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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

JOEL A. SHAPIRO, Plaintiff and Appellant, v. LITTLE COMPANY OF MARY HOSPITAL, INC., et al., Defendants and Respondents.	B169510 (Los Angeles County Super. Ct. No. BC 284977)

APPEAL from a judgment of the Superior Court of Los Angeles County. Andria K. Richey, Judge. Affirmed.

Bond Curtis, Tom Curtis, and Alexander W. Kirkpatrick for Plaintiff and Appellant.

Bingham McCutchen, Ross E. Campbell, Beth McGowen, Katharine L. West, and Devan J. McCarty for Defendants and Respondents Little Company of Mary Hospital, Inc., Providence Health Systems, Inc., Julius H. Grollman, Jr., M.D., Michele Delvicario, M.D., and Robert Goldman, M.D.

Musick, Peeler & Garrett, J. Robert Liset, and Kent A. Halkett, for Defendant and Respondent John H. Kuwata, M.D.

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Appellant Joel A. Shapiro, M.D., filed an action arising from the suspension of his privileges at respondent Little Company of Mary Hospital (Hospital). The action alleged five causes of action and named the Hospital, the Hospital's owner, Providence Health Systems, Inc., and four physicians as defendants. The trial court sustained the defendants' demurrers to the first amended complaint without leave to amend on the ground that Dr. Shapiro has not exhausted his administrative and judicial remedies. Dr. Shapiro appeals from the judgment dismissing his action. We affirm.

FACTS

The operative facts appear in Dr. Shapiro's first amended complaint. For the purpose of testing the legal sufficiency of the complaint, all material, issuable facts properly pleaded in the complaint are deemed to be true. (5 Witkin, Cal. Procedure (4th ed. 1997) Pleading, § 903.)

Dr. Shapiro is an interventional cardiologist with multiple professional qualifications.[1] The Hospital is a general acute care hospital. In early 2001, Dr. Shapiro purchased the cardiology practice of a retiring cardiologist. The practice was located in Torrance and the retiring physician cared for his patients at the Hospital, as well as at the Torrance Memorial Medical Center (Torrance Hospital). In order to be able to care for the patients in the practice he was purchasing, in and around May 2001 Dr. Shapiro applied for, and was granted, staff membership and privileges in Cardiovascular Disease and Interventional Cardiology at both hospitals.

Interventional cardiology is performed in large part in the Cardiac Catherization Laboratory (the Laboratory) located in the Hospital. Dr. Shapiro commenced providing interventional cardiology services at the Laboratory in May 2001. The first amended complaint alleges that, from the beginning, Dr. Shapiro observed that both

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[1] Dr. Shapiro is a diplomate of the American Board of Internal Medicine (1992), with a subspecialty in cardiovascular diseases (1993) and interventional cardiology (1999), a fellow of the American College of Cardiology (1996), and a fellow of the Society of Cardiac Angiography and Interventions.

the equipment and method of practice at the Laboratory were below the standard of care. The first amended complaint details the alleged deficiencies in the equipment and methods of practice followed in the Laboratory, which included unnecessary radiology procedures performed by respondent Julius H. Grollman, Jr., M.D., a radiologist. Dr. Shapiro "insisted upon proper procedures, including control of his own cases and cessation of unnecessary radiology procedures."

All new members of the medical staff are monitored in a process called "proctoring," in which medical staff members who hold particular privileges observe new members exercising those privileges. Dr. Shapiro was proctored by respondents Michele Delvicario, M.D., John H. Kuwata, M.D., and Robert Goldman, M.D., all of whom are cardiologists. The first amended complaint alleges that these three respondents acted to prevent Dr. Shapiro from exercising his privileges at the Hospital by making false proctoring reports, by refusing to proctor Dr. Shapiro, by wrongfully interfering with Dr. Shapiro, by making false reports about Dr. Shapiro to the committees of the medical staff and by wrongfully interfering with the submission of truthful information to these committees.

In a letter dated July 27, 2001, the president of the medical staff of the Hospital, Dr. Robert Faries, notified Dr. Shapiro that his clinical privileges at the Hospital were suspended, effective immediately. The suspension was based on two cases performed on July 25 and 26, 2001, "together with complications and/or concerns with several prior cases performed in the last two months." Under section 6.2 of the Hospital's "Professional Staff Bylaws" (hereafter bylaws), the president of the medical staff, among others, has the right to summarily suspend clinical privileges whenever the failure to take that action "may result in an imminent danger to the health of any individual." Dr. Shapiro complied with this notice by ceasing to perform procedures at the Laboratory.

