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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

RONALD S. COOPERMAN, Plaintiff and Appellant, v. TENET HEALTHCARE CORPORATION et al., Defendants and Respondents.	B168703 (Los Angeles County Super. Ct. No. BS080666)

APPEAL from a judgment of the Superior Court of Los Angeles County, David P. Yaffe, Judge. Affirmed.

Law Offices of Thomas J. Weiss, Thomas J. Weiss and Hyrum K. Hunt for Plaintiff and Appellant.

Law Offices of Mark T. Kawa and Mark T. Kawa for Defendants and Respondents.

A doctor on staff at a hospital complained about a letter he received from the chairman of his department, contending the letter was not issued in conformance with the hospital's bylaws. The hospital modified the letter by striking out its reference to the bylaws but denied the doctor's request to remove the letter from his file. The doctor then sought a writ of mandate to compel expungement of the letter. His petition was denied, and the doctor now appeals. We reject his claim of error and affirm.

FACTS

On October 20, 1997, Ronald S. Cooperman, M.D., an anesthesiologist on staff at the Encino-Tarzana Regional Medical Center, received the following letter from Daniel Lavigna, M.D., the Chief of the Medical Center's Department of Anesthesia:

> "The . . . Department of Anesthesia met Monday, October 13, 1997 and during the course of the meeting the issue regarding your inappropriate behavior was discussed. This letter will memorialize the conversation we had on or about September 30, 1997 in the presence of Wayne Kleinman, M.D. regarding the multiple complaints received over the years by nurses, doctors and patients in both the Labor and Delivery area and the OR suite.
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> "You have had multiple discussions/counseling sessions over the years on this topic with both myself and other members of the department. As you may recall the last meeting was initiated due to three recent incidents. One concerned your late response to an emergency trauma surgery, the second case concerned your disappearance from L&D after you were asked to do an epidural and the third was a refusal of a surgeon to accept you as the

> anesthesiologist, stating that are [*sic*] obstructive in the performance of cases and not pleasant to the patients.
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> "Pursuant to Article VII, Section 1(b)(iii) your are [*sic*] hereby issued this letter of admonition. Please note that it is expected that your behavior and interactions will improve and that failure to correct this behavior, as you agreed to in our meeting, will result in corrective action, including suspension of clinical privileges."[1]

B.

On December 10, 1997, Dr. Cooperman's lawyer sent a four-page letter (with attachments) to Dr. Lavigna, complaining about the manner in which the October 13 meeting was conducted, and about several statements made in Dr. Lavigna's letter, and contending the bylaws were violated. Dr. Cooperman asked Dr. Lavigna to "acknowledge in writing the invalidity of the letter of admonition, withdraw it, and notify the Medical Executive Committee of such acknowledgment and withdrawal." Dr. Lavigna did not respond.

Four years later, Dr. Cooperman asked for and was granted an administrative hearing before the Medical Executive Committee. The hearing was held in July 2002, after which Glenn Irani, M.D., the Medical Center's Chief of Staff, sent the following letter to Dr. Cooperman:

> "This letter is to respond to your request for removal of the letter of admonition from your credential file.

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[1] Section 1(b)(iii) of the Medical Center's bylaws provides: "Following discussion of identified concerns with any department member, any department may authorize the Chairman to issue a letter of admonition, warning or censure, or to require such member to be subject to routine monitoring for such time as may appear reasonable."

"Based on the Medical Staff Bylaws, Rules and Regulations, you were afforded an audience with the Medical Executive Committee . . . . At that time you were given an opportunity to present your request formally to the Executive Committee members. Members of the Executive Committee had been provided the opportunity to review the documents involved in order to evaluate your request. The copies which were available at the meeting were collected at the close of the meeting.

"The Executive Committee reviewed the minutes from the October 13, 1997, Department meeting. The Executive Committee noted that the minutes from that meeting included a recommendation that a letter be sent to you to memorialize conversations with you and to let you know that failure to change [your] behavior may result in corrective action. As stated in Article VII, Section 1 B 2, the Department Chair has the right to send letters of informal counseling, with or without consultation with department [*sic*]. After discussing the documents and the issues, the Executive Committee did not feel that removal of the documents in your credential file was an appropriate option. However, it was determined that the letter in your file should be revised to eliminate the sentence which states, 'Pursuant to Article VII, Section 1(b)(iii) your are [*sic*] hereby issued this letter of admonition.'

"The Executive Committee approved this decision by a majority vote. As Chief of Staff, I did not participate in the voting.

"Please be aware that documents in your medical staff credential file are maintained as confidential in accordance with all applicable laws. The letter in your file does not constitute a restriction or limitation of your privileges or medical staff membership and is not considered to be corrective action. The letter is not released or reported in response to reference requests from other facilities. If any discipline which restricts or limits your privileges or membership ever would be taken, you would have the right to a hearing and appeal to challenge the basis for that action, as provided in the medical staff bylaws and applicable law."

Shortly after the hearing, the October 20, 2001, letter was modified by drawing a line through the first sentence of the third paragraph and noting that it had been "Deleted per Medical Executive Committee 7/16/02." It looks this:

> "Deleted per Medical Executive Committee 7/16/02
> "~~Pursuant to Article VII, Section 1(b)(iii) your are [*sic*] hereby issued this letter of admonition~~. Please note that it is expected that your behavior and interactions will improve and that failure to correct this behavior, as you agreed to in our meeting, will result in corrective action, including suspension of clinical privileges."

