Filed 9/9/03 Maheshwari v. Vista Hospital Systems CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

B.D. MAHESHWARI,

Plaintiff and Appellant,

v.

VISTA HOSPITAL SYSTEMS, INC. et al.,

Defendants and Respondents.

E031768

(Super.Ct.No. RIC296142)

O P I N I O N

APPEAL from the Superior Court of Riverside County. Sharon J. Waters, Judge. Affirmed.

B.D. Maheshwari in pro. per. and Philip L. Merkel for Plaintiff and Appellant.

Horvitz & Levy, David M. Axelrad, and Tracy L. Turner; LaFollette, Johnson, DeHaas, Fesler, Silberberg & Ames, and Robert C. Shephard for Defendants and Respondents Vista Hospital Systems, Inc. et al.

Horvitz & Levy, David M. Axelrad and Tracy L. Turner; D'Antony, Poliquin & Doyle, and David Tredway; LaFollette, Johnson, DeHaas, Fesler, Silberberg & Ames and Robert C. Shephard for Defendants and Respondents Richard Rouhe and Terry L. Sanderfer.

Plaintiff and appellant B.D. Maheshwari, M.D. (plaintiff) appeals from a judgment entered in favor of defendants and respondents (1) Vista Hospital Systems, Inc., dba Corona Regional Medical Center (Vista), (2) Corona Regional Medical Center (the hospital), (3) Marlene Woodworth, CEO of the hospital, (4) Jan Henderson, Supervisor of the hospital's intensive care unit, (5) Nancy Bakewell, Manager/Director of the hospital's emergency room, (6) Scott Gross, President and CEO of Primus Management, Inc., which managed the hospital, (7) Terry L. Sanderfer, M.D., and (8) Richard Rouhe, M.D. We shall affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

I. Factual History

Plaintiff is a staff internist and cardiologist at the hospital. At the time of trial, he was the Chief of the Department of Medicine at the hospital, and headed the medical staff's bylaws committee.

On February 27, 1996, nurse Diane Walsh and plaintiff were working together in the emergency room at the hospital. When plaintiff walked up to the nurses' station, Walsh asked him whether he had brought any "candy and stuff" for the nurses that day. Plaintiff responded, "I brought myself. I know your needs. I know you love it." Nancy Bakewell, Walsh's supervisor and the nurse manager of the emergency room, overheard plaintiff's comment and watched Walsh's reaction. Walsh appeared embarrassed and upset.

Later that day, Bakewell discussed the incident with Walsh. Walsh told Bakewell that plaintiff's comment embarrassed her and that "Dr. Maheshwari is always making statements like this when [I'm] in PCU and no one has been able to stop him." Because

plaintiff's comment had a sexual connotation and had embarrassed Walsh, Bakewell concluded it was a violation of the hospital's sexual harassment policy.

Bakewell prepared a written report about the incident, referred to in hospital documents and throughout this proceeding as a "statement of concern." Bakewell presented the statement of concern to her immediate supervisor, Jan Henderson. Henderson told Bakewell that the human resources department would need to investigate. Bakewell gave the statement of concern to the human resources department, and it was then forwarded to the hospital's chief executive director, Marlene Woodworth.

At Woodworth's direction, a human resources representative, Diane Cox, interviewed Bakewell and Walsh. Both Bakewell and Walsh told Cox that they had repeatedly heard sexually charged comments by plaintiff, and that they were bothered by the comments. Bakewell also gave the names of two other female employees who had complained to Bakewell about plaintiff's behavior. When Cox interviewed these two employees, they confirmed that plaintiff frequently made comments containing sexual innuendoes. For example, one female employee reported that plaintiff had told her, "You probably want my body." Cox memorialized these interviews in a written memorandum to Woodworth. Cox did not have authority to interview plaintiff or recommend action against him because medical staff issues are handled by the medical executive committee (executive committee). Nevertheless, in Cox's memorandum, she requested that Woodworth follow up on the statement of concern by discussing it with the Chief of Staff, Dr. Gupta.

Woodworth and Dr. Gupta discussed the statement of concern and Cox's interviews, and decided that they should meet with plaintiff. On March 29, 1996, they showed the statement of concern and the Cox memorandum to plaintiff. (Plaintiff, however, testified that he was not shown the memorandum until later.) At that meeting, plaintiff denied that he had made the comments that Bakewell, Walsh and the two other female employees had attributed to him. Incongruously, however, he also remarked, "Well, Marlene, I've made you blush too," and reminded Woodworth of comments he had made in the past about her clothing and jewelry. Although Woodworth had not been offended by the comments at the time they were made, she was offended when plaintiff raised them at the meeting because she believed plaintiff was trying to make her feel uncomfortable.

Woodworth told plaintiff that his remarks had offended Walsh and the other female employees, and asked him to refrain from any such behavior in the future. She reminded him that the employees are entitled to a harassment-free working environment and gave him a copy of the hospital's sexual harassment policy. No further action was planned, and Woodworth and Dr. Gupta considered the matter concluded.

On March 30, 1996, using the letterhead of his law office (plaintiff has been a lawyer since 1989), plaintiff wrote to Dr. Gupta and accused the nurses of retaliating against him for complaining about mismanagement in their department. Plaintiff asked Dr. Gupta to take up "this matter" with the executive committee.

Granting plaintiff's request, Dr. Gupta called for a special meeting of the executive committee on April 19, 1996. At the meeting, plaintiff spoke first and requested the committee to conduct an investigation into the allegations against him. Then, Woodworth

related the contents of the statement of concern Bakewell had prepared concerning the Walsh incident. Woodworth also mentioned that plaintiff had been the subject of similar complaints in 1992, and recommended that any investigation by the committee include those incidents as well. The executive committee voted to create an ad hoc committee to interview the employees and report back to the executive committee.

The members of the ad hoc committee were Drs. Young, Rouhe, Sanderfer, Plasencia and Silva. Dr. Silva, however, did not participate. The ad hoc committee interviewed Bakewell, Walsh, Henderson, and Karen Voyer (one of the female employees who had informed Cox about plaintiff's inappropriate comments). The committee came to a consensus that the allegations against plaintiff were credible. The ad hoc committee reported its findings to the executive committee on June 19, 1996, but it did not recommend any particular disciplinary action.

After some discussion, the executive committee decided that a letter of reprimand could be warranted. Before making that decision, however, the committee wanted to hear from plaintiff. Dr. Gupta invited plaintiff to address the executive committee on June 27, 1996, and provided one week's notice of the meeting. Plaintiff appeared, but claimed that he "[did] not remember what happened." Plaintiff also demanded to see the ad hoc committee's documents before responding. The executive committee decided to reconvene after giving plaintiff an opportunity to review the documents. Because the executive committee did not want copies of the documents to leave the hospital, it told plaintiff that he could review the documents in the medical staff office at his convenience.

