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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

ROBERT J. JAFFE,

Plaintiff and Appellant,

v.

KAISER FOUNDATION HOSPITAL et al.,

Defendants and Respondents.

B166698

(Los Angeles County
Super. Ct. No. BS069856)

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

Robert J. Jaffe, in propria persona, for Plaintiff and Appellant.

Foley & Lardner, Lowell C. Brown, Sarah G. Benator, and Lauren Reisman, for Defendants and Respondents.

I. INTRODUCTION

Robert Jaffe, M.D., plaintiff, appeals from a judgment denying his administrative mandate petition to compel the reinstatement of his medical staff membership and clinical privileges at Kaiser Foundation Hospital—Panorama City. Plaintiff also appeals from an order denying his motion to vacate that judgment. Plaintiff named as defendants: Kaiser Foundation Hospital—Panorama City; Southern California Permanente Medical Group; and Kaiser Health Plan, Inc. The administrative action at issue was taken by Kaiser Foundation Hospital—Panorama City. For purposes of clarity, we will refer to the hospital as defendant. However, our legal conclusions apply equally to the remaining defendants. We affirm both the judgment and the order denying plaintiff's motion to vacate.

II. BACKGROUND

A. Medical Staff Bylaws

Defendant's medical staff bylaws encompass the investigation and adjudication of allegations of improper conduct by medical staff. The first step is investigatory. Defendant's Executive Committee or its designee: conducts an investigation; notifies the subject of the investigation; prepares a written report; and recommends action. The recommended action may include suspension of clinical privileges and revocation of staff membership. In addition, the Executive Committee has discretion to implement summary suspension at any time. When a recommendation to revoke membership and suspend privileges is made, the staff member is entitled to written notice of the adverse recommendation and of the right to request a hearing before the Executive Committee. Defendant's bylaws provide in that regard: "**Procedural Rights.** Any recommendation by the Executive Committee . . . which constitutes grounds for a hearing . . . shall entitle

the staff member to the procedural rights provided in [the hearing and appeals procedure section]. In such cases, the Hospital Administrator shall give the member written notice of the adverse recommendation and the right to request a hearing [before an arbitrator] in the manner specified in [the hearing and appeals procedure section]."

In addition, the bylaws provide for an informal attempt to resolve the issues. They state: "To facilitate the resolution of interprofessional issues at an early stage, a member who is entitled to the procedural rights provided in [the hearing and appeals procedure section] may request an informal hearing before the Executive Committee. The request shall be in writing and shall state the specific reasons and the evidence which supports the request. The Executive Committee shall fix the time and place for the hearing as soon as the committee reasonably may be convened, but, preferably, on a date within ten (10) working days after receipt of the request. The member shall be entitled to be accompanied by and represented at this closed, informal hearing only by a physician, dentist or podiatrist licensed to practice in the State of California who is not an attorney at law and who is, preferably, a member in good standing of the Professional Staff."

B. Peer Review Proceedings

On April 18, 1994, defendant's Medical Staff Credentials and Privileges Committee recommended that the Executive Committee investigate plaintiff's practice. An investigation ensued. On August 1, 1994, the Executive Committee recommended termination of plaintiff's medical staff membership and clinical privileges. The Executive Committee also summarily suspended plaintiff's privileges pending his appeal. On August 2, 1994, plaintiff was given notice of the Executive Committee's recommended action, his summary suspension, and his rights to both a formal and an

informal hearing. Defendant submitted a Business and Professions Code[1] section 805 report to the Medical Board of California regarding the suspension of plaintiff's staff privileges pending any appeal of the termination recommendation. Summary suspension of medical privileges is authorized by section 809.5.[2] Plaintiff requested both an informal and a formal hearing. The informal hearing was held on August 15, 1994. Following the informal hearing, the Executive Committee voted to uphold its recommendation.

