean section. The JRC concluded:

“Apparently, the baby did not suffer any adverse outcome, but [nonetheless], Dr. Chao’s management did not seem to be appropriate. A cesarean section should have been performed immediately or should have been, at least, readily available.”

The JRC summarized its findings as follows:

“In conclusion, the Judicial Review Committee shares the Medical Executive Committee’s concerns regarding Dr. Chao’s care of his patients. Dr. Chao has consistently demonstrated an inability to communicate effectively with nursing staff. His repeated delays in responding to calls from nursing staff and then also, delays in proceeding with appropriate care of his patients have been problematic and are of significant concern. The Committee feels that many of the problems involving Dr. Chao is that he is overworked, however, this does not excuse his behavior.”

The JRC noted, however, that almost all of the complaints regarding Dr. Chao’s care were generated by nurses and stated that “a suspension of the clinical privileges should be based on direct physician review and input.” After considering “all the evidence presented,” the JRC felt that, “while some remedial action by the MEC might be in order, the action taken was too severe for the failures in performance noted.” The JRC concluded that the MEC did not meet its “burden of proving that its action was reasonable and warranted.”

The MEC appealed the JRC’s decision to Kaweah Delta’s board of directors (Board). Following a hearing before the appeal board of the Board, the appeal board, composed of three Board members, issued a written decision on March 30, 2001, in which it disagreed with the JRC’s decision that revocation of Dr. Chao’s privileges was too severe for the “failures of performance noted.” The appeal board, quoting the JRC’s findings in the seven cases where the JRC found “failures of performance,” stated that the JRC’s findings “include numerous instances of seriously substandard practice and flawed medical judgment by Dr. Chao,” which “indicate that the MEC has met its burden of proving that suspension of [Dr. Chao’s] clinical privileges and medical staff membership was reasonable and warranted.” The appeal board further stated that the JRC’s final conclusion that the MEC did not meet this burden appeared to result from the JRC’s “clear error” in requiring reportings of a physician’s performance problems to originate from some source other than nurses. Since the appeal board was concerned that the JRC’s application of “an inappropriate standard . . . may have prejudiced the Judicial Review Committee’s evaluation of the MEC’s actions,” the appeal board remanded the

matter to the JRC for reconsideration in light of the JRC's findings that Dr. Chao's "care fell below an acceptable standard in a number of cases in which patients were exposed to significant risk."

In a written response to the appeal board, the JRC refused to modify its initial decision that suspension of Dr. Chao's privileges was not reasonable. The JRC disagreed that it had erred, stating that "[h]onorable people, in our country, listening to the same testimony, are allowed to reach a different opinion." The JRC further summarized its position, stating:

"We feel that the MEC was exercising due diligence in their review of Dr. Chao's work. However, the members of the JRC felt that the MEC decision to suspend Dr. Chao's privileges was too severe. The JRC came to this decision based upon all the evidence presented during the judicial process. This included all the NOEs [notice of events], not just the ones that were highlighted in our initial decision. We feel that the preponderance of evidence does not support a decision to suspend Dr. Chao's privileges. We concur that the MEC should continue to review Dr. Chao's work for a finite period of time. However, at this time we do not feel that suspension of Dr. Chao's privileges is warranted. [¶] Further review of Dr. Chao's work for a finite period of time as deemed appropriate by the MEC would be reasonable. During this time the JRC feels that all of Dr. Chao's cases should be reviewed and if he still does not measure up to the standard of care of practice at this institution, then suspension of privileges may be warranted at that point."

Following the JRC's response, the appeal board recommended to the Board that it reverse the decision of the JRC and sustain the MEC's decision to terminate Dr. Chao's staff privileges. In a written decision, the Board noted that, after remand, the "JRC recommended that that the MEC review all of Dr. Chao's cases for a finite period of time and 'if he still does not measure up to the standard of care practiced at this institution, then suspension of privileges may be warranted at that point.'" The Board, however, agreed with the appeal board's recommendation to terminate Dr. Chao's privileges, explaining:

"The findings of fact made by the JRC and cited in the decision and remand issued by the Appeal Board, show serious and repeated deviations from an appropriate standard of care. They also demonstrate that patients have been

exposed to significant risk of harm on several occasions. The JRC's ultimate decision is not supported by substantial evidence. Its findings of fact support a decision directly contrary to its recommendation. Even after reconsideration, the JRC did not modify or in any way lessen the severity of these findings of fact. Further, the content of the JRC recommendation quoted above demonstrates that Dr. Chao does not currently practice in a manner that meets the standard of care at Kaweah Delta."