Thereafter, in a letter to Dr. Gupta, plaintiff refused to appear for the rescheduled meeting unless copies of the documents were sent to his office. Dr. Gupta refused plaintiff's demand, but reiterated that plaintiff could review the documents at the hospital. Plaintiff never took advantage of the executive committee's offer.

Plaintiff did, however, appear at the rescheduled executive committee meeting on July 17, and received the documents at that time. Plaintiff reviewed the documents prior to being interviewed by the executive committee. Plaintiff then gave his response to the allegations -- that the nursing staff was "out to get him" and he never made any inappropriate comments. Thereafter, the executive committee discussed and voted on what action, if any, to take. The members voted overwhelmingly to send plaintiff a warning letter. The vote would have been unanimous, except that plaintiff's son, who was a member of the executive committee, abstained from voting.

The executive committee needed approval from the hospital's governing board before it could send the warning letter to plaintiff. Dr. Gupta and Woodworth presented the case to the hospital's governing board. The governing board approved the letter, and it was sent to plaintiff on July 30, 1996. The letter stated the executive committee's conclusion that plaintiff had made offensive comments to hospital personnel and instructed plaintiff as follows: "You must be more sensitive to what is offensive to other people, and cease making these types of statements in the future." Further offensive comments, the letter warned, would require corrective action. The letter closed with an offer to assist plaintiff in seeking counseling if necessary.

After receiving the letter, plaintiff demanded that all documents relating to the investigation be sent to him, and that he be informed as to how each member of the ad hoc committee voted. Plaintiff also demanded a judicial review committee (JRC) hearing, "[e]ven if such a hearing is not normally provided for in the Medical Staff Bylaws."

The executive committee discussed plaintiff's demands at its next meeting. It made the following findings: (1) plaintiff had been offered the opportunity to review all documents relating to the investigation prior to the July 17 meeting but he declined to do so; (2) plaintiff had the opportunity to review the documents at the July 17 meeting prior to addressing the executive committee; (3) plaintiff had previously received copies of the human resources documents which summarized the allegations against him; (4) the ad hoc committee's interview, discussions and minutes were part of peer review proceedings and, as such, were protected from discovery under Evidence Code section 1157; and (5) a written reprimand did not entitle plaintiff to a JRC hearing under the medical staff bylaws. Plaintiff was informed of these findings in writing on September 3, 1996.

On October 5, 1996, the Vista board asked its Health Care Management Executive, Scott Gross, to report on the executive committee's investigation and course of action. (The hospital is part of Vista's hospital systems, which has its own governing board. Vista has the right to ratify the executive committee's action or require it to undertake further proceedings.) Gross stated that the executive committee had found substantial evidence of sexual harassment by plaintiff, but had decided to issue only a "weak" letter of reprimand. The Vista board concluded that it had an obligation to protect hospital employees from sexual harassment and decided to send its own, more stern, letter to plaintiff.

Vista sent its letter to plaintiff on November 18, 1996. The letter stated that the Vista board had reviewed the employee complaints against plaintiff and was troubled by plaintiff's denial of the allegations despite overwhelming evidence to the contrary. The letter explained Vista's zero tolerance policy on sexual harassment, and warned that, "Vista has directed management to monitor the situation to assure that your harassment has ceased . . . . If any further harassment is reported and verified . . . Vista will pursue any and all rights, remedies and procedures available to it to assure that you are not permitted access to the Medical Center."

In response to Vista's letter, plaintiff demanded that Vista send him the documents upon which its reprimand was based. Vista responded that the hospital had already provided him all the necessary documents.

Plaintiff has not received any further warnings or counseling about sexual harassment, and no disciplinary action has been taken against him. Plaintiff has not lost or been denied staff privileges at the hospital or any other hospital. Plaintiff has not disclosed the executive committee's findings or the two warning letters to any other hospital. As far as plaintiff is aware, no one outside the hospital has ever seen the executive committee's and Vista's warning letters, except in the course of this litigation.

II. Procedural History

On May 6, 1997, plaintiff filed suit against Vista, the hospital. Woodworth, Henderson and Bakewell. He later identified Gross, Sanderfer and Rouhe as Doe defendants. The operative complaint asserts numerous causes of action, including those at

issue on appeal -- emotional distress, libel, slander per se, and violation of common law fair procedure and Business and Professions Code section 805 et seq.

In support of his claims, plaintiff alleged that (1) the defendants slandered and libeled him by making and republishing within the hospital, statements "accusing [him of] sexually harass[ing] two nurse employees"; (2) these same accusations constitute extreme and outrageous conduct and caused him severe emotional distress; and (3) the defendants violated plaintiff's common law right to fair procedure and the Business and Professions Code by implementing a "de facto" loss of privileges, i.e., warning him that future misconduct might result in termination of staff privileges, without following common law or the medical staff bylaws.

The defendants moved for summary adjudication on plaintiff's causes of action for defamation and emotional distress, invoking Civil Code section 47. Granting the motion in part, the trial court dismissed both defamation claims against defendant Rouhe and the libel claim against defendant Sanderfer.

By agreement of the parties, the trial was bifurcated. A bench trial was conducted on the fair procedure and Business and Professions Code causes of action. On July 26, 2001, the trial court ruled in defendants' favor on the following grounds: (1) common law fair procedure was not required for the executive committee and Vista letters because the letters did not adversely affect plaintiff's contract, property or economic rights; (2) the hospital's procedure was fair because plaintiff was given notice of the nature of the complaints against him and an adequate opportunity to respond; (3) there was no evidence of bias on the part of the ad hoc committee members or the executive committee; (4) in

light of plaintiff's opportunity to review all pertinent documents in the hospital staff office and at the July 17 executive committee meeting, the mere fact that he was not allowed to remove the documents from the hospital does not amount to a violation of fair procedure; (5) the medical staff bylaws did not require that the executive committee grant plaintiff's request for a JRC hearing; and (6) the executive committee's investigation was conducted in compliance with the bylaws.

After the bench trial, plaintiff's remaining claims for emotional distress and defamation were scheduled to go to a jury trial.

Through in limine motions, the defendants again asserted that the absolute privilege provided by Civil Code section 47 was a defense to the remaining causes of action. Additional lengthy hearings on the privilege issue followed and the parties stipulated that the trial court could determine the applicability of the privilege based on the evidence that had been submitted during the bench trial. The trial court granted judgment in favor of defendants Rouhe, Sanderfer, Woodworth and Gross on the ground that the remaining claims against these defendants were based on communications that were absolutely privileged.