The formal hearing, conducted before an arbitrator, commenced on April 24, 1995, and continued to September 18, 1997. The arbitrator's ruling, issued on December 15, 1997, upheld defendant's decision to revoke plaintiff's staff membership and clinical privileges. The arbitrator found that between 1986 and 1994: plaintiff's treatment of 12 patients had been below the community standard of care; plaintiff had prescribed excessive medication in 2 of those cases; in 1 of the 2 excessive medication cases, plaintiff administered excessive steroid injections; medical record entries were inadequate, deficient, or problematic in 6 cases; and plaintiff had, on at least 1 occasion, used a single syringe to inject multiple patients, a practice not only below the community standard of care, but "intolerable" and exhibiting "an astonishing lack of judgment." The arbitrator stated his findings were based on the individual cases presented. The findings also noted an ongoing pattern of indifference or defiance by plaintiff concerning defendant's policies, procedures, and directives.

Plaintiff appealed the arbitrator's decision to defendant's Appellate Review Panel. In June 1998, the three-member Appellate Review Panel unanimously upheld the

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[1] All further statutory references are to the Business and Professions Code except where otherwise noted.

[2] Section 809.5, subdivision (a) states in pertinent part, "[A] peer review body may immediately suspend . . . clinical privileges . . . where the failure to take that action may result in an imminent danger to the health of any individual . . . ."

arbitrator's decision. The Appellate Review Panel concluded a preponderance of the evidence in the record supported findings: plaintiff had "repeatedly failed to adhere to the policies and procedures and standards of quality care and service" established by defendant. The appellate panel further found: "[Plaintiff's] pattern of failures included: failure to adhere to universal precautions, *e.g.,* re-use of syringes; failure to ensure patient's health and safety by placing patients in potential jeopardy or at risk by prescribing inappropriate medications, including improper volume of medication orders, *e.g.,* benzodiazepine (case NJ); Tylenol with codeine (case JM), multiple steroid injections (case BF), and suboptimal choice of antibiotics in a seriously compromised patient (case CW); failure to assure continuity of care by failing to order and/or record appropriate laboratory tests (case SS); indecipherable and inadequate medical record charting and documentation; and inadequate evaluation and management of cases, contrary to Hospital's guidelines and protocols." Following the Appellate Review Panel's decision, defendant's board of directors terminated plaintiff's staff membership and privileges.

Plaintiff filed his writ of administrative mandate petition on June 7, 2001. The trial court denied the petition. The trial court also denied plaintiff's motions for a new trial or to vacate the judgment. This appeal followed.

III. DISCUSSION

A. Standard of Review

Code of Civil Procedure section 1094.5 (section 1094.5) allows for review by mandate of the hospital's administrative decision. (*Anton v. San Antonio Community Hosp.* (1977) 19 Cal.3d 802, 814-817; see *Pomona College v. Superior Court* (1996) 45 Cal.App.4th 1716, 1722.) Section 1094.5, subdivision (a) describes the administrative writ proceeding thusly, "Where the writ is issued for purposes of inquiring into the

validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer, the case shall be heard by the court sitting without a jury." Section 1094.5, subdivision (b) provides in pertinent part: "The inquiry in such a case shall extend to the 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. . . ." Section 1094.5, subdivision (d) states, "[I]n cases arising from private hospital boards or boards of directors of districts organized pursuant to The Local Hospital District Law, . . . or governing bodies of municipal hospitals . . . , 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." (*Hongsathavij v. Queen of Angels etc. Medical Center* (1998) 62 Cal.App.4th 1123, 1136; *Bonner v. Sisters of Providence Corp.* (1987) 194 Cal.App.3d 437, 444.)

