Filed 9/8/04 Sutter Davis Hospital v. Yolo Super. Ct. CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

SUTTER DAVIS HOSPITAL, Petitioner, v. THE SUPERIOR COURT OF YOLO COUNTY, Respondent; DONNA JOHNSON, Real Party in Interest.	C045798 (Super. Ct. No. PO-001810)

Sutter Davis Hospital (Sutter) filed in the trial court a motion for a protective order to preclude Donna Johnson from discovering a document that Sutter claimed was privileged. After the motion was denied, Sutter filed a petition for writ of mandate in this court seeking to compel the trial court to vacate its order. We issued an alternative writ and stayed the trial court's order. For reasons that follow, we conclude the document is privileged

pursuant to Evidence Code section 1157. Accordingly, we shall issue the requested peremptory writ of mandate.

FACTS

This writ proceeding arises out of an accident involving Donna Johnson's now-deceased husband, Richard, while he was a patient at Sutter.[1] On December 22, 1999, Richard, who had lung cancer, was operated on at Sutter. He was recuperating in the Intensive Care Unit (ICU), when he fell and broke his hip while attempting to get up and go to the bathroom.

Johnson filed a complaint seeking damages for elder abuse (Welf. & Inst. Code, §§ 15600 et seq.), negligence, and intentional and negligent infliction of emotional distress. She alleged that Sutter failed to properly care for her husband after his surgery, noting he should have been classified as a serious risk for a fall because his physical and mental capabilities were impaired by his medications. Although his doctor had ordered that his bed rails be left up at all times and that he be under direct observation, Sutter failed to heed those directives and allowed Richard to go to the toilet unassisted, which led to his accident.

Cindy Goss, a registered nurse, was on duty when Richard fell. In her deposition, she testified that she filled out a preprinted risk management form concerning the accident. Johnson moved to compel discovery of the document, and Sutter opposed the motion.

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[1] Because Donna Johnson and her husband shared the same surname, we will refer to her by her last name and to him by his first name to avoid confusion.

Sutter was unable to locate the form completed by Goss, and asserted that the only document it possessed concerning the incident was prepared by Sutter's former quality management director, Andrea Plon. According to Sutter, that document was protected by the attorney-client privilege. As for the document prepared by Goss, Sutter argued that, even if it existed, it was privileged under Evidence Code section 1157, which provides that records of a medical staff committee are immune from discovery when the committee has the responsibility of evaluating and improving the quality of care rendered in a hospital. (Evid. Code, § 1157, subd. (a); further section references are to the Evidence Code unless otherwise specified.)

At the hearing on the discovery motion, the trial court reserved the determination of the applicability of section 1157 until the document was found. The court ordered Sutter to provide a copy of the document to Johnson within 20 days, or to submit a statement under penalty of perjury describing the steps it had taken to find the document.

Unable to locate the document, Sutter provided a declaration of its current quality management director, Joseph Troja, outlining his efforts to locate the report Goss referred to in her deposition. Troja reported that he had searched the quality assurance and risk management records and had directed other personnel to search the documents in ICU, the medical surgical floor, and the administrative department. He spoke with his predecessors, who stated that they, too, had searched all of Sutter's quality assurance reports without success.

Around one year later, Johnson filed a "Motion to Enforce Court Order Compelling Production of Nurse Cindy Goss's Incident Report," again seeking to compel production of the report.

At the hearing on the motion, the trial court again reserved its determination of the applicability of section 1157. It ordered Sutter's counsel to personally search for the quality assurance reports. Specifically, the court ordered counsel to inspect the "Quality Assurance reports maintained in the filing cabinet or other storage facility, including closed storage containers whether on or off site."

Sutter's counsel inspected the specified locations, including the quality management department filing cabinet where the quality assurance reports were normally kept. Out of an abundance of caution, counsel inspected other drawers in the department and found the document, entitled "Quality Assessment Record for Patient Falls," in the quality management director's office in a file cabinet drawer other than the one where the quality assurance reports were usually maintained.