The first amended complaint alleges that the July 27, 2001 summary suspension failed to set forth "any cause, justification or medical reason" for the suspension; that

the summary suspension failed to comply with Business and Professions Code section 809.5, subdivision (a) that immediate suspension could be imposed only when the failure to do so may result in imminent danger to the health of any individual; and that the suspension failed to comply with section 6.2 of the bylaws that an immediate suspension is warranted only when failure to do so may result in an imminent danger to the health of any individual.

Under the bylaws, the Medical Executive Committee (MEC) of the medical staff was required to review the summary suspension within seven days of the suspension, and Dr. Shapiro had the right to meet with the MEC within 14 days of the suspension. Dr. Shapiro requested a meeting with the MEC.

In a letter dated August 3, 2001, Dr. Faries notified Dr. Shapiro that the MEC decided on August 2, 2001, to sustain Dr. Shapiro's summary suspension. The MEC also imposed a "concurrent consultation" requirement for Dr. Shapiro's admissions and consults at the Hospital. This letter listed "concerns which have led to the summary suspension" in the case of six patients upon whom Dr. Shapiro performed interventional cardiology services in June and July 2001 in the Laboratory.

Dr. Shapiro met with the MEC on August 9, 2001, and provided "the true and correct facts regarding the six areas of concern."

In a letter dated August 13, 2001, Dr. Faries informed Dr. Shapiro that the summary suspension would remain in effect for all intervensionist and emergency diagnostic procedures to be performed by Dr. Shapiro; that Dr. Shapiro could perform elective diagnostic procedures, subject to proctoring for the next 20 cases; and that Dr. Shapiro's patient admissions to the Hospital would be subject to standard, rather than concurrent, proctoring as set forth in the August 3, 2001 letter.

On September 12, 2001, Dr. Shapiro exercised his right under subdivision (a)(2) of section 7.3 of the bylaws to request a hearing regarding the suspension of his privileges.[2]

Section 7.3(d) of the bylaws provides that, upon receipt of a request for a hearing, the MEC is required to schedule a hearing. If, as in this case, the request for a hearing is made by a practitioner who is under suspension, the hearing is required to be held within 30 days from the date of receipt of the request for a hearing.

The bylaws also require that, upon receipt of a request for a hearing, the MEC shall appoint a Judicial Review Committee (JRC) composed of three members of the professional staff. (Section 7.3(e).) Dr. Shapiro was informed of the appointment of the JRC on October 8, 2001.

In letters exchanged on November 8 and 9, 2001, Dr. Shapiro and the Hospital entered into a comprehensive agreement, the thrust of which appears to have been to resolve the issues that led to the summary suspension without the need for a hearing before the JRC. This agreement, referred to hereafter as the "November Agreement," cancelled the JRC hearing dates of November 20 and December 4 and 6, 2001, that had been set previously, and stated that hearings would be rescheduled "in February if needed." The November Agreement provided further that Dr. Shapiro would continue to perform the procedures at the Torrance Hospital from which he had been suspended at the Hospital, and the medical staff at the Hospital would receive input from the staff at the Torrance Hospital about these procedures. The November Agreement went on to state that the Hospital's MEC would meet on January 28, 2002, to consider the reinstatement of the privileges that had been suspended, and that the MEC would consider Dr. Shapiro's performance at the Torrance Hospital in considering whether to reinstate Dr. Shapiro's privileges. The first amended complaint alleges that by virtue

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[2] Under section 7.3(b)(9), the suspension of privileges constitutes grounds for a hearing.

of the November Agreement, Dr. Shapiro's privileges "continued to be summarily suspended but the hearing process was postponed to permit [Hospital] to evaluate Plaintiff's exercise of those same privileges at the [Torrance Hospital]."

As required by law, the Hospital reported Dr. Shapiro's suspension of privileges to the California Medical Board. As a result, the Torrance Hospital suspended Dr. Shapiro's interventional, but not diagnostic, privileges. The first amended complaint alleges that this "frustrated" the "purpose" of the November Agreement.

On November 19, 2001, the Torrance Hospital suggested that the allegations against Dr. Shapiro should be independently reviewed. A few days afterwards, the American Medical Foundation for Peer Review and Education (AMF) undertook to perform this review.