After the trial court's ruling on the absolute privilege, the only claims left to be tried before a jury were the defamation and emotional distress claims against Bakewell and Henderson. Plaintiff stated that he would prove that Bakewell lied in the statement of concern and in telling other nurses that plaintiff was being investigated for sexual harassment. Plaintiff further contended that Henderson was liable for republishing the statement of concern to her superiors at the hospital.

The jury trial commenced on January 17, 2002. At the conclusion of the plaintiff's case, the defendants moved for nonsuit. The trial court granted nonsuit in favor of Henderson because plaintiff failed to produce any evidence that she republished the statement of concern. The court, however, concluded that the evidence against Bakewell was "perhaps enough to get past the non-suit" and it would "wait and see how the jury react[s] to it." The trial ended on February 1, 2002, and the jury returned a 9-3 defense verdict.

On March 12, 2002, judgment was entered in favor of all defendants and notice of entry of judgment in the defendants' favor was served on March 21. On appeal, plaintiff does not challenge the nonsuit in favor of Henderson or the jury's verdict in favor of Bakewell. Plaintiff only challenges the bench trial decision on the fair procedure and Business and Professions Code causes of actions, and the trial court's ruling that the tort claims against Woodworth, Gross, Sanderfer and Rouhe were barred as a matter of law by the absolute privilege.

ANALYSIS

I. Plaintiff's Complaint Is Not Barred

Defendants contend that plaintiff's complaint is barred as a matter of law because plaintiff has failed to exhaust his judicial remedies. In support of their contention, defendants cite to *Westlake Community Hospital v. Superior Court*.[1]

[1] *Westlake Community Hosp. v. Superior Court* (1976) 17 Cal.3d 465 (*Westlake*).

Under *Westlake,* a physician seeking to challenge a private hospital's decision affecting his or her staff privileges must first exhaust any internal remedies provided by the hospital. Exhaustion is required even though the physician seeks only damages and not reinstatement of privileges.[2] If the internal challenge is unsuccessful, the physician then must seek to overturn the decision through a mandamus proceeding pursuant to Code of Civil Procedure section 1094.5 (section 1094.5). Only if the decision is set aside in a mandamus proceeding may the physician bring a civil tort action.[3] Unless and until it is set aside, the adverse ruling at the internal level "has the effect of establishing the propriety of the hospital's action" and bars any claim based on the premise the action was unjustified.[4]

Moreover, the requirement of filing a mandamus proceeding is independent of the internal exhaustion requirement. Thus, even if the physician exhausts the hospital's internal remedies, he or she cannot bring a civil action without first prevailing on a mandamus petition.[5] The mandamus requirement applies to contract as well as tort claims[6] and applies not only where a physician's privileges are completely terminated, but also to any lesser restrictions on privileges.[7]

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[2] *Westlake, supra,* 17 Cal.3d 465, 475, 476-477.

[3] *Westlake, supra,* 17 Cal.3d 465, 475, 479; *DeVaughn Peace, M.D., Inc. v. St. Francis Medical Center* (1994) 28 Cal.App.4th 454, 460.

[4] *Westlake, supra,* 17 Cal.3d 465, 484; accord, *Knickerbocker v. City of Stockton* (1988) 199 Cal.App.3d 235, 243.

[5] *Westlake, supra,* 17 Cal.3d 465, 484.

[6] *Pomona College v. Superior Court* (1996) 45 Cal.App.4th 1716, 1728.

[7] *McNair v. Pasadena Hospital Assn., Ltd.* (1980) 111 Cal.App.3d 841, 844-846.

In this case, we need not determine whether the hospital's or Vista's actions qualify as a restriction of plaintiff's privileges as a physician: Even if the *Westlake* doctrine applies, plaintiff's complaint is not barred, because it could be deemed to be a mandamus petition. In a footnote in *Westlake*, the Supreme Court recognized that if a "plaintiff's complaint could conceivably be found sufficient to warrant treating the complaint as a petition for writ of mandate [cf. *Boren v. State Personnel Board* . . .]," the court could consider the complaint as mandamus petition.[8] In *Boren*, the Supreme Court stated: "[I]t is unimportant that plaintiff's pleading was not in form a petition for mandamus or certiorari. All that is required is that plaintiff state facts entitling him to some type of relief, and if a cause of action for mandamus or certiorari has been stated, the general demurrer should have been overruled. [Citations.]"[9]

Here, the ninth cause of action for violation of common law fair procedure and tenth cause of action for violation of Business and Professions Code section 805, as alleged in the operative complaint, can be deemed to be a mandamus petition. First, plaintiff prayed for mandamus-type relief in these causes of action, including that defendants be required to provide fair procedures and to expunge his records. Second, the parties in this case consented to, and the trial court did, try the fair procedure and Business and Professions Code claims *before* the tort causes of action as a bench trial. Therefore, plaintiff's complaint is not barred under the *Westlake* doctrine.

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[8] *Westlake, supra*, 17 Cal.3d 465, 485, footnote 10, citing *Boren v. State Personnel Board* (1951) 37 Cal.2d 634, 638 (*Boren*).

[9] *Boren, supra*, 37 Cal.2d 634, 638.

II. Defendants Did Not Violate Common Law Fair Procedure or Business and Professions Code Section 805 et seq.

Plaintiff contends that the trial court erred in finding the hospital disciplinary process did not violate common law fair procedure or Business and Professions Code section 805 et seq. (section 805 et seq.). Specifically, plaintiff contends that: (1) the bylaws and fair procedure required a JRC hearing; (2) he should have been allowed to address the ad hoc committee separate from the executive committee; (3) he had a right to cross-examine the nurses who had complained of sexual harassment; (4) he should have been provided with copies of the executive committee's investigation file rather than allowed to review them in the hospital only; and (5) the ad hoc committee was biased against him.

A. Standard of Review

Whether a plaintiff's right to fair procedure was violated is a question of law reviewed de novo by this court.[10] However, to the extent that we must review the factual determinations made by the trial court in upholding the hospital's actions, we must apply the substantial evidence standard, resolving all evidentiary conflicts in favor of the respondents and indulging all reasonable inferences in support of the judgment.[11]

B. Strict "Common Law Fair Procedure" Requirements Do Not Apply to Proceedings Which Do Not Substantially Affect a Fundamental Vested Right

[10] *Rosenblit v. Superior Court* (1991) 231 Cal.App.3d 1434, 1442-1443 (*Rosenblit*).