On September 10, 2002, Dr. Cooperman's lawyer wrote to Dr. Irani to complain about the manner in which the October 1997 letter was modified, stating it was not enough to "'white out' the last sentence on the file copy and pretend it is a true copy." Dr. Cooperman "insist[ed] that Dr. Lavigna's 'letter of admonition' be removed from his credentials file and from any other files in which a copy of it may appear . . . ." Dr. Irani wrote back to say the Executive Committee would take no further action and enclosed a copy of the modified letter.

C.

On January 9, 2003, Dr. Cooperman filed a petition for a writ of mandate in which he asked the trial court to compel the Medical Center and Dr. Irani "to remove the letter of admonition" from Dr. Cooperman's credentials file and from all other files.[2] In his supporting memorandum, Dr. Cooperman contended the

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[2] The named respondents are Tenet Healthcare Corporation, a Nevada corporation doing business as Encino-Tarzana Regional Medical Center, and Glenn Irani, M.D. Our subsequent references to the Medical Center include Tenet and Dr. Irani.

letter was not authorized by Article VII, Section 1(b)(iii) of the Medical Center's bylaws because no consensus was reached authorizing Dr. Lavigna's letter, and because Dr. Cooperman was not counseled before the letter was sent. He claimed the letter should not have been placed in his credentials file and that the only remedy was to remove it.

The Medical Center answered the petition and concurrently demurred, contending it had no duty to "expunge" the letter from the file (and thus could not be compelled to do so by mandate), that the letter was properly issued, that Dr. Cooperman's claims were time-barred, and that the petition was in any event moot because the "arguably incorrect" reference to the bylaws had been deleted.

The trial court decided the petition on its merits, took the demurrer off calendar, and ruled that the "decision by [the Medical Center was] neither arbitrary, capricious, nor . . . unsupported by any evidence. [The Medical Center] therefore does not have a ministerial duty to remove the letter in its entirety from [Dr. Cooperman's] personnel file. The redaction of the letter brings it into compliance with [the Medical Center's] bylaws, so that the removal of the letter in its entirety is not the performance of an act which the law specifically enjoins, within the meaning of section 1085(a) of the Code of Civil Procedure."

This appeal is from the judgment thereafter entered.

DISCUSSION

Dr. Cooperman contends the Medical Center must comply with its bylaws. We agree in the abstract but find the point irrelevant in light of Dr. Cooperman's failure to suggest that the bylaws require expungement of the modified letter. As the Medical Center contends, the October 1997 letter is no longer an admonition made pursuant to the bylaws.

There is also the fact that Dr. Cooperman has failed to explain how he is prejudiced by the letter in its present form. The most he has to say is that "[a]ny professional reader of the letter for purposes of evaluating the physician's conduct or reputation will know its original form, will note its persistence in the file despite the re-labeling, and will note the apparent hallmarks of formality in the notation of hand delivery and the offensive language of the letter, which certainly is not mere 'counseling,' as described in the bylaws." But no one has disclosed the letter, and the uncontroverted evidence establishes that it "does not constitute a restriction or limitation of [Dr. Cooperman's] privileges or medical staff membership and is not considered to be corrective action. The letter is not released or reported in response to reference requests from other facilities. If any discipline which restricts or limits [his] privileges or membership ever would be taken, [he] would have the right to a hearing and appeal to challenge the basis for that action, as provided in the medical staff bylaws and applicable law."[3]

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[3] We note that the redacted letter conforms to the bylaws. Article VII, Section 1(b)(ii) authorized the Chairman of the Department of Anesthesia to issue written comments ("informal counseling") to a member of his department. Under the bylaws, such comments are subject to the confidentiality requirements of all medical staff information "and may be issued by the department chairman with or without prior discussion with the recipient and with or without

In his reply brief, Dr. Cooperman says "the foul is the harm," and "the fact that [he] cannot show that such harm has actually been incurred does not deprive the practitioner of the protection of the bylaws." He is wrong. A writ will not issue when there is nothing to compel, and an appeal cannot succeed where prejudice has not been shown. The case Dr. Cooperman cites for a different conclusion, *OXY Resources California v. Superior Court* (2004) 115 Cal.App.4th 874, 886-887, is inapposite and does no more than state the well established rule that writ review is proper to prevent execution of a discovery order compelling the disclosure of privileged documents. Here, there is no threatened disclosure.

In short, the facts do not support Dr. Cooperman's argument, and he is in any event unable to point to any harm caused, or about to be caused, by the letter. It follows that the Medical Center has no duty to expunge the letter (under its bylaws or otherwise), and that the trial court was without authority to compel such action. (*Wenzler v. Municipal Court* (1965) 235 Cal.App.2d 128, 132.)

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consultation with the department. Such comments or suggestions shall not constitute a restriction of privileges, shall not be considered to be corrective action, and shall not give rise to hearing, review or appeal rights under Article VIII."

DISPOSITON

The judgment is affirmed. The Medical Center is entitled to its costs of appeal.

NOT TO BE PUBLISHED.

VOGEL, J.

We concur:

SPENCER, P.J.

MALLANO, J.