SUPERIOR COURT PROCEEDINGS

On September 7, 2001, Dr. Chao filed a petition for writ of administrative mandamus and damages. Dr. Chao contended that the Board's decision to terminate his privileges was not supported by the JRC's findings, the Board made findings based on JRC statements which were taken out of context, the Board failed to recite which portions of the evidence it considered in reaching its decision, and the Board's actions were arbitrary and capricious in that the decision does not state which of the JRC's findings it accepted, rejected or ignored. The superior court held a hearing and then issued an order denying the petition. This appeal followed.²

DISCUSSION

A. Standard of Review

Code of Civil Procedure section 1094.5 sets forth the rules of review for administrative mandamus proceedings. The superior court's review of a final administrative decision extends to "questions 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. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." (*Id.*, § 1094.5, subd. (b).)

²Although no judgment was entered in this case, the trial court's order denying Dr. Chao's petition for writ of administrative mandamus is appealable, since the trial court did not contemplate taking further action or making further orders on the petition. (*Vollstedt v. City of Stockton* (1990) 220 Cal.App.3d 265, 271, fn. 4; *Covina-Azusa Fire Fighters Union v. City of Azusa* (1978) 81 Cal.App.3d 48, 56.)

The parties do not dispute that the final decision at issue here arose from the board of directors of a local hospital district organized under section 32000 et seq. of the Health and Safety Code. Accordingly, with respect to the substantive medical issues, review of the Board's action is governed by the abuse of discretion standard. (Code Civ. Proc., § 1094.5, subd. (d).) Abuse of discretion is established "if the court determines that the findings are not supported by substantial evidence in the light of the whole record." (*Ibid.*) In reviewing the administrative decision of a hospital's governing body, the superior court must determine two issues: (1) "whether the governing body applied the correct standard in conducting its review of the matter"; and (2) "whether there was substantial evidence to support the governing body's decision." (*Hongsathavij v. Queen of Angels etc. Medical Center* (1998) 62 Cal.App.4th 1123, 1136 (*Hongsathavij*)).³

Our role on appeal "is the same as the superior court's, which was the same as the hospital's governing body. 'Like the trial court, we also review the administrative record to determine whether its findings are supported by substantial evidence in light of the whole record, our object being to ascertain whether the trial court ruled correctly as a matter of law.'" (*Hongsathavij, supra*, 62 Cal.App.4th at pp. 1136-1137.) We do not review the actions or reasoning of the superior court; instead, we conduct our own review of the administrative proceedings to determine whether the superior court ruled correctly as a matter of law. (*Id.* at p. 1137.) With these principles in mind, we turn to an

³Dr. Chao contends that we are required to uphold the JRC's "decision unless the administrative findings viewed in light of the *entire record* are so lacking in evidentiary support as to render them unreasonable[.]" citing *Cipriotti v. Board of Directors* (1983) 147 Cal.App.3d 144, 155. To the extent Dr. Chao is contending that we are required to review the JRC's decision to determine whether substantial evidence supports it, we disagree. We agree with the court in *Hongsathavij* that so long as the Board applied the correct standard in conducting its review, our role is to determine whether substantial evidence supports the Board's decision. As the court pointed out in *Hongsathavij*, the court in *Cipriotti* never had to distinguish which of the decisions (that of the judicial review committee or of the governing body) it was reviewing, because the decisions were the same, and therefore is unpersuasive in cases where those decisions differ. (*Hongsathavij, supra*, 62 Cal.App.4th at p. 1136.)

evaluation of whether the writ of administrative mandamus was properly denied in this case.

B. Substantial Evidence

One of the grounds for the MEC's appeal was the lack of substantial evidence to support the JRC's decision. The appeal board agreed with the MEC that while the evidence supported the JRC's findings that Dr. Chao's "care fell below an acceptable standard in a number of cases in which patients were exposed to significant risk," those findings did not support its conclusion that the MEC had not met its burden of proving that suspension of Dr. Chao's privileges was reasonable and warranted. The Board agreed with the appeal board that the JRC's ultimate decision was not supported by substantial evidence. Dr. Chao contends that the appeal board and the Board improperly substituted their own judgment for that of the JRC, instead of applying the substantial evidence standard, and that substantial evidence supported the JRC's decision.