Fair procedure rules prohibit private associations from acting in any arbitrary manner, and require that their actions be substantively rational and procedurally fair.[12] Fair procedure is required when a medical staff decision of a hospital "'substantially affects a fundamental vested right,'" i.e., a physician's right to pursue a livelihood.[13]

In a recent decision, *Potvin v. Metropolitan Life Insurance Co.*,[14] the California Supreme Court examined the limitation on common law fair procedure rights. In *Potvin*, a physician challenged MetLife's decision to remove him from its provider networks.[15] The court found that an insurer's relationship with its physician providers affects a public interest.[16] Nonetheless, it held that an insurer does not have to comply with the common law right of fair procedure unless its decision "*significantly impairs* the ability of an ordinary, competent physician to practice medicine or a medical specialty in a particular geographic area, thereby affecting an important, substantial economic interest."[17]

Potvin's holding is consistent with prior case law holdings that a right to fair procedure applies to cases involving substantial impairment of a physician's practice

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[footnote continued from previous page]

[11] *In re Marriage of Mix* (1975) 14 Cal.3d 604, 614; *Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1632-1633.

[12] *Pinsker v. Pacific Coast Society of Orthodontists* (1974) 12 Cal.3d 541, 550 (*Pinsker II*).

[13] *Anton v. San Antonio Community Hosp.* (1977) 19 Cal.3d 802, 823 (*Anton*).

[14] *Potvin v. Metropolitan Life Ins. Co.* (2000) 22 Cal.4th 1060 (*Potvin*).

[15] *Potvin, supra*, 22 Cal.4th 1060, 1064-1066.

[16] *Potvin, supra*, 22 Cal.4th 1060, 1070-1071.

[17] *Potvin, supra*, 22 Cal.4th 1060, 1071, italics added.

resulting from a hospital's denial, termination or suspension of staff privileges.[18] There is no legal support, however, for plaintiff's argument that the right to fair procedure should be expanded to include private warning letters to a physician regarding his misconduct.

Nevertheless, in his opening brief, plaintiff relies on *Salkin v. California Dental Association*, to support his fair procedure argument.[19] In *Salkin*, an appellate court applied the fair procedure doctrine to state and national dental associations' *public* censure of the plaintiff for malpractice.[20] The court found that the censure "'imminently threatened'" the plaintiff's dental practice and "'transcend[ed] the organization itself because it convey[ed] to the community that the disciplined member was found lacking by his peers.'"[21]

Salkin is readily distinguishable from the case at hand. First, *Salkin* involved a public censure. Here, the letters sent to plaintiff were private and never made public, except in the context of this lawsuit. Hence, there was never any fear that the public was made aware of the disciplinary letters. Moreover, plaintiff admitted that, in the five-year period between his receipt of the letters and his testimony at trial, no one outside of the hospital had ever seen the letters or learned of their contents, except as a result of his lawsuit. Second, this case is distinguishable from *Salkin* because the dentist in *Salkin* was censured for his incompetence (malpractice) -- a fact that would definitely affect whether a

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[18] *Anton*, *supra*, 19 Cal.3d 802, 823; *Cipriotti v. Board of Directors* (1983) 147 Cal.App.3d 144; *Tiholiz v. Northridge Hospital Foundation* (1984) 151 Cal.App.3d 1197, 1202.

[19] *Salkin v. California Dental Assn.* (1986) 176 Cal.App.3d 1118 (*Salkin*).

[20] *Salkin*, *supra*, 176 Cal.App.3d 1118, 1125.

[21] *Salkin*, *supra*, 176 Cal.App.3d 1118, 1124, 1125.

patient would want to be treated by the dentist. Here, the disciplinary letters concerned social behavior, not plaintiff's competency to practice medicine. A patient may find personality characteristics unimportant to a decision whether to be treated by a doctor who is technically fully competent. In fact, plaintiff did not present any evidence that he lost a single patient as a result of the hospital's internal disciplinary action. Therefore, we find *Salkin* to be inapplicable to this case.

In sum, there was no evidence that the disciplinary letter "*significantly impair[ed]*" plaintiff's ability to practice medicine, "thereby affecting an important, substantial economic interest."[22] The full panoply of common law rights to fair procedure was not required.

C. The Hospital's Disciplinary Process Did Not Violate Common Law Fair Procedure

Even if the hospital should have afforded fair procedure before sending the warning letters to plaintiff, defendants provided fair procedure to plaintiff in this case.

"The common law requirement of a fair procedure does not compel formal proceedings with all of the embellishments of a court trial [citation], nor adherence to a single mode of process. It may be satisfied by any one of a variety of procedures which afford a fair opportunity for [the subject] to present his position. . . . the associations themselves should retain the initial and primary responsibility for devising a method which provides [the subject] with adequate notice of the 'charges' against him and a reasonable

[22] *Potvin*, *supra*, 22 Cal.4th 1060, 1071, italics added.

opportunity to respond."[23] The hospital's procedure is reviewed under the abuse of discretion standard.[24]

In this case, plaintiff had notice of the sexual harassment allegations against him before it was reported to the executive committee. In fact, Woodworth and Dr. Gupta were willing to conclude the investigation with a simple verbal warning to plaintiff. However, at the request of plaintiff, the executive committee conducted an investigation into the sexual harassment charges.

When the executive committee conducted its investigation, plaintiff had ample opportunity to be heard. First, plaintiff presented his version of the events to the executive committee on April 19, 1996, when he first requested that the committee conduct an investigation into the sexual harassment allegations. Plaintiff then had a second opportunity to present his side of the story after the ad hoc committee interviewed the nurses. When plaintiff claimed that he had forgotten what the nurses said about him, the executive committee gave him the option of reviewing the investigation file in the medical staff office of the hospital. Because plaintiff did not take advantage of that offer, the executive committee allowed plaintiff to review the documents at the next meeting and gave him time to look them over before giving his response. Then the committee listened to what plaintiff had to say.

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[23] *Pinsker II*, *supra*, 12 Cal.3d 541, 555; see also *Anton*, *supra* 19 Cal.App.3d 802, 830 [fair procedure requires adequate notice of the charges and a fair opportunity to respond].)

[24] *Pinsker II*, *supra*, 12 Cal.3d 541, 556.

This procedure afforded plaintiff was more than adequate to satisfy fair procedure. Nevertheless, plaintiff claims that defendants failed to abide by common law fair procedure because: (1) plaintiff was entitled to, but not given, a JRC hearing; (2) plaintiff was not permitted to address the ad hoc committee; (3) plaintiff was not permitted to cross-examine the nurses; (4) plaintiff was unable to remove the investigatory documents from the hospital; and (5) the ad hoc committee was biased against plaintiff. We shall address each of plaintiff's arguments.