As the Court of Appeal succinctly stated in *Bonner v. Sisters of Providence Corp., supra,* 194 Cal.App.3d at page 444: "When reviewing a final administrative order, the trial court considers the record of the proceedings before the administrative board. (Code Civ. Proc., § 1094.5, subd. (a).)" The standard of review for the trial court is as follows: "'[T]he reviewing court must uphold the hospital judicial review committee's decision unless administrative findings viewed in light of the entire record are so lacking in evidentiary support as to render them unreasonable.' (*Gaenslen v. Board of Directors* [(1985)] 185 Cal.App.3d [563,] 572.) 'Under the substantial evidence test, it is not the function of reviewing courts to resolve differences of medical judgment.' (*Cipriotti v. Board of Directors* (1983) 147 Cal.App.3d 144, 154 [].)" (*Bonner v. Sisters of Providence Corp.*, *supra*, 194 Cal.App.3d at p. 447.) Our standard of review is the same. We independently review the administrative record to determine whether defendant's findings are supported by substantial evidence in light of the record as a whole. (*Hongsathavij v. Queen of Angeles etc. Medical Center*, *supra*, 62 Cal.App.4th at

pp. 1136-1137; *Bonner v. Sisters of Providence Corp., supra,* 194 Cal.App.3d at p. 444.) Our colleagues in Division Two of this appellate district have explained "[A]n appellate court must uphold administrative findings unless the findings are so lacking in evidentiary support as to render them unreasonable. (*Oskooi v. Fountain Valley Regional Hospital* (1996) 42 Cal.4th 233, 243 []; *Gaenslen v. Board of Directors, supra,* 185 Cal.App.3d at p. 572.) " (*Hongsathavij v. Queen of Angels etc. Medical Center, supra,* 62 Cal.App.4th at p. 1137.) In addition, where the facts are undisputed, we independently evaluate fair hearing claims. (*Southern Cal. Underground Contractors, Inc. v. City of San Diego* (2003) 108 Cal.App.4th 533, 542; *Rosenblit v. Superior Court* (1991) 231 Cal.App.3d 1434, 1442-1444.)

B. Plaintiff's Briefs on Appeal

Plaintiff raises numerous arguments by way of reference to his opening brief filed in the trial court. Rather than brief those arguments, he incorporates them from papers filed below. In addition, these and other arguments are not supported by meaningful or, at times any, citations to the record or to pertinent legal authority. These issues have been forfeited. (*Santa Monica Rent Control Bd. v. Pearl Street, LLC* (2003) 109 Cal.App.4th 1308, 1313, fn. 6; *Garrick Development Co. v. Hayward Unified School Dist.* (1992) 3 Cal.App.4th 320, 334; *Balesteri v. Holler* (1978) 87 Cal.App.3d 717, 720-721.) With respect to plaintiff's appeal from the order denying his motion to vacate the judgment, he has not raised any cognizable issue. Therefore, any issue that could have been raised has been waived and the order denying the motion to vacate will be affirmed. (*Building etc. Assn. v. Richardson* (1936) 6 Cal.2d 90, 102; *People ex rel. Dept. of Corporations v. SpeeDee Oil Change Systems, Inc.* (2002) 95 Cal.App.4th 709, 713, fn. 2.)

C. The Informal Hearing

Plaintiff devotes a significant portion of his brief to arguing multiple "section 809 violations" occurred during the informal hearing held at his request and pursuant to defendant's bylaws. Plaintiff made no request to continue the informal hearing by reason of any violations of section 809. Plaintiff has not shown that he raised this issue at the time of the informal hearing. If he failed to timely raise the issue in the administrative proceedings, the objection is waived. (*Alameida v. State Personnel Bd.* (2004) 120 Cal.App.4th 46, 53; *People ex rel. Dept. of Transportation v. Cole* (1992) 7 Cal.App.4th 1281, 1286; *City of Walnut Creek v. County of Contra Costa* (1980) 101 Cal.App.3d 1012, 1018-1022.)

Even if the argument is not waived, we conclude section 809 et seq. was inapplicable. Section 809 et seq. governs a physician's right to a hearing after a hospital proposes to take adverse action against a medical staff member. (§ 809; *Sahlolbei v. Providence Healthcare, Inc.* (2003) 112 Cal.App.4th 1137, 1147-1148.) The trial court found the informal hearing was not subject to the procedural requirements of section 809 et seq. We agree. Plaintiff's right to a hearing that employed the procedural due process protections codified in section 809 et seq. did not arise until *after* the informal investigation activity and the informal hearing were concluded. (§ 809, subd. (a); see *Sahlolbei v. Providence Healthcare, Inc., supra,* 112 Cal.App.4th at pp. 1148-1151.)