1. Standard used by the Board

Dr. Chao argues that the appeal board and the Board failed to apply the correct standard of review when the MEC appealed from the JRC's decision not to terminate his privileges. Under Kaweah Delta's bylaws, the Board was required to affirm the JRC's decision if the hearing was fair and the decision was supported by substantial evidence.⁴ Dr. Chao contends that instead of applying the substantial evidence standard, the appeal board and the Board independently assessed the evidence, and therefore the Board's decision cannot stand, citing *Huang v. Board of Directors* (1990) 220 Cal.App.3d 1286.

⁴Sections 8.4-9 and 8.4-10 of Kaweah Delta's bylaws both provide, in pertinent part, that "[t]he decision of the Judicial Review Committee shall be subject to such rights of appeal as described in these Bylaws, but shall otherwise be affirmed by the Board of Directors as the final action if it supported by substantial evidence, following a fair procedure." Section 8.5-6, subdivision (a) provides in pertinent part, that "the Board of Directors shall review a final decision and shall affirm the decision of the Judicial Review Committee if the Judicial Review Committee's decision is supported by substantial evidence, following a fair procedure." Section 8.5-6, subdivision (b) provides in pertinent part, "[s]hould the Board of Directors determine that the Judicial Review Committee decision is not supported by substantial evidence, the Board may modify or reverse the decision of the Judicial Review Committee"

In *Huang*, the governing body on appeal, the hospital's appeal board, overruled the judicial review committee's decision in favor of a complaining physician and issued its own decision suspending the physician's staff privileges. (*Huang v. Board of Directors, supra*, 220 Cal.App.3d at pp. 1291-1292.) In doing so, the appeal board made a factual finding—that the physician had attempted to intimidate and threaten a nurse—which was directly contrary to the judicial review committee's finding that the physician did not verbally abuse or threaten the nurse. (*Id.* at p. 1294.)

As in this case, the hospital's bylaws imposed the same standard of review, the substantial evidence standard, on the appeal board as on the trial and appellate courts. The appellate court determined that the hospital's appeal board had not applied the substantial evidence standard when reviewing the judicial review committee's decision, but instead reweighed the evidence and independently determined that the physician's testimony was not credible. (*Huang v. Board of Directors, supra*, 220 Cal.App.3d at pp. 1293-1294.) Since the appeal board applied its independent judgment in reviewing the record, its determination that there was a substantial basis for suspension of the physician's staff privileges was invalid, and the trial court's finding that substantial evidence supported the appeal board's decision meaningless. (*Id.* at pp. 1294-1295.) In light of the fact that the appeal board independently assessed the evidence, the appellate court concluded that the judicial review committee's finding removed any valid basis for the medical executive committee's summary suspension of the physician. (*Id.* at p. 1296.)

We do not believe the Board committed the error of the reviewing panel in *Huang*. There the board actually reweighed the evidence before it and reached contrary *factual* findings based on its own evaluation of the witnesses' credibility. Here, both the appeal board and the Board accepted the factual findings of the JRC, as well as its conclusions about Dr. Chao's competency, but reached a different decision regarding whether those findings provided a substantial basis for the MEC's summary suspension of Dr. Chao's staff privileges. It is apparent that the appeal board and the Board disagreed primarily

with the JRC's ultimate judgment, not its factual findings. In the appeal board's and the Board's view, termination of privileges was warranted based on the grounds proved by the MEC.

Dr. Chao argues that it was not the Board's function to resolve differences of medical judgment. Dr. Chao contends that because the appeal board and the Board are composed of lay people, they cannot substitute their judgment for that of the physicians on the JRC, citing *Cipriotti v. Board of Directors, supra*, 147 Cal.App.3d at page 154, which states the general rule that "it is not the function of reviewing courts to resolve differences of medical judgment," and *Bonner v. Sisters of Providence Corp.* (1987) 194 Cal.App.3d 437, 447-448, in which that court stated that "[c]ourts are ill-equipped to assess the judgment of qualified physicians on matters requiring advanced study and extensive training in medical specialties."