1. Plaintiff Was Not Entitled to a Judicial Review Committee Hearing

Plaintiff contends that he was entitled to a JRC hearing under the medical staff bylaws. We disagree.

Section 13(a)(iii) of the bylaws sets forth the disciplinary actions for which a physician is entitled to a JRC hearing. It states:

"(iii) GROUNDS FOR HEARING

"Except as otherwise specified in these bylaws, any one or more of the following actions or recommended actions shall be deemed actual or potential adverse action and constitute grounds for a hearing in accordance with Article III, Section 13:

"(a) denial of medical staff membership;

"(b) denial of requested advancement in staff membership status, or category cause of reason;

"(c) denial of medical staff reappointment;

"(d) demotion to lower medical staff category or membership status due to medical disciplinary cause of reason;

"(e) suspension of staff membership;

"(f) revocation of medical staff membership;

"(g) denial of requested clinical privileges;

"(h) involuntary reduction of current clinical privileges;

"(i) suspension of clinical privileges;

"(j) termination of all clinical privileges; or

"(k) termination of temporary privileges for medical disciplinary cause or reason[;]

"(l) involuntary imposition of significant consultation or monitoring requirements (excluding monitoring incidental to provisional status and Section 6)."

Although section 13(a)(iii) lists eleven disciplinary actions for which a physician is entitled to a JRC hearing, warning letters that impose no restrictions are not on the list. Nevertheless, plaintiff contends that Vista's warning that it had "directed management to monitor the situation to assure that [his] harassment has ceased" is a "monitoring requirement[]" for which he has a right to a hearing under section 13(a)(iii)(l). We agree with the trial court and reject this strained interpretation of the bylaws.

As stated above, section 13(a)(iii)(l) provides a right to a JRC hearing for the "involuntary imposition of significant consultation or monitoring requirements." The clear language of this section clearly indicates that there must be an "imposition" of significant monitoring requirements. Plaintiff argues that Vista met this requirement when it sent plaintiff the second warning letter. The letter stated that "Vista has directed management to *monitor* the situation to assure that your harassment has ceased . . . . If any further

harassment is reported and verified . . . Vista will pursue any and all rights, remedies and procedures available to it to assure you are not permitted access to the Medical Center." (Italics added.) Seizing on the word "monitor," plaintiff argues that this letter satisfies the monitoring requirement in the bylaws. Plaintiff, however, fails to provide what significant monitoring requirements were imposed on plaintiff by the Vista letter. A plain reading of the letter only shows that management would be "keeping an eye" on plaintiff to ensure that the sexual harassment did not continue. This is not what is required under section 13(a)(iii)(l).

Moreover, plaintiff contends that he was entitled to a JRC hearing under section 11(d) and (e) of the bylaws. Plaintiff claims that "[t]he discussion of these sections was clouded in the trial court because of an obvious typographical error in the Bylaws whereby a section was misnumbered." We disagree.

Section 11(d) of the bylaws, entitled "medical executive committee action," describes the actions which the executive committee may take once it concludes an investigation -- ranging from serious punishment, such as probation, monitoring, suspension or revocation or privileges, reduction of membership status, suspension or revocation of medical staff membership, to less severe punishments, such as letters of admonition, censure, reprimand or warning.

Section 11(e)(i) of the bylaws, entitled "subsequent action," states: "If corrective action as set forth in Section *13 d*.[**25**] is recommended by the Medical Executive Committee, that recommendation shall be transmitted to the Governing Board." (Italics added.) Section 11(e)(ii) then states: "The Governing Board shall give great weight to Medical Executive Committee recommendations and shall not act in an arbitrary or capricious manner in deciding whether to adopt the committee's recommendation as a final recommendation unless the member requests a hearing, in which case the final decision shall be determined as set forth in Article III, Section 13." Article III, Section 13 entitled the member to have a JRC hearing.

In the trial court, plaintiff argued that the "13 d." referenced in section 11(e)(i) should be read as "11.d" instead. Plaintiff argued that "[t]his is commonsensical because Section 11 is entitled 'Corrective Actions' and Section 11 d. lists the corrective actions the [executive committee] may take. Section 13 d., entitled 'Appeal,' concerns the procedures for appealing a JRC hearing panel decision to the [hospital] Governing Board and to the Vista Board. Section 13 d. has no listing of 'corrective actions.'" Plaintiff, therefore, argues that with this "correction," section 11(e)(ii) gives him a right to a JRC hearing before the hospital may undertake any of the responses listed in section 11(d), including the warning letters at issue in this case.

We find plaintiff's argument to be pure speculation. Plaintiff does not and cannot cite to any evidence that there was a typographical error in the bylaws. Moreover,

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25 Section 13(d) of the bylaws, entitled "appeal," sets forth procedures for appealing

[footnote continued on next page]

plaintiff's interpretation of section 11(e) *directly contradicts* section 13(a)(iii)'s express limitation on the right to a JRC hearing to certain types of corrective action, as stated above. It is, therefore, in the words of the trial court, "nonsensical and unreasonable."

Nevertheless, plaintiff argues that he "bolstered his argument by showing that the Medical Staff Bylaws were amended in 1999." The amendment, however, does not support plaintiff's argument. In 1999, the language in section 11(e)(ii) that "the final decision shall be determined as set forth in Article III, Section 13" was changed to provide that, "If the member is entitled to and requests a hearing, the procedure and final decision shall be determined as set forth in Article VIII." Plaintiff contends that the added language, "if the member is entitled to," would have been unnecessary unless the pre-1999 section 11 provided the right to a hearing for all disciplinary actions. Plaintiff, however, ignores the possibility that the bylaws were amended to clarify, rather than change, their original meaning. As stated by the trial court, "[w]ithout evidence that the intent and purpose behind the new by-laws was to change, as opposed to merely clarify, the prior by-laws, the 1999 by-laws, shed no light on the interpretation of the 1994 by-laws." Also, because the new language refers to Article III, the meaning of the amendment cannot be determined without reviewing Article VIII -- which is not included in the record on appeal. Furthermore, what is patently absent from the amendments to the bylaws in 1999 is a "correction" to the bylaws as plaintiff would like it to read -- changing section "13 d" to section "11 d" in section

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[footnote continued from previous page]
a JRC hearing panel decision.

11(e)(i) of the bylaws. Had the intent of the amendment been to change the bylaws to correct the typographical error -- the error should have been corrected. It was not.