D. Peer Review Activities

Plaintiff argues certain evidence was withheld from defendant's Executive Committee. However, the issue before us is the validity of the final administrative decision of the Appellate Review Panel, which upheld the arbitrator's decision following the formal hearing. That determination is the "final administrative order or decision"

referred to in section 1094.5. (§ 1094.5, subd. (a); *Hongsathavij v. Queen of Angels etc. Medical Center, supra,* 62 Cal.App.4th at pp. 1135-1136.)

E. The Arbitration Hearing

1. The outside reviewer

Plaintiff argues a fair procedure violation occurred in that defendant withheld evidence it tampered with an "outside reviewer," Dr. Ronald K. Nudelman. Executive Committee chairperson Dr. Joanne Schottinger asked Dr. Nudelman to review specific patient charts and to give his opinion as to the quality of care at issue in light of community standards. Plaintiff relies on Dr. Schottinger's testimony at the arbitration hearing: "[Plaintiff's counsel]: Q[.] Now, doctor, when you—did you write a letter to Dr. Nudelman? Because he wrote you. His exhibit, which is exhibit 89, is addressed to you, and it appears that, from the letter, and particularly the last page, which refers to three questions on your part, that you wrote him some sort of a letter. Did you write him a letter? [¶] A[.] There was a cover letter sent with the charts, telling him that the charts were coming, and we asked him to address the issue of community standards outside of Kaiser standards on several questions. [¶] [Plaintiff's counsel]: That letter was not furnished in discovery, and I would like to look at that letter. [Plaintiff's counsel then asked defense counsel,] Do you happen to have it here today[?] [¶] [Defense counsel]: No. [¶] [Plaintiff's counsel]: Assuming we come back tomorrow, will you bring it tomorrow? [¶] [Defense counsel]: I've never seen it. [¶] [Plaintiff's counsel]: I'd like to see it." At that point, plaintiff's counsel turned to a different subject.

Plaintiff subsequently placed the letter in question in evidence. That letter, which is addressed to Dr. Nudelman from Dr. Schottinger states as follows: "Thank you for agreeing to review the selected medical records . . . . As you know, the Executive Committee of the Professional Staff of Kaiser Foundation Hospitals, Panorama City, has

requested your services to conduct an independent review of the quality of care provided by the subject physician, Robert Jaffe, MD, for each of the specific cases reflected in the medical records in relation to community standards of care. In this regard, we would also appreciate specific comment on the following issues: [¶] [Medical Record Number 2835614:] Management of diabetic complications including ulcer and proteinuria. [¶] [Medical Record Number 3197473:] Management of a patient with a prosthetic heart valve on coumadin undergoing invasive procedures. [¶] [Medical Record Number 7115574:] Initial management of CHF in the ER and management of positive blood culture upon notification by laboratory. [¶] [Medical Record Number 6817084:] Management of resistant bacteria in pneumonia. [¶] [Medical Record Number 6759778:] Frequency of multiple steroid injections. [¶] [Medical Record Number 7174143:] Management of anemia, hematuria and falling in a patient on coumadin. [¶] [Medical Record Number 6030542:] Management of coumadin therapy after one episode of atrial fibrillation." The letter continues: "In addition, we would like your opinion on the community standard regarding: [¶] 1. Reuse of syringes after injection for subsequent injections upon change of needles. [¶] 2. Appropriate intervals for monitoring patients on coumadin with PT tests. [¶] 3. Appropriate maximum dosages of halcion."