Those cases, however, did not involve a board of directors' ability to reverse a judicial review committee's decision, and therefore have no application here. Moreover, a hospital's board of directors does not stand in the same shoes as the court, since boards of hospital districts are charged with regulating the admission of doctors to their hospitals and courts should defer to a board's "administrative expertise in determining whether the professional is qualified to take on the additional responsibilities involved in a grant of hospital privileges." (*Unterthiner v. Desert Hospital Dist.* (1983) 33 Cal.3d 285, 298; see also Health & Saf. Code, §§ 32125, subd. (a) [board of directors is responsible for enforcement of "all rules, regulations and bylaws necessary for the administration, government, protection and maintenance of health care facilities under their management"], 32128, subd. (a)(2) & (a)(5) [hospital's rules established by board of directors must include "(2) Provision for a procedure for appointment and reappointment of medical staff ..." and "(5) Limitations with respect to the practice of medicine and surgery in the hospital as the board of directors may find to be in the best interests of the public health and welfare"].)

Dr. Chao cites neither case authority nor a provision in the bylaws that supports his position that the Board was not permitted to overturn the JRC's decision that suspension of his staff privileges was not reasonable or warranted if substantial evidence supported the JRC's factual findings. While, as Dr. Chao points out, Business and Professions Code section 809.05, subdivision (a) requires the Board to give "great weight to the actions of peer review bodies," the Board did so in this case by accepting the JRC's factual findings.⁵ Apparently Dr. Chao would interpret this statute as requiring the Board to blindly accept the findings and decision of the JRC. There is nothing in the statute's language, however, that prohibits the Board from reaching a conclusion that differs from that of the JRC if the JRC's conclusion is not supported by substantial evidence.

As Kaweah Delta points out, it is the Board, not the JRC, that is the final decision-making entity. If the governing body has applied the correct standard of review, as the appeal board and the Board did in this case, judicial scrutiny is focused solely on whether substantial evidence supports the *governing body's* decision, not the decision of the committee or panel that hears the evidence. If the court were to review only the latter, "there would be no purpose for the bylaw provision [that] permits review of that decision by the hospital's governing body, which then issues the final administrative decision in the matter." (*Hongsathavij, supra*, 62 Cal.App.4th at p. 1136.)

"A hospital is required to establish high professional and ethical standards and to maintain those standards through careful selection and review of its staff." (*Unnamed Physician v. Board of Trustees* (2001) 93 Cal.App.4th 607, 617.) Since the appeal board and the Board both applied the correct standard of review, Dr. Chao's contention that the appeal board failed to conduct proceedings in the "nature of an appellate hearing" as

⁵Business and Professions Code section 809.05, subdivision (a) provides: "It is the policy of this state that peer review be performed by licentiates. This policy is subject to the following limitations: [¶] (a) The governing bodies of acute care hospitals have a legitimate function in the peer review process. In all peer review matters, the governing body shall give great weight to the actions of peer review bodies and, in no event, shall act in an arbitrary or capricious manner."

required by Kaweah Delta's bylaws fails. (See *Huang v. Board of Directors*, *supra*, 220 Cal.App.3d at p. 1295 [“Under the hospital’s bylaws the appeal board was required to conduct proceedings ‘in the nature of an appellate review,’ which meant that it was required to apply the substantial evidence test in reviewing the findings of the judicial review committee”].) Our task is to determine whether the Board’s decision to suspend Dr. Chao’s privileges was supported by substantial evidence. (*Hongsathavij*, *supra*, 62 Cal.App.4th at p. 1137.)⁶

2. Sufficiency of the evidence

Since we have found that the Board applied the correct standard of review, we independently examine the record before us to determine whether substantial evidence supports the Board’s decision to suspend Dr. Chao’s privileges.

“The substantial evidence rule provides that where a finding of fact is attacked on the ground it is not sustained by the evidence, the power of an appellant court begins and ends with a determination whether there is any substantial evidence, contradicted or uncontradicted, which supports the finding.’ [Citation.] The court must consider the evidence in the light most favorable to the prevailing party, giving him the benefit of every reasonable inference and resolving conflicts in support of the judgment. [Citation.] The court is without power to judge the effect or value of the evidence, weigh the evidence, consider the credibility of witnesses, or resolve conflicts in the evidence or in the reasonable inferences that may be drawn from it. [Citation.] Unless a finding, viewed in light of the entire record, is so lacking in evidentiary support as to render it unreasonable, it may not be set aside. [Citation.]” (*Huang v. Board of Directors*, *supra*, 220 Cal.App.3d at pp. 1293-1294.)