We also note that, even if we were to accept plaintiff's unsupported "correction" of section 11(e)(i), his argument fails. Section 11(e)(ii) states that if a physician requests a hearing, the final decision shall be determined as set forth in Article III, Section 13. This reference incorporates section 13, in its entirety, which includes the limitation set forth in section 13(a)(iii) on the types of action (excluding warning letters) that give rise to a right to a JRC hearing.

Therefore, we hold that the trial court properly rejected plaintiff's claim that he was entitled to a JRC hearing.

2. Fair Procedure Did Not Require that Plaintiff Be Permitted to Address the Ad Hoc Committee Established by the Executive Committee

Plaintiff presented his version of the events to the executive committee on two separate occasions. Plaintiff, however, claims that he had a right to separately address the ad hoc committee, which consisted of four executive committee members.

In support of his contention, plaintiff relies on section 11(c) of the bylaws, which provides that a physician shall be "notified that an investigation is being conducted and shall be given an opportunity to provide information in a manner and upon such terms as the investigating body deems appropriate." Plaintiff contends that the ad hoc committee was the "investigating body" and that section 11(c) therefore required that plaintiff be invited to provide information to the ad hoc committee, rather than to the executive committee. Plaintiff's argument fails.

The executive committee delegated the task of interviewing the nurses to the ad hoc committee. The executive committee, however, reserved the opportunity to hear plaintiff's response and decide what, if any, action should be taken. Therefore, the executive committee remained the "investigative body." Moreover, the executive committee's delegation of a discrete task to the ad hoc committee was consistent with section 11(c), which gives the executive committee discretion to "conduct the investigation itself, or [to] assign the task to an appropriate medical staff officer, medical staff department, or standing or ad hoc committee of the medical staff."

Plaintiff's contention is also unsupported by the law on fair procedure. Fair procedure requires that the physician be given an opportunity to address the decisionmaker, in this case, the executive committee.[26] In *Marmion*, a medical education subcommittee had discussed performance issues with the plaintiff, but the plaintiff claimed that he should have been invited to address the entire medical education committee.[27] The court rejected the plaintiff's argument because it found that the ultimate decisionmaker, the director of medical education, was on the subcommittee and had listened to plaintiff's response.[28] "The hearing before the [subcommittee] provided [the plaintiff] a fair and full opportunity to respond to the charges in the presence of . . . the final decision-maker."[29] Similarly, in this

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[26] *Marmion v. Mercy Hospital & Medical Center* (1983) 145 Cal.App.3d 72, 92-93 (*Marmion*).

[27] *Marmion, supra*, 145 Cal.App.3d 72, 92-93.

[28] *Marmion, supra*, 145 Cal.App.3d 72, 93.

[29] *Marmion, supra*, 145 Cal.App.3d 72, 93.

case, plaintiff gave his response to the allegations to the decisionmaking body -- the executive committee. This was sufficient.

Plaintiff also argues that the ad hoc committee's report took on special significance because the executive committee and governing boards relied on it. Plaintiff is correct that the executive committee relied on the ad hoc committee's summary of the employee interviews -- the ad hoc committee was asked to interview the nurses so that the entire executive committee would not have to do so. The ultimate decision to send the warning letter, however, was made only after the full executive committee heard plaintiff's response.

Therefore, we hold that plaintiff's lack of opportunity to address the ad hoc committee did not violate fair procedure.

3. Plaintiff Did Not Have a Right to Confront His Accusers

Plaintiff contends that he should have been allowed to cross-examine the nurses who accused him of sexual harassment. In support of his contention, plaintiff relies on *Hackethal v. California Medical Association*.[30] Plaintiff's reliance on *Hackethal* is misplaced.

Hackethal addressed fair procedure in the context of formal charges brought before the California Medical Association (CMA) relating to a physician's competence to practice medicine, charges which ultimately resulted in the physician's expulsion from the CMA.[31] The formal nature of the charges against the physician and his resulting expulsion from the

[30] *Hackethal v. California Medical Assn.* (1982) 138 Cal.App.3d 435 (*Hackethal*).

state medical association required that the physician be allowed to cross-examine his accusers.[32]

This case is distinguishable. Here, the executive committee's investigation was prompted by plaintiff's request, rather than formal charges, and the hospital's private reprimands had no effect on plaintiff's ability to practice medicine. Had his ability to practice medicine been challenged, under the bylaws, plaintiff would have had the right to challenge termination of his privileges in a formal JRC hearing, which would have included cross-examination of witnesses. However, in this case, neither a formal hearing nor cross-examination of witnesses were warranted for written warnings which did not impose any limitation on plaintiff's staff privileges.

4. Plaintiff Was Given Access to Pertinent Documents

Plaintiff contends that fair procedure was violated because he was not allowed to make copies of the ad hoc committee's investigatory file and take them out of the hospital to his attorney's office. We disagree.

Plaintiff was informed that he could review the investigatory file in its entirety in the medical staff office at his convenience. The hospital wanted to avoid circulation of the confidential material in the investigatory file outside the hospital. Plaintiff and his attorney could have reviewed the investigatory file, but simply chose not to.

[footnote continued from previous page]

[31] *Hackethal, supra,* 138 Cal.App.3d 435,438-440.

[32] *Hackethal, supra,* 138 Cal.App.3d 435,444.

Plaintiff relies on *Rosenblit*, however, to support his contention that denying plaintiff copies of his file violated fair procedure. In *Rosenblit*, a hospital terminated the physician's staff privileges based on its review of his medical decisions as reported in 30 medical charts.[33] The court held that the hospital violated fair procedure when it denied the physician copies of the charts so that he could have them reviewed by his expert witnesses in preparation for his hearing.[34]

Rosenblit is distinguishable. First, *Rosenblit* involved termination of staff privileges, which requires a higher standard of fair procedure.[35] This case involved private warning letters which did not affect plaintiff's staff privileges. Second, the physician's need to have copies of the medical charts in *Rosenblit* was critical to his ability to defend himself because of the technical and medical complexity of the issues involved. Here, the issues were not numerous or complex. The witnesses were few; their statements were straightforward. No expertise or lengthy review was necessary to understand the issues. Plaintiff has indicated no manner in which his ability to prepare was affected or impaired.

In sum, plaintiff's opportunity to review the investigatory file in the medical staff office of the hospital, at plaintiff's convenience, afforded plaintiff fair procedure.

5. The Ad Hoc Committee Was Not Biased Against Plaintiff

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[33] *Rosenblit, supra*, 231 Cal.App.3d 1438.