Sutter then filed a motion for a protective order, asserting that the report prepared by Goss is a privileged document pursuant to section 1157. In support of the motion, it presented declarations establishing the following:

According to the bylaws of Sutter's medical staff, the Medical Executive Committee (MEC) is the organized committee responsible for evaluating and improving the quality of care provided at Sutter. It is comprised of various physicians and certain administrators from the hospital. In fulfilling its duties, the MEC has delegated

some of its peer review functions to two separate committees, both of which report directly to the MEC. The Physician Performance Improvement Monitoring Committee (PPIMC) addresses issues dealing with the quality of care rendered by physicians, and the quality council addresses issues involving interdisciplinary quality of care. The quality council, which is comprised of physicians and hospital administrators, holds regular meetings to review, evaluate, and take steps necessary to improve the quality of care; its minutes are forwarded to the MEC for review and approval.

The quality management director is a member of the quality council and is a non-voting, ex-officio member of the MEC. The MEC has specifically delegated to the quality management director the responsibility for gathering, monitoring, evaluating, and reporting information on quality of care issues to the MEC, and has endorsed the use of a confidential communication document called a Quality Assessment Record (QAR) for those purposes. The QAR provides information that helps to identify patterns, trends, incidents, and issues affecting the quality of care.

All Sutter employees are required to complete a QAR if they observe or are aware of an incident involving patient care and hospital safety. The QAR is forwarded to the manager of the affected department, who then forwards it to the quality management department. Pursuant to directions from the MEC, the quality management director reviews the QAR, performs appropriate follow-up, and uses the information for reporting patient or quality issues to the MEC, the PPIMC, and the quality council.

The QARs are maintained in the quality management department, are confidential, and specific access is granted only on a need-to-know basis as determined by the quality management director and/or chief of staff. The documents are to be reviewed only by members of the MEC, the PPIMC, or the quality council when appropriate. In implementing the use of QARs, the MEC intended that they be privileged under section 1157, and the documents are not provided to the Department of Health Services or other state agencies as part of any state mandated reporting requirements.

During her tenure as quality management director, Andrea Plon was conducting a study on patient falls for the quality council when she determined the QAR in use at that time did not provide sufficient information necessary to complete the study. Therefore, Plon devised a "Quality Assessment Record for Patient Falls" to be used by Sutter staff. The QAR for Patient Falls was subject to the same reporting process as the original QARs. Plon mistakenly indicated on the document form that it was confidential and protected by the attorney-client privilege, when she actually meant to indicate it was privileged under section 1157.

On December 25, 1999, Goss was working in the ICU at Sutter when Richard fell. Before her shift ended, Goss filled out a QAR for Patient Falls and gave it to her nursing supervisor with the understanding that it would be forwarded to the quality management department. Goss reviewed the document that was the subject of Sutter's motion for a protective order and declared it is the same document that she completed on the night of Richard's fall.

Plon included the information from all the QARs for Patient Falls between 1997 and 1999 to prepare a performance improvement report, which she submitted to the quality council. The minutes of the quality council's meeting on February 9, 2000, disclose that the council reviewed and discussed Plon's report. Minutes of the MEC's meeting on February 23, 2000, reflect that it also reviewed the report.

According to Plon, who had not been employed as the quality management director since April 2001, she had forgotten about the study and the specialized QARs she had generated until she was shown the document which counsel located.

The trial court denied Sutter's motion for a protective order, ruling Sutter had not shown that the QAR for Patient Falls filled out by Goss is a record of either a peer review body or an organized committee of medical staff in a hospital within the meaning of section 1157. According to the court, the evidence did not suggest that either the quality council or the MEC ever reviewed the QAR for Patient Falls. Furthermore, the fact Sutter was unable to locate the QAR for Patient Falls for approximately a year suggested that the report was not part of the hospital's normal peer review process.

DISCUSSION

I

Section 1157 provides in relevant part: "(a) Neither the proceedings nor the records of organized committees of medical . . . staffs in hospitals, or of a peer review body, . . . having the responsibility of evaluation and improvement of the

quality of care rendered in the hospital, . . . shall be subject to discovery."

A "medical staff committee" or "peer review body" includes not only committees comprised solely of physicians, but also multidisciplinary committees in which the majority of members are nurses and administrators. (*Santa Rosa Memorial Hospital v. Superior Court* (1985) 174 Cal.App.3d 711, 718-721.) The privilege extends to committees that review not only physicians but also any other aspects of hospital activities that relate to "'evaluation and improvement of the quality of care rendered in the hospital.'" (*Id.* at pp. 720-721.)