The first amended complaint alleges that, in addition to the AMF review, Dr. Shapiro "arranged" for a review by an internationally recognized interventional cardiologist, Dr. Gary S. Roubin.

According to the allegations of the first amended complaint, the AMF reviewers came to California to review the medical records at the Hospital and the Torrance Hospital. The complaint goes on to allege that the Hospital "agreed to continue to postpone its JRC hearing and maintain the November 8, 2001 agreement [the November Agreement], pending receipt and review of the AMF report." This is the last reference to the JRC in the first amended complaint.

The first amended complaint characterizes the results of the AMF review with the following summary allegation: "In a thirty-three page report dated April 2, 2002, the [AMF] reviewers found after extensive review of not only the cases set forth in the Notice of Charges, but also of Plaintiff's cases at [the Torrance Hospital], that no medical cause existed for [the Hospital] to have suspended Plaintiff's Interventional Cardiology privileges." The first amended complaint also alleges that Dr. Roubin's review was favorable to Dr. Shapiro.

Dr. Shapiro's privileges at the Torrance Hospital were restored on April 4, 2002.

The Hospital took no action until June 3, 2002. (See text, *post*.) In the meantime, according to the allegations of the first amended complaint, respondents engaged in "unreasonable actions" to delay the reversal of Dr. Shapiro's summary suspension and "compelled" Dr. Shapiro to attend meetings to defend himself against baseless criticisms, "all for the purpose of continuing to restrict Plaintiff's practice at [the Hospital]."

In a letter dated June 3, 2002, the president of the Medical Staff notified Dr. Shapiro that the MEC decided on May 20, 2002, to lift the summary suspension that had been imposed in August 2001. Specifically, the letter informed Dr. Shapiro that his summary suspension for all interventional procedures in the Laboratory was lifted, with the requirement that the proctoring requirements would be "twice standard." Dr. Shapiro was allowed to select his proctors, but was required to involve a minimum of three different proctors on each privilege requiring proctoring. Dr. Shapiro's summary suspension for emergency diagnostic procedures was lifted without proctoring, and his appointment to the provisional staff with membership in the Department of Medicine of the Hospital was approved.

There was no mention in the MEC's letter of June 3, 2002, of the JRC that had been appointed in October 2001.

Following the letter of June 3, 2002, neither respondents nor Dr. Shapiro took any further action, until Dr. Shapiro filed this action.

The first cause of action is against the Hospital and Dr. Grollman and alleges a combination in restraint of trade (Cartwright Act). The second cause of action is against the Hospital and is captioned "Deprivation of Common Law Fundamental Fairness." The third cause of action is against all defendants and is captioned "Intentional Interference With Practice of Lawful Profession." The fourth cause of

action is against all defendants and alleges a trade libel. The fifth cause of action against all defendants is for "Unlawful Retaliation Against Physician."

Each of the five causes of action is predicated on acts and omissions that occurred between July 27, 2001, and June 3, 2002. As Dr. Shapiro sums up his action in his opening brief, he is suing respondents for the "completely factually devoid summary suspension of his medical staff privileges that existed from its imposition on July 27, 2001 [] until its lifting effective June 3, 2002 [], a period of over 10 months."

DISCUSSION

The trial court sustained respondents' demurrers without leave to amend on the authority of *Westlake Community Hosp. v. Superior Court* (1976) 17 Cal.3d 465, which requires that a plaintiff in Dr. Shapiro's position exhaust his administrative and/or judicial remedies before filing a civil action for damages that arise out of the termination or suspension of medical staff privileges.

Dr. Shapiro contends that *Westlake Community Hosp. v. Superior Court* does not apply because, but for the requirement of "double standard proctoring," the action of June 3, 2002, was in all respects favorable. He contends that he therefore had no reason to seek administrative, or judicial, review of this decision. As far as the "double standard" proctoring requirement laid down by the June 3, 2002 decision is concerned, Dr. Shapiro contends that this is not a disciplinary measure, and that he therefore was not under a duty to seek to set it aside in an administrative proceeding.

Respondents contend that Dr. Shapiro was required to exhaust his administrative remedies. Respondents contend that "double the standard" proctoring was a corrective and/or a disciplinary measure which Dr. Shapiro should have sought to set aside in administrative proceedings, before filing the instant action.