[34] *Rosenblit, supra*, 231 Cal.App.3d 1446-1447.

[35] *Hackethal, supra*, 138 Cal.App.3d 435, 442 [fair procedure requirements vary according to the action contemplated and its effects on the individual].

Plaintiff contends that the members of the ad hoc committee were biased against him. Because this is a factual questions, the substantial evidence standard applies. We must resolve all evidentiary conflicts and indulge all reasonable inferences in support of the judgment.[36]

Plaintiff has admitted that he did not have any evidence to suggest that Drs. Rouhe, Plasencia or Young were biased against him. As to Dr. Sanderfer, plaintiff's only contention is that in the course of the investigation, Dr. Sanderfer reported that he had witnessed plaintiff make inappropriate comments to Sanderfer's wife, who was a nurse at the hospital at the time.

Substantial evidence supports the trial court's conclusion that Dr. Sanderfer's observation of plaintiff's inappropriate conduct does not invalidate the ad hoc committee's investigation or the executive committee's warning letter. Dr. Sanderfer explained that plaintiff's comments never bothered his wife, and that "[t]hey certainly didn't offend or threaten [Dr. Sanderfer] either. [Dr. Sanderfer] felt more embarrassed for [plaintiff]." Moreover, notwithstanding plaintiff's comments, Dr. Sanderfer considered plaintiff a positive acquaintance. Dr. Sanderfer also testified that he could be fair and impartial, he did not pre-judge whether plaintiff had made the statements alleged in the statement of concern and Human Resources interview, and he would have disqualified himself if he believed he was biased.

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[36] *In re Marriage of Mix*, *supra*, 14 Cal.3d 604, 614; *Kuhn v. Department of General Services*, *supra*, 22 Cal.App.4th 1627, 1632-1633.

Nevertheless, plaintiff relies on *Applebaum v. Board of Directors*[37] in support of his argument that Dr. Sanderfer's participation in the investigation deprived him of fair procedure. Plaintiff, however, misconstrues the holding of *Applebaum.* Plaintiff contends that *Applebaum* "establishes that even if any individual cannot prove actual bias, the overlapping of accusatory, investigative, and adjudicative functions results in the lack of impartiality in the fact-finding process." Therefore, plaintiff claims that, because Dr. Sanderfer served on both the ad hoc committee and the executive committee, plaintiff's fair procedure rights were violated. *Applebaum*, however, does not contain the holding espoused by plaintiff. Rather, *Applebaum* held that overlapping functions violated fair procedure "given the circumstances" of that case.[38] The circumstances in *Applebaum* are different from the circumstances in this case.

In *Applebaum*, the court found fair procedure lacking because a committee investigating a physician's incompetence included the complaining physician who had prompted the investigation.[39] The court was particularly troubled because the complaining physician was a specialist in the relevant field to whom the other committee members were likely to defer.[40] In this case, the allegations against plaintiff came from the nurses -- not anyone on the ad hoc or executive committee. Dr. Sanderfer merely offered a personal observation in the course of discussing the nurses' complaints. Moreover, Dr. Sanderfer

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[37] *Applebaum v. Board of Directors* (1980) 104 Cal.App.3d 648 (*Applebaum*).
[38] *Applebaum, supra*, 104 Cal.App.3d 648, 660.
[39] *Applebaum, supra*, 104 Cal.App.3d 648, 659-660.
[40] *Applebaum, supra*, 104 Cal.App.3d 648, 660.

was not a specialist in sexual harassment issues to whom the other members were likely to defer. Furthermore, in light of the evidence from Bakewell, Walsh and Voyer that plaintiff had made sexually suggestive comments in the hospital, there is no reason to conclude that the other members of the ad hoc committee would have discounted the nurses' complaints had Dr. Sanderfer not been on the committee.

Therefore, the trial court's finding that the ad hoc committee was not biased against plaintiff is supported by substantial evidence.

D. The Medical Executive Committee Proceedings Did Not Violate the Business and Professions Code

Plaintiff bases his cause of action under the Business and Professions Code on section 809.6, subdivision (a), which provides that, "The parties are bound by any additional notice and hearing requirements" provided in medical staff bylaws. In this case, because plaintiff has failed to establish a violation of the bylaws as discussed above, he has failed to establish a violation of section 809.6.

Moreover, section 809.6 is not applicable to this case. Section 809.6 is part of a statutory scheme governing notice and hearing procedures for actions which require a report under Business and Professions Code section 805.[41] A section 805 report is required only where a physician is disciplined for a "medical disciplinary cause or reason," defined as "that aspect of a licentiate's competence or professional conduct that is

[41] See Business and Professions Code sections 809.1-809.9.

reasonably likely to be detrimental to patient safety or to the delivery of patient care."[42] Also, like the common law right to fair procedure, a section 805 report is only required if staff privileges are terminated or restricted.[43] In this case, because plaintiff was admonished to avoid sexually harassing employees rather for than creating a risk to patients, and because his staff privileges were never restricted, the hospital was not required to submit a section 805 report. Therefore, section 809.6 does not apply.

III. Defendants' Statements Are Protected Under Civil Code Section 47

Plaintiff contends that the trial court erred in ruling that the absolute privilege under Civil Code section 47 (section 47), subdivision (b) bars plaintiff's claims against Drs. Rouhe, Sanderfer, Woodworth and Gross. We disagree.

A. Standard of Review

"Interpretation of section 47, subdivision (b) is a pure question of law which we review independently. [Citations.]"[44]

B. Defendants' Statements Are Privileged

Section 47, subdivision (b) provides that communications made "(4) in the initiation or course of any . . . proceeding authorized by law and reviewable [by writ of mandate]

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[42] Business and Professions Code section 805, subdivision (a)(1)(D)(6).

[43] See Business and Professions Code section 805, subdivisions (b)(1) - (b)(3) [a section 805 report is only required for denial or rejection of an application for staff privileges; termination or revocation of staff privileges; or restrictions on staff privileges, membership or employment for 30 days or more than any 12-month period].

[44] *Rothman v. Jackson* (1996) 49 Cal.App.4th 1134, 1139-1140.

pursuant to Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure" are absolutely privileged.

Peer review organizations such as the executive committee are authorized -- and required --by law to oversee hospital staff physicians.[45] Their decisions are subject to review by writ of mandate under either section 1094.5 or section 1085 of the Code of Civil Procedure. If fair procedure is required, the executive committee's decisions can be reviewed under Code of Civil Procedure section 1094.5.[46] Otherwise, the executive committee's decisions can be reviewed under section 1085.[47] Therefore, section 47, subdivision (b) protects all communications made to initiate action by the executive committee or made in the course of the executive committee's proceedings.