The important policy underlying section 1157 was explained in *Matchett v. Superior Court* (1974) 40 Cal.App.3d 623 as follows:

"Section 1157 was enacted upon the theory that external access to peer [review] investigations conducted by staff committees stifles candor and inhibits objectivity. It evinces a legislative judgment that the quality of in-hospital medical practice will be elevated by armoring staff inquiries with a measure of confidentiality." (*Id.* at p. 629, fn. omitted.)

"This confidentiality exacts a social cost because it impairs malpractice plaintiffs' access to evidence. In a damage suit for in-hospital malpractice against doctor or hospital or both, unavailability of recorded evidence of incompetence might seriously jeopardize or even prevent the plaintiff's recovery. Section 1157 represents a legislative choice between competing public concerns. It embraces the goal of medical staff candor at the cost of

impairing plaintiffs' access to evidence." (*Matchett v. Superior Court, supra*, 40 Cal.App.3d at p. 629, fn. omitted.)

In other words, the protection against disclosure is designed to foster constructive criticism with the goal of enhancing safety and the quality of care. "'Without this frank exchange of information, medical staffs will have no legal grounds upon which to initiate corrective action (such as restricting privileges, or requiring monitoring or further education) that could be critical to the protection of patients. Clearly such a result would be contrary to the Legislature's intent in enacting section 1157.'" (*Alexander v. Superior Court* (1993) 5 Cal.4th 1218, 1228, fn. omitted (hereafter *Alexander*), disapproved on another point in *Hassan v. Mercy American River Hospital* (2003) 31 Cal.4th 709, 724, fn. 4.)

Section 1157's prohibition against discovery has been described as a "complet[e] protect[ion]" (*Bell v. Sharp Cabrillo Hospital* (1989) 212 Cal.App.3d 1034, 1046), an "absolute" immunity (*Snell v. Superior Court* (1984) 158 Cal.App.3d 44, 49), and a "blanket exclusion" (*Roseville Community Hospital v. Superior Court* (1977) 70 Cal.App.3d 809, 813). As a general rule, the statutory protection against discovery is construed expansively and any exceptions narrowly. (*Scripps Memorial Hospital v. Superior Court* (1995) 37 Cal.App.4th 1720, 1724.)

II

Sutter contends the trial court erred in determining the QAR for Patient Falls prepared by Goss is not a privileged document immune from discovery under section 1157.

Review by way of extraordinary writ is appropriate because Sutter seeks relief from a discovery order that may undermine a privilege, and appellate remedies are not adequate once the privileged information has been disclosed. (*Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 330.)

Discovery orders are reviewed under the abuse of discretion standard, and we defer to the trial court's factual findings concerning privilege if they are supported by substantial evidence. (*Scripps Health v. Superior Court* (2003) 109 Cal.App.4th 529, 533; *National Football League Properties, Inc. v. Superior Court* (1998) 65 Cal.App.4th 100, 108-109.) "Where there is a basis for the trial court's ruling and it is supported by the evidence, a reviewing court will not substitute its opinion for that of the trial court. [Citation.] The trial court's determination will be set aside only when it has been demonstrated that there was 'no legal justification' for the order granting or denying the discovery in question. [Citations.]" (*Lipton v. Superior Court* (1996) 48 Cal.App.4th 1599, 1612.)

The burden of establishing entitlement to nondisclosure rests with the party resisting discovery (*Santa Rosa Memorial Hospital v. Superior Court, supra,* 174 Cal.App.3d at p. 727; *Brown v. Superior Court* (1985) 168 Cal.App.3d 489, 500-501), which is Sutter in this case.

Sutter contends it met its burden by presenting uncontradicted evidence establishing that the QAR for Patient Falls prepared by Goss is covered by section 1157 since it was part of an investigation organized by a peer review committee for the express purpose of

evaluating or improving the quality of care. Sutter argues the trial court erred in determining the document was not privileged because, in the court's view, it was not maintained for, or reviewed by, a peer review committee. According to Sutter, the privilege applies regardless of whether the entire MEC and quality council actually reviewed the document. It is sufficient that Plon, who was a member of those committees, reviewed the document and then used the information to prepare a report on patient falls, which was submitted to the MEC and quality council. Sutter also asserts that the fact it could not locate the document immediately upon request has no bearing on whether the QAR for Patient Falls is a record of a medical staff committee having responsibility for the evaluation and improvement of the quality of care.