Code of Civil Procedure section 1094.5 “clearly contemplates that at minimum, the reviewing court must determine both whether substantial evidence supports the administrative agency’s findings and whether the findings support the agency’s

⁶Dr. Chao contends that the trial court failed to determine whether the Board applied the appropriate standard of review. While there is nothing in the trial court’s order stating that it made this determination, as stated above, we do not review the trial court’s reasoning; instead we review whether the trial court ruled correctly as a matter of law. Having concluded that the Board applied the appropriate standard of review, the trial court’s failure to state the same conclusion in its decision does not require reversal.

decision.” (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 514-515.) “[I]mplicit in section 1094.5 is a requirement that the agency [that] renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order.... By focusing ... upon the relationships between evidence and findings *and between findings and ultimate action*, the Legislature sought to direct the reviewing court’s attention to the analytic route the administrative agency traveled from evidence to action.” (*Id.* at p. 515, italics added.)

Here, the Board accepted the JRC’s factual findings with respect to the seven cases in which the JRC found “failures of performance” and concluded those findings did not support the ultimate decision of the JRC, i.e., that the termination of privileges was not reasonable and warranted. Dr. Chao does not contend that the JRC’s factual findings, which the Board based its ultimate decision on, were not supported by substantial evidence. Indeed, he would be hard pressed to do so, since he conceded below that he did not dispute the JRC’s findings or decisions, and on appeal, he argues in the first section of his opening brief that the JRC’s report was supported by substantial evidence, citing the evidence to support his contention, and states that the JRC’s findings “remain dispositive.”

Instead, Dr. Chao contends that those findings do not support the Board’s ultimate action of terminating his staff privileges. Dr. Chao argues that the JRC did not find that he committed “numerous instances of seriously substandard practice and flawed medical judgment” as stated in the appeal board’s written decision, or that he engaged in “serious and repeated deviations from an appropriate standard of care” as stated in the Board’s final decision, and therefore these conclusions are without evidentiary support. He reasons that the JRC’s conclusions in each of the seven cases are merely “observations,” not findings; that the JRC’s statement in its decision after reconsideration that suspension of privileges may be warranted “if he still does not measure up to the standard of care of practice” at the hospital is not a finding that he engaged in substandard care; and that the JRC never used the word “substandard” in its decisions.

While the JRC never used the word “substandard” in its decisions, clearly the JRC found that Dr. Chao committed errors in seven cases that resulted from flawed medical judgment and which placed patients at risk. Specifically, the JRC made statements such as “Dr. Chao’s failure to respond immediately to the nurses’ calls and proceed timely with appropriate treatment cannot be justified”; “Dr. Chao[’s] decision to leave was inappropriate and he should have proceeded with cesarean section immediately”; “Dr. Chao’s judgement and behavior in this cause [*sic*] were flawed”; “Dr. Chao’s delay potentially jeopardized the status of this fetus”; “Dr. Chao’s actions [in leaving a patient with concerns about fetal distress] were inappropriate”; “it was Dr. Chao’s responsibility to attend to this patient or to arrange for another physician to evaluate the patient”; “Dr. Chao did not appropriately plan for possible problems that may have resulted with this patient”; and “Dr. Chao’s management did not seem to be appropriate.”

These are more than mere “observations,” they are conclusions based on the evidence. Significantly, the JRC did not change these findings after the appeal board remanded the matter to it, or correct the appeal board’s statement that Dr. Chao’s “care fell below an acceptable standard in a number of cases in which patients were exposed to significant risk” in its response to the appeal board’s remand. Instead, the JRC inferred, in its response following remand, that it agreed Dr. Chao’s care was substandard when it again recommended that Dr. Chao’s cases be reviewed and stated “if he still does not measure up to the standard of care of practice at this institution,” suspension of his privileges might be warranted. The conclusion that Dr. Chao’s care fell below an acceptable standard is amply supported by Dr. Helm’s testimony that Dr. Chao’s management of the patients in these cases did not meet the standard of medical practice in the community. Since there is evidence in the record to support the conclusion that Dr. Chao acted below the standard of care, we reject Dr. Chao’s contention that the Board acted in an arbitrary and capricious manner in concluding that his care was substandard and, on that basis, upholding the MEC’s decision to terminate his privileges.