Plaintiff later declined to cross-examine Dr. Nudelman. At the May 15, 1996, hearing the following occurred: "The arbitrator: . . . And the record should also reflect that I was informed . . . that Dr. Jaffe was waiving his right to cross-examine Dr. Nudelman. [¶] Is that correct?" Plaintiff's counsel responded, "Right." In closing argument before the arbitrator, plaintiff argued Dr. Schottinger's letter to Dr. Nudelman: was provided to plaintiff "at a very late date"; improperly hinted at the perceived problem, thereby precluding a truly unbiased assessment by Dr. Nudelman; and inappropriately revealed the name of the physician under review. On appeal, plaintiff argues, "The fact that [defendant's] inappropriately instructed and tampered-with

'outside' reviewer *testified*, as [defendant's] expert witness, at the Arbitration further violated [plaintiff's] fair procedure rights." (Orig. italics.)

No fair procedure violation occurred. Plaintiff directed the arbitrator's attention to the letter and argued its effect on Dr. Nudelman's assessment. Plaintiff declined to cross-examine Dr. Nudelman. The evidence that Dr. Nudelman's review was arguably biased as a result of Dr. Schottinger's letter was before the arbitrator. The arbitrator could consider that evidence in assessing the weight to be given Dr. Schottinger's testimony. Further, the arbitrator could consider the letter in terms of Dr. Nudelman's review of the medical care provided by plaintiff to the patients in question.

2. Evidence of Altered Records

Plaintiff claims he presented evidence defendant had altered and otherwise tampered with evidence introduced at the arbitration hearing. The arbitrator impliedly rejected that assertion. Plaintiff argues, "[T]he [a]rbitrator's [f]indings failed to acknowledge the evidence of tampering." Plaintiff cites no legal authority for the proposition the arbitrator was required to make an express finding as to the evidence tampering claims. Pursuant to the bylaws, "Within thirty (30) days of completion of the hearing, the arbitrator shall make a report and recommendation in writing to the Executive Committee and to the Hospital Administrator, including findings of fact and a conclusion articulating the connection between the evidence produced at the hearing and the decision reached . . . ."

F. The Appellate Review Panel Hearing

1. By-law requirements

With respect to appellate review, defendant's medical staff bylaws provide: "1. If appellate review is timely requested by the appellant or the Executive Committee, *the Chairman of the Board of Directors shall appoint a three member Appellate Review Panel*, at least one of whom shall be a member of the Professional Staff of the Hospital who was not a witness at the prior hearing. The Chairperson of the Panel shall be selected by the Chairman of the Board of Directors. [¶] 2. *The appellate hearing* shall take place at a time and place agreed to by the Chairperson of the Appellate Review Panel and the appellant, preferably within sixty (60) days of receipt of the request for hearing, and *shall be based upon the prior hearing. No additional witnesses or evidence shall be presented unless the panel is convinced that the witnesses or evidence could not have been presented at the prior hearing.* Each party shall have the right to appear and respond, may be represented by legal counsel and may present a written statement or brief and an oral presentation to the Appellate Review Panel. If the panel allows witnesses to appear before it, they may testify and be cross examined. The chairperson of the panel shall determine admissibility of evidence and appropriate procedures for examination of witnesses before the panel. [¶] 3. A verbatim record shall be ma[d]e of the appellate hearing. If either side chooses to engage a shorthand reporter, it shall bear the cost thereof. However, it shall make available to the other side, if requested, a copy of the transcript of the hearing at the cost of copying such transcript. [¶] 4. *Reasons for appeal and for reversal of the recommendations shall be procedural failure so as to deny a fair hearing, lack of a rational basis for the recommendations, or action taken arbitrarily or capriciously.* The panel may affirm, modify or reverse the recommendation. The panel also may remand the matter for further consideration of designated issues. In such instance the recommendations as to the designated may be

reviewed by the Appellate Review Panel, in accordance with the procedures of this subsection, but following an expedited time frame, if feasible. [¶] 5. Upon receiving the written report of the Appellate Review Panel, which shall be due within thirty (30) days of completion of the hearing, the Chairman of the Board shall announce the Appellate Review Panel's decision in the matter as determined by majority vote. Such decision shall be transmitted to the Hospital Administrator, Chief of Staff, the Executive Committee, and to the appellant. Except in case of a remand, there shall be no further appeal to the Board of Directors or to the Professional Staff." (Italics added.)