1. The Administrative Procedures Set Forth in the Bylaws Were Not Exhausted With Respect to Dr. Shapiro's Suspension of July/August 2001

As Dr. Shapiro has made clear, in this action he seeks damages which he contends were caused by his suspension between July 27, 2001, and June 3, 2002.

Dr. Shapiro's suspension of July 27, 2001, which was confirmed on August 13, 2001, was never subjected to administrative review. The administrative review of that decision would have taken place before the JRC, and such administrative appeals from the decision of the JRC as either one of the parties to the hearing might have taken.

It appears that initially dates were set for a hearing before the JRC, but those dates were continued as a result of the November Agreement. The postponement of the hearing was authorized by section 7.3(g) of the bylaws which provides that a hearing may be continued with the consent of the practitioner who is subject to the JRC proceedings. Accepting, as we must, the allegations of the first amended complaint as true, it also appears that the parties agreed to a further continuance of the JRC hearing, while the outside review was being performed by the AMF.

There is no further mention in the first amended complaint of the JRC, or a hearing or decision by the JRC, after the AMF rendered its report on April 2, 2002. Thus, we must, and do, assume that there was never a hearing before the JRC, and that there was therefore never a decision by the JRC regarding Dr. Shapiro's suspension of July/August 2001.[3]

The bylaws govern both the prehearing and hearing procedures before the JRC in considerable detail. The hearings require a presiding and hearing officer, a written record, and the presentation of evidence. The bylaws detail the evidence that may be considered in the hearing. (Section 7.4(b)(9).) The JRC's decision is required to be based on the evidence, and the burdens of proof are also regulated. Importantly, the JRC must render a decision that is accompanied by a report containing findings of fact and a "conclusion articulating the connection between the evidence produced at the hearing and the decision reached." (Section 7.3(h).) Also important is the process of

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[3] We note in the margin that the appellate briefs confirm that no JRC hearing ever took place.

an appeal to the Board of Directors, which is governed in detail in section 7.5 of the bylaws.

If these procedures had been followed, we would have before us the detailed findings and conclusions that would support the decision of the JRC, whatever that decision may have been. As an example, the complaint alleges that the summary suspension failed to comply with Business and Professions Code section 809.5, subdivision (a) and section 6.2 of the bylaws. The JRC's findings would have addressed the facts that support, or do not support, this allegation. The development of the factual predicates for the administrative body's decision by persons with the technical expertise in the field is the very reason to require the exhaustion of administrative remedies.

By requiring an exhaustion of administrative remedies even where the practitioner seeks only damages and not reinstatement, "courts accord recognition to the 'expertise' of the organization's quasi-judicial tribunal, permitting it to adjudicate the merits of the plaintiff's claim in the first instance. [Citation.] Finally, even if the absence of an internal damage remedy makes ultimate resort to the courts inevitable (see *Developments in the Law-Private Associations* (1963) 76 Harv.L.Rev. 983, 1075), the prior administrative proceeding will still promote judicial efficiency by unearthing the relevant evidence and by providing a record which the court may review. Accordingly, we conclude that the exhaustion of remedies doctrine fully applies to actions seeking damages for an allegedly wrongful termination of or exclusion from membership in a private association." (*Westlake Community Hosp. v. Superior Court*, *supra*, 17 Cal.3d at pp. 476-477.)

Dr. Shapiro contends that he has "substantially prevailed" as a result of the June 3, 2002 letter by the MEC which lifted the suspension and that, for this reason, he was not required to exhaust administrative remedies, as required by *Westlake Community Hosp. v. Superior Court, supra*, 17 Cal.3d at pages 476-477. This assumes that the MEC decision of June 3, 2002, was the substantive and procedural equivalent of the

decision by the JRC, as far as Dr. Shapiro's suspension of July/August 2001 is concerned. This assumption is erroneous.

The MEC's decision of June 3, 2002, did not adjudicate the substantive question whether Dr. Shapiro's suspension of July/August 2001 was justified. It is the JRC, and not the MEC, that is vested with the power to make this decision. Under the bylaws, a review of a decision to suspend a practitioner's privileges (section 7.3(b)(9)) is vested in the JRC that is appointed by the MEC (section 7.3(e)) to hear and determine the charges (section 7.3(c)) that led to the suspension. (Section 7.4(b).) The decision of the JRC is to be considered the "final recommendation of the Medical Executive Committee [MEC] to the Board of Directors," unless it is appealed to the Board of Directors. (Section 7.3(i).) However, a decision by the MEC is not a substitute for a decision by the JRC.