Johnson counters that the QAR for Patient Falls is not a record of the MEC or a medical staff committee, but a record maintained by the hospital's administration.

As the Supreme Court explained in *Alexander*: "Hospitals have a dual structure. First, an administrative governing body (often comprised of persons other than health care professionals) takes ultimate responsibility for the quality and performance of the hospital. Second, an 'organized medical staff' entity (composed of health care professionals) has responsibility for providing medical services, and is 'responsible to the governing body for the adequacy and quality of the medical care rendered to patients in the hospital.' (Cal. Code Regs., tit. 22, § 70703, subd. (a); see also *id.*, § 70701(a)(1)(F); Bus. & Prof. Code, § 805.5.) [¶] The medical staff entity is required to perform various functions (e.g.,

'executive review, credentialing, . . . utilization review, infection control') through one or more committees. (Cal. Code Regs., tit. 22, § 70703, subd. (d).)" (*Alexander*, *supra*, 5 Cal.4th at p. 1224.)

"Section 1157 'applies *only* to records of and proceedings before medical investigative committees.' [Citation.] Information developed or obtained by hospital administrators or others which does not derive from an investigation into the quality of care or the evaluation thereof by a medical staff committee, and which does not disclose the investigative and evaluative activities of such a committee, is not rendered immune from discovery under section 1157 merely because it is later placed in the possession of a medical staff committee or made known to committee members; and this may be so even if the information in question may be relevant in a general way to the investigative and evaluative functions of the committee. Just as '"a party cannot [under the attorney-client privilege] conceal a fact merely by revealing it to his lawyer"' [citations], a hospital cannot render its files immune from discovery simply by disclosing them to a medical staff committee. Hospital administrators cannot, in other words, evade their concurrent duty to insure the adequacy of medical care provided patients at their facility--the duty articulated in *Elam* [*v. College Park Hospital* (1982) 132 Cal.App.3d 332[2]]--simply by purporting to have

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[2] *Elam v. College Park Hospital, supra,* 132 Cal.App.3d 332 held that a hospital has a duty to use reasonable care in selecting, reviewing, and periodically evaluating the competency of its

delegated that entire responsibility to medical staff committees. The responsibilities of hospital administrators pertaining to the quality of in-hospital care will, of course, usually be related to the similar duties of medical staff committees. Nonetheless, the responsibilities of hospital administrators are independent of those resting with medical staff committees." (*Santa Rosa Memorial Hospital v. Superior Court*, *supra*, 174 Cal.App.3d at p. 724; accord, *Willits v. Superior Court* (1993) 20 Cal.App.4th 90, 100-101.)

In this case, no evidence was presented to the trial court showing that the QAR for Patient Falls was an administrative record of Sutter as opposed to a record of a medical staff committee responsible for evaluating and improving patient care in the hospital. The uncontradicted evidence disclosed that the document was part of a quality of care investigation by Plon, the quality management director, on behalf of the quality council, the committee to whom the MEC delegated the responsibility for evaluating and improving the quality of care provided by medical staff who were not physicians. Plon collected information from the QARs for Patient Falls and prepared a report, which she then submitted to the quality council and the MEC, although she did not submit the individual QAR for Patient Falls to these committees.

Alexander observed that according to the plain language of section 1157, the privilege is not limited to records *generated* by

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medical staff to ensure that patients receive adequate medical care at the hospital's facility. (*Id.* at p. 346.)

medical staff committees, it also encompasses materials *submitted* to a committee for review. (*Alexander*, *supra*, 5 Cal.4th at p. 1225.) It appears the trial court may have interpreted this observation as a requirement that the materials be submitted to the entire committee to be privileged; in its ruling denying the protective order, the court emphasized that the QAR for Patient Falls was not specifically submitted to the entire medical staff committee. However, nothing in *Alexander* holds that section 1157 requires that the materials be submitted to the entire medical staff committee for the privilege to apply. All that is required is evidence demonstrating the material is a record of a medical staff committee charged with evaluating and improving the quality of patient care. (§ 1157, subd. (a).)