2. Bias

Plaintiff asserts a violation of his fair procedure rights in that he was not given a sufficient opportunity to voir dire the members of the Appellate Review Panel to discover possible bias or conflicts of interest. The record does not support plaintiff's assertion.

At the outset of the appellate review hearing, plaintiff, who was no longer represented by counsel, stated, ". . . I had thought this was going to be a repeat of the arbitration . . . ." The chairperson of the Appellate Review Panel, Dr. Mary E. Reres, explained to plaintiff, "This is not a repeat of what you experienced during the arbitration hearing," and that review was limited to the three areas identified in the bylaws. Plaintiff then raised a second concern, as to the make-up of the Appellate Review Panel. Plaintiff stated, "And I do have further issues, and as I pointed out [previously,] thinking that this was going to be an arbitration hearing, that the people on the board . . . would be chosen in concert by the fact that all three have ties, and probably strong ties, can be an issue, and those ties being with Kaiser, and I would have hoped to have had a say in the choosing." Further, plaintiff stated, "[I]t would have been my preference to have had a panel that was non-Kaiser, non-Kaiser affiliated, and appointed in concert by the hospital and by myself." Plaintiff wanted to know what the panelists' "feeling[s]" were on that point. Plaintiff sought to ask the panelists, "[S]hould Dr. Jaffe have had a say in the

choosing of the panelists, and should they have been from non-Kaiser surroundings." The chairperson, Dr. Reres, responded, "The panel cannot act in opposition to the bylaws, period." Later, Dr. Reres stated, "[The panel] cannot have an opinion different than the bylaws in the organization of this meeting." Nevertheless, Dr. Reres allowed the panel members to respond to plaintiff's questions.

The foregoing exchange demonstrates plaintiff's attempt to voir dire the members of the Appellate Review Panel concerning possible bias was limited to two specific questions. The questions related to the Appellate Review Panel's composition. Moreover, the panel members answered those questions. Plaintiff made no attempt to ask further questions. On this record, plaintiff's assertion his fair procedure rights were violated in that he was not given a sufficient opportunity to voir dire the members of the Appellate Review Panel to discover possible bias or conflicts of interest is without merit. Finally, we note there is no evidence of any bias on the part of the Appellate Review Panel members.

3. Medical records

Plaintiff contends the Appellate Review Panel could not have properly reviewed the record of the formal hearing because it admitted it did not review "*any*" medical records. Plaintiff argues: "[Plaintiff's] contention [in the trial court] was not that [the Appellate Review Panel] should have reviewed 'all' medical records, but that the [panel] admitted it was not provided with, nor had it reviewed 'any' of the medical records. [Citation.] Therefore, the issues [plaintiff] raised before the [Appellate Review Panel], including [defendant's] tampering with and misreporting of the medical records, and the Arbitrator's disregarding of the evidence regarding the medical records could not have been reviewed by the [panel] because the [panel] did not have 'any' medical records to decide these issues. [¶] . . . [¶] Furthermore, it was improper for the [Appellate Review

Panel's] Findings to state conclusions regarding the medical records without reviewing any medical records."

The record does not support plaintiff's claim. At the outset of the Appellate Review Panel hearing, while plaintiff was attempting to clarify the scope of the hearing, the following transpired: "Dr. Robert Jaffe: And were all 32 volumes of the transcripts read by the panelists? Is that what I understand? [¶] Dr. Reres: Yes. [¶] Dr. Robert Jaffe: And were all the exhibits all read? [¶] Dr. Reres: The exhibits were read. [¶] Dr. Robert Jaffe: Medical Records all studied? [¶] Dr. Reres: No, medical records were not presented, only the materials that were available during the arbitration process. [¶] [Legal Advisor to the Panel]: The medical records are available, and should there be any reason to go back and look at them, the panel will do that. They are available. [¶] Dr. Robert Jaffe: Thank you." The foregoing was not a concession by the Appellate Review Panel that it had not reviewed *any* medical records. Dr. Reres simply stated the panel had reviewed the record of proceedings before the arbitrator, including exhibits. In other words, the Appellate Review Panel in reaching its decision considered the entire record of the arbitration hearing.