The same is true of the report by the AMF issued on April 2, 2002. While we accept as true the allegations of the first amended complaint that the AMF report found that there was no medical cause of Dr. Shapiro's suspension in July/August 2001, the AMF proceedings, assuming that they can be characterized as "proceedings," are not a substitute for the JRC proceedings that are detailed in, and governed by, the bylaws.

Procedurally, the MEC's decision of June 3, 2002, was not the result of the administrative review that is provided for in the bylaws. There was no adversarial hearing, there was no presentation of evidence, there were no findings of fact and no conclusion that articulated the connection between the evidence produced at the hearing and the decision reached, as required by section 7.3(h) of the bylaws. There is simply no record upon which a judicial review of the decision could be based. (See part 2, *post*.) In light of the foregoing, Dr. Shapiro's contention that he has substantially prevailed as a result of the MEC decision of June 3, 2002, is without merit. It is the JRC, and not the MEC, that is charged under the bylaws with conducting a hearing on whether the evidence warrants a suspension of a physician's privileges. We note that it is Dr. Shapiro's desire to litigate the propriety of his

suspension of July/August 2001 that requires a hearing by the JRC. If he does not wish to resolve the question of the propriety of his suspension in July/August 2001, there is no need for a proceeding before the JRC. In the same vein, if Dr. Shapiro does not believe that the "double the standard" proctoring is a limitation on his practice in terms of section 7.3(b)(11) of the bylaws, there is no need to request a hearing on this matter before a newly constituted JRC.[4]

In his reply brief, Dr. Shapiro contends that recourse to the JRC is tantamount to securing an "advisory opinion from an as-yet unconstituted judicial review committee body as to whether or not the July 27, 2001 summary suspension was properly imposed in the first place." Dr. Shapiro is mistaken. There is a JRC that was appointed in October 2001 to hear and determine the propriety of Dr. Shapiro's suspension in July/August 2001. A decision rendered by this JRC on this suspension would not be an advisory opinion, but an administrative determination of the propriety of that suspension.

Dr. Shapiro's reliance on *Joel v. Valley Surgical Center* (1998) 68 Cal.App.4th 360 is misplaced. In *Joel*, a physician was suspended by the MEC. The physician requested a hearing before the surgical center's JRC. Before the hearing was held, a settlement was reached between the physician and the center under which the suspension was terminated immediately, and without limitations, conditions or restrictions. The settlement specifically *exempted* any damage claim from the settlement that arose out of the suspension. (*Id.* at p. 364.) The physician sued for damages, and the center contended that he had not exhausted his administrative remedies, since no hearing had been held before the JRC. The Court of Appeal held that the physician was not required to exhaust administrative remedies, since the

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[4] Dr. Shapiro states in his opening brief that the first amended complaint "does not raise issues in regard to the mere 'double standard' proctoring requirements."

unconditional reinstatement gave the physician the maximum relief he could have obtained at the JRC hearing. (68 Cal.App.4th at p. 367.)

On the material issue of the resolution of the administrative proceedings, this case is the diametric opposite of *Joel v. Valley Surgical Center*. In this case, there has not been a settlement, or any kind of resolution, of the propriety Dr. Shapiro's suspension of July/August 2001. As Dr. Shapiro has made clear, his very purpose in bringing this action is to resolve by litigation the question whether his suspension in July/August 2001 was proper. In *Joel v. Valley Surgical Center*, on the other hand, the suspension was terminated and resolved without limitations and conditions by the settlement.

Simply put, in *Joel v. Valley Surgical Center*, the administrative proceedings had been terminated, which is not true of this case. After the JRC was appointed in this case, the hearing before the JRC was continued in order to allow time for a settlement of the case. However, no hearing before the JRC ever took place, and Dr. Shapiro and the Hospital never entered into an agreement terminating the proceedings before the JRC. As respondents concede, Dr. Shapiro has the right to recommence the JRC proceedings that relate to his suspension in July/August 2001, which is the proper administrative forum to consider Dr. Shapiro's suspension of July/August 2001.