The applicability of section 47, subdivision (b) to executive committee communications is further supported by the statute's legislative history. Subdivision (b) was enacted specifically to overturn a Supreme Court decision in *Hackethal v. Weissbein*,[48] which held that communications to a private medical peer review organization

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[45] Business and Professions Code section 2282.

[46] See Code of Civil Procedure section 1094.5; *Anton*, *supra*, 19 Cal.3d 802, 815.

[47] See Code of Civil Procedure section 1085; *Anton*, *supra*, 19 Cal.3d 802, 815, footnote 11; *Weary v. Civil Service Com.* (1983) 140 Cal.App.3d 189, 195 [a city employee was entitled to writ review under section 1085 of an "improvement needed" evaluation rating even though a hearing was not required by law]; *McGill v. Regents of University of California* (1996) 44 Cal.App.4th 1776, 1785 ["'[O]rdinary mandate [under section 1086] is used to review adjudicatory actions or decisions when the agency was not required to hold an evidentiary hearing'"].

[48] *Hackethal v. Weissbein* (1979) 24 Cal.3d 55.

are not privileged.[49] "The lesson conveyed by [the enactment of subdivision (b)] appears clear. By its immediate, unanimous response to *Hackethal v. Weissbein* [citation], the Legislature demonstrated a strong conviction that the absolute privilege afforded by section 47 should not be confined narrowly only to . . . peer review proceedings conducted by governmental agencies, but rather should apply also to . . . analogous peer review proceedings conducted by private entities because the purposes served by the privilege apply equally to such proceedings."[50]

Plaintiff cites *Pettus v. Cole*[51] and *Cuenca v. Safeway San Francisco Employees Fed. Credit Union*[52] to support his argument that section 47, subdivision (b) does not apply to this case. These cases held that an adjudicatory proceeding of a private company is not "judicial" or "official" under subdivision (b).[53] [54] Neither of these cases, however, addressed subdivision (b) clause (4). Hence, they are inapplicable to this case.

Moreover, plaintiff argues that there was no "proceeding" or "trial" because he was denied a JRC hearing. "Proceeding," however, as used in section 47 has a broad meaning and includes any "transaction[]."[55] Moreover, in applying section 47, courts have focused less on what type of proceeding is actually held and more on the authority of the body. For

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[49] See *Moore v. Conliffe* (1994) 7 Cal.4th 634, 652.

[50] *Moore v. Conliffe*, *supra*, 7 Cal.4th 634, 653, italics omitted.

[51] *Pettus v. Cole* (1996) 49 Cal.App.4th 402 (*Pettus*).

[52] *Cuenca v. Safeway San Francisco Employees Fed. Credit Union* (1986) 180 Cal.App.3d 985 (*Cuenca*).

[53] *Pettus*, *supra*, 49 Cal.App.4th 402, 436-438.

[54] *Cuenca*, *supra*, 180 Cal.App.3d 985, 993-994.

[55] *Ascherman v. Natanson* (1972) 23 Cal.App.3d 861, 865 (*Ascherman*).

example, in construing the scope of the "official proceeding" privilege under what is now subdivision (b) clause (3), *Ascherman* held that the application of the privilege to communications to an administrative body depends on "(1) whether the administrative body is vested with discretion based upon investigation and consideration of evidentiary facts, (2) whether it is entitled to hold hearings and decide the issue by the application of rules of law to the ascertained facts and, more importantly (3) whether its power affects the personal or property rights of private persons."[56] Focusing on the authority of the body, rather than the type of proceeding ultimately held, encourages communication and thereby ensures that the purpose of the privilege is fulfilled.[57]

In this case, the executive committee has the authority to conduct formal hearings and to make decisions which substantially affect a physician's economic interests. Therefore, the privilege should apply to its communications regardless of the form its action takes.[58]

Plaintiff argues that defendants should not be allowed to argue, on the one hand, that warning letters do not trigger a right to a JRC hearing, and on the other hand, that the executive committee proceeding is covered by subdivision (b). Plaintiff's argument is based on the erroneous premise that the subdivision (b) privilege applies only to

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[56] *Ascherman*, *supra*, 23 Cal.App.3d 861, 866.

[57] *Ascherman*, *supra*, 23 Cal.App.3d 861, 866.

[58] See *Long v. Pinto* (1981) 126 Cal.App.3d 946, 949 [an unsolicited letter to a hospital's board of directors was absolutely privileged because it was intended to prompt action]; *Brody v. Montalbano* (1978) 87 Cal.App.3d 725, 732 [a letter to a school board was privileged regardless of whether it led to an "official proceeding"].

proceedings which are subject to review under Code of Civil Procedure section 1094.5, i.e., proceedings which are required by law. However, as discussed above, subdivision (b) expressly includes proceedings subject to review under Code of Civil Procedure section 1085, which includes the voluntary, quasi-judicial proceedings in this case.

Having established that section 47, subdivision (b) applies to executive committee proceedings, we now turn to the specifics of plaintiff's defamation and emotional distress claims against Woodworth, Gross, Sanderfer and Rouhe.

Plaintiff's emotional distress and defamation claims against Woodworth are based on her communications with the Chief of Staff, Dr. Gupta, concerning the nurses' complaints, and her subsequent comments to the executive committee in the course of investigation plaintiff's conduct. Woodworth informed Dr. Gupta about the nurses' complaints because it was Dr. Gupta's responsibility to decide whether the allegations required executive committee action or an investigation. The medical staff bylaws specifically provide for this procedure: section 11(a) states that any person may provide information to the medical staff about the conduct of a staff physician. Therefore, Woodworth's communications with Dr. Gupta and her comments to the executive committee are protected under section 47, subdivision (b).

Plaintiff's claims against Drs. Sanderfer and Rouhe are also based entirely on communications made in the course of the executive committee investigation. These statements are, therefore, privileged under section 47, subdivision (b).

Plaintiff sued Gross based on his report to Vista regarding the executive committee proceedings. Vista could either ratify the executive committee's action or it could require

it to undertake further proceedings. Gross's report, therefore, was still part of the executive proceeding and is covered by the privilege under section 47, subdivision (b).

Accordingly, we affirm the trial court's judgment in favor of defendants Woodworth, Gross, Sanderfer and Rouhe because their communications are absolutely privileged under Civil Code section 47, subdivision (b).

DISPOSITION

The judgment is affirmed. Defendants shall recover their costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

/s/ Ward
J.

We concur:

/s/ Ramirez
P.J.

/s/ Richli
J.