4. Findings

Plaintiff contends the Appellate Review Panel failed "'to articulate a connection between the evidence produced at the hearing and the decision reached,'" and "to reveal the analytic route . . . traveled from evidence to action" in violation of section 809.4, subdivision (a)(1). Section 809.4, subdivision (a) provides: "Upon the completion of a hearing concerning a final proposed action for which a report is required to be filed under Section 805, the licentiate and the peer review body involved have the right to receive all of the following: [¶] (1) A written decision of the trier of fact, including findings of fact and a conclusion articulating the connection between the evidence produced at the hearing and the decision reached. [¶] (2) A written explanation of the procedure for

appealing the decision, if any appellate mechanism exists." The written decision referred to in section 809.4, subdivision (a)(1) is that of the trier of fact—in this case, the arbitrator who presided over the formal hearing. In other words, section 809.4, subdivision (a), required the arbitrator, not the Appellate Review Panel, to issue a written decision identifying the connection between the evidence produced at the hearing and the ultimate decision. This is consistent with the Supreme Court's decision in *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515, which the trial court cited. Plaintiff does not contend the arbitrator's findings were deficient.

5. Medical Board of California

Plaintiff introduced new evidence before the Appellate Review Panel. Plaintiff presented evidence that, on March 19, 1998, the Medical Board of California notified him it had closed its investigation—prompted by defendant's section 805 report—and stated "[W]e have found no deviation from the Standard of Care in the Community as related to the information that has been reviewed." The Appellate Review Panel considered that letter and related argument in reaching its decision. While plaintiff's argument is not entirely clear, he apparently contends the Appellate Review Panel misconstrued, disregarded, or gave insufficient weight to the medical board's findings. The medical board's decision was not binding on defendant. (See *Bonner v. Sisters of Providence Corp., supra,* 194 Cal.App.3d at pp. 444-447.) Under the bylaws, the weight to be accorded the medical board's decision was a question for the Appellate Review Panel. Also pursuant to the bylaws, the Appellate Review Panel could reverse the recommended administrative action for: denial of a procedurally fair hearing; lack of a rational basis for the recommendation; or arbitrary or capricious action taken. Plaintiff has not argued nor shown that the medical board's decision compelled a reversal of the recommended administrative action.

G. The Syringe Reuse Charge

Defendant's Executive Committee charged in part that plaintiff had maintained an inappropriate practice of using the same syringe for injecting different patients. As noted above, the arbitrator found plaintiff had, on at least one occasion, used a single syringe to inject multiple patients, a practice not only below the community standard of care, but "intolerable" and exhibiting "an astonishing lack of judgment." Plaintiff concedes there was an initial incident when he used the same syringe (with a new needle each time) on multiple patients. He argues, however, that there was no substantial evidence he repeated that practice. Moreover, plaintiff contends the arbitrator's finding of at least one occasion improperly varied from the charge that he maintained a practice of misconduct, thereby circumventing defendant's burden of proof as to the charge. In other words, plaintiff asserts the termination of his staff membership and hospital privileges was upheld for reasons other than those set forth in the statement of charges. Plaintiff cites no legal authority for the proposition the arbitrator's finding could not vary in any degree whatsoever from the specific misconduct charged. Moreover, the arbitrator did not consider evidence of uncharged misconduct and limited his findings to issues raised by the statement of charges. Under these circumstances, we find no improper prejudicial variance between the acts charged and the arbitrator's findings. (*Cook v. Civil Service Commission* (1960) 178 Cal.App.2d 118, 133.)

IV. DISPOSITION

The judgment is affirmed. The order denying the motion to vacate the judgment is affirmed. Defendants, Kaiser Foundation Hospital—Panorama City, Southern California

Permanente Medical Group, and Kaiser Health Plan, Inc., are to recover their costs on appeal from plaintiff, Robert Jaffe, M.D.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

TURNER, P.J.

We concur:

GRIGNON, J.

ARMSTRONG, J.