Dr. Shapiro states in his opening brief that, after the initial JRC hearing had been deferred pending his evaluation at the Torrance Hospital, an "independent review" was conducted. Dr. Shapiro goes on to contend that "once that independent review had been conducted, and plaintiff had been cleared by both independent reviewers, the provisional agreement outlined in the November 8, 2001 letter was finalized in the June 3, 2002 reinstatement letter which lifted the summary suspension. . . . In light of that, there was no quasi-judicial adjudication of any issue related to involving [*sic*] the summary suspension." Dr. Shapiro contends that he was

not required to exhaust his administrative remedies because there was no quasi-judicial adjudication of his suspension of July/August 2001.

The flaw in this contention is that the November Agreement was reached before there was ever a suggestion of an "outside," or "independent," review and that, for this reason the November Agreement makes no mention of such a review. Thus, the June 3, 2002 letter could not "finalize" the independent review by the AMF allegedly agreed upon in the November Agreement, since an independent review by the AMF, or any other body, was never mentioned in the November Agreement. The November Agreement contemplated that the Hospital would monitor Dr. Shapiro's performance at the Torrance Hospital. As the complaint alleges, the purpose of the November Agreement was "frustrated" by the Torrance Hospital's suspension of Dr. Shapiro's privileges. There is simply no relationship between the November Agreement and the MEC's June 3, 2002 letter.

Be that as it may, the thrust of this contention appears to be that the parties agreed that the "independent review" by the AMF would serve as a substitute for the JRC proceedings. However, the allegations of the first amended complaint do not support this claim. The first amended complaint does not allege that the parties agreed to substitute the AMF review, or Dr. Roubin's review, for a decision by the JRC. While the complaint alleges that the MEC's June 3, 2002 letter states that the Hospital "notified Plaintiff that following its [MEC's] receipt of the April 2, 2002 report, the MEC . . . decided to lift the July 27, 2001 summary suspension . . . ," the June 3, 2002 letter, attached to, and incorporated in the complaint as an exhibit, makes no mention of the AMF review. The text of the incorporated exhibit take precedence over the contrary allegations of the complaint. (4 Witkin, Cal. Procedure, *supra*, Pleading, § 393.) Thus, we must disregard the allegation in the complaint that the MEC's decision of June 3, 2002, relied on, or took account of, the AMF review.

In sum, the factual assertion in Dr. Shapiro's brief that there was an agreement to substitute the AMF review for a review by the Hospital's JRC is not supported by

the allegations of the first amended complaint. There is nothing that shows that the "independent review" was substituted for the review by the Hospital's JRC.

There never was a review by the JRC of Dr. Shapiro's suspension of July/August 2001. Yet, this is the body that is charged with conducting a hearing, and deciding, whether that suspension was appropriate. Dr. Shapiro's failure to exhaust the administrative remedy of a hearing and decision by the Hospital's JRC bars the instant action. (*Westlake Community Hosp. v. Superior Court*, *supra*, 17 Cal.3d at pp. 476-477.)

2. Dr. Shapiro's Judicial Remedies Must Be Exhausted in the Event of an Unfavorable Outcome of the Administrative Proceedings

As the Supreme Court has explained, judicial review by mandate of an administrative decision serves several important functions. Review by mandate provides for a "uniform practice of judicial, rather than jury, review of quasi-judicial administrative decisions." (*Westlake Community Hosp. v. Superior Court, supra*, 17 Cal.3d at p. 484.) Review by mandate also serves to protect persons who are involved in the difficult process of peer review and peer discipline. "Because such individuals remain ultimately subject to suit, the procedure outlined above does not conflict with the legislative decision to afford only a conditional privilege to these decisionmakers (see Civ. Code, § 43.7); once a court determines in a mandamus proceeding that an association's quasi-judicial decision cannot stand, either because of a substantive or procedural defect, the prevailing party is entitled to initiate a tort action against the hospital and its board or committee members or staff." (*Ibid.*, fn. omitted.)

We note that when, and if, Dr. Shapiro has exhausted his administrative remedies regarding his suspension of July/August 2001, he must, if the outcome is adverse to him, exhaust his judicial remedy by a petition for a writ of mandate before proceeding with a civil action for damages.

Since Dr. Shapiro has not exhausted his administrative and judicial remedies, the demurrer to the first amended complaint was properly sustained without leave to amend.

DISPOSITION

The judgment is affirmed. Respondents are to recover their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

FLIER, J.

We concur:

COOPER, P.J.

RUBIN, J.