Despite his concessions regarding the JRC's findings, Dr. Chao attempts to recast the JRC's factual findings by referring to his testimony, as well as the testimony of Drs. Helm and Leon, regarding the difficulties of an obstetrics practice and his testimony that he was unaware of the criticisms of his care until the MEC suspended his medical staff privileges. Dr. Chao cites to evidence that no patient complained about his care, no colleague accused him of substandard medical treatment prior to his suspension, and no patient was injured as a "direct" result of his treatment or medical judgment. He cites his testimony explaining his conduct in the seven cases. His argument essentially boils down to a plea for this court to independently review the record and come to our own conclusions. This is clearly beyond our competency and authority in a case such as this.

Dr. Chao offers no authority demonstrating that the appeal board or the Board violated any of the bylaws or any provision of state law in concluding that Dr. Chao's "failures of performance" did not merit continuation of staff membership at Kaweah Delta. The Board was presented with a series of incidents showing Dr. Chao's lack of judgment and risk to patients. These were not isolated events; instead, they show a pattern of lack of due care. The Board is not required to wait until a patient complains, has been injured, or dies before taking action against a physician who has provided substandard care. On the contrary, "a hospital [that] closes its eyes to questionable competence and resolves all doubts in favor of the doctor does so at the peril of the public." (*Rhee v. El Camino Hospital Dist.* (1988) 201 Cal.App.3d 477, 489; *Webman v. Little Co. of Mary Hospital* (1995) 39 Cal.App.4th 592, 600.) Indeed, it is the policy of this state "to exclude, through the peer review mechanism as provided for by California law, those healing arts practitioners who provide substandard care or who engage in professional misconduct, regardless of the effect of that exclusion on competition." (Bus. & Prof. Code, § 809, subd. (a)(6).)

In essence, Dr. Chao's position is that if the governing body believes an action against a physician is necessary, and if the medical staff disagrees, the medical staff gets to make the final decision, even though the staff has concluded that the physician has

operated below the standard of care. This proposition, which establishes medical staff sovereignty, is untenable. “Ultimate responsibility is not with the medical staff, but with the governing body of the hospital.” (*Hongsathavij, supra*, 62 Cal.App.4th at p. 1143.) As the court in *Hongsathavij* explained when considering the governing body’s role in the peer review process:

“Certain policy considerations must be borne in mind. Hospital governing body members have fiduciary duties as directors and under certain circumstances have exposure to personal liability. (See Corp. Code, §§ 309 [corporations, generally], 5231 [nonprofit benefit corporations], 7231 [nonprofit mutual benefits corporations], and 9241 [nonprofit religious corporations].) A hospital itself may be responsible for negligently failing to ensure the competency of its medical staff and the adequacy of medical care rendered to patients at its facility. (*Elam v. College Park Hospital* (1982) 132 Cal.App.3d 332, 346) A hospital has a duty to ensure the competence of the medical staff by appropriately overseeing the peer review process. (*Id.* at pp. 338, 341-342, 347.) Hospital assets are on the line, and the hospital’s governing body must remain empowered to render a final medical practice decision which could affect those assets. A hospital’s governing body must be permitted to align its authority with its responsibility and to render the final decision in the hospital administrative context.” (*Hongsathavij, supra*, 62 Cal.App.4th at p. 1143.)

Similarly, where, as here, medical staff has concluded that a physician has provided substandard care, a hospital’s governing body must be able to render the final decision regarding its ability to assume the risk of retaining that physician on its staff. It is not for this court to determine the standards to be applied in granting or denying privileges. (*Unterthiner v. Desert Hospital Dist., supra*, 33 Cal.3d at p. 298.) As long as the governing body applies the correct standard in conducting its review of the matter, and its decision is supported by substantial evidence, we must defer to the governing body’s expertise. (*Ibid.*)

Here, the Board sought to correct the disparity between the JRC’s factual findings, as established by the evidence that Dr. Chao acted below the standard of care, and the JRC’s determination that suspension of Dr. Chao’s staff privileges was not reasonable and warranted. Because the Board’s findings are supported by substantial evidence and

its conclusions are supported by the findings, we are compelled to conclude that the Board did not abuse its discretion in terminating Dr. Chao's privileges. The superior court therefore properly denied the petition.

DISPOSITION

The judgment is affirmed. Costs are awarded to respondent.

GOMES, J.

WE CONCUR:

BUCKLEY, Acting P.J.

WISEMAN, J.