Here, Goss followed established procedure and submitted the QAR for Patient Falls to her supervisor to submit to the quality management director, who was performing an investigative study on patient falls for the quality council. As we explained previously, the MEC has specifically delegated to the quality management director the responsibility for gathering, monitoring, evaluating, and reporting information on quality of care issues to the MEC, and has endorsed the use of a confidential communication document called a quality assessment record, or QAR, for those purposes. The QAR for Patient Falls was simply a modified form of this document, which provided Plon with specific information more relevant to the study she was performing on behalf of the quality council and the MEC. Plon, who was a member of the quality council and an ex-officio member of the MEC, reviewed all the QARs for

Patient Falls and prepared a report to submit to the quality council and the MEC based on the information contained therein. That Plon did not submit the individual documents underlying the report to the rest of the quality council or to the MEC does not negate the fact that those materials represented information derived from an investigation into the quality of care or the evaluation thereof by a medical staff committee, and were reviewed by a committee member before preparing a final report. As such, the QARs for Patient Falls were records of the quality council and the MEC, giving the statute the broad interpretation that was intended. (*Alexander*, *supra*, 5 Cal.4th at p. 1225, fn. 6 ["[I]t is unlikely the Legislature intended a narrow or limited definition of 'records' in section 1157 [subdivision] (a)"].)

To support its determination that the QAR for Patient Falls was not a privileged document, the trial court also emphasized that the fact Sutter could not find the document in a timely fashion indicated it was not part of the normal peer review process and, thus, it was not a record of a medical staff committee. We agree with Sutter that this does not refute its uncontradicted evidence that the QAR for Patient Falls was part of an investigation into patient care on behalf of the quality council and the MEC, with the goal of improving patient care by decreasing the incidence of future falls.

Plon was performing a specific study, with a specialized one-page QAR limited to patient falls. It is not unusual that she did not file these documents in the same place that the typical three-page QARs were generally kept. Moreover, it is not surprising that

Sutter may have had difficulty locating the QAR for Patient Falls given that (1) Plon had left her position as quality management director more than a year before Johnson's initial motion to compel production of the document prepared by Goss, (2) two other people occupied the position of quality management director after Plon completed the study on patient falls, and (3) those people were not involved in Plon's study on behalf of the quality council and, thus, presumably did not know they should not be searching for a typical QAR in the place QARs were normally kept. As the trial court remarked when counsel stated he had found the document, "counsel is sometimes better suited" to search for documents when there is staff turnover "because the new people come in and they only know what the people know. If it occurred before they got there, they don't know."

Accordingly, based on the uncontradicted evidence that the QAR for Patient Falls was a document used by the quality council and the MEC to investigate patient falls in order to improve the quality of patient care, and that this document was reviewed by Plon, who was a member of both committees, the trial court erred in denying Sutter's motion for a protective order.

III

In arguing that the QAR for Patient Falls prepared by Goss is not protected by section 1157, Johnson relies on testimony in depositions taken after the trial court issued its ruling on December 11, 2003. Specifically, she relies on the depositions of Rebecca Welty, Joseph Troja, Susan Gilpatrick, Lisa Clark-Barlow, and Janet Wagner.

Sutter responds that we should not consider Johnson's additional evidence because it was not before the trial court when it ruled on the protective order. Sutter is correct.

In reviewing a trial court's ruling, it is improper to consider documents that were not before the trial court. (*Anti-Defamation League of B'nai B'rith v. Superior Court* (1998) 67 Cal.App.4th 1072, 1098, fn. 12.) In fact, "[n]o rule of appellate practice is more firmly established than that which precludes a reviewing court from considering evidence which was not presented to or passed upon by the trial court. [Citation.] Our review is confined to the proceedings which occurred in the court below and are brought up for review in a properly prepared record on appeal." (*Schumpert v. Tishman Co.* (1988) 198 Cal.App.3d 598, 601-602, fn. 2; see also *Pulver v. Avco Financial Services* (1986) 182 Cal.App.3d 622, 632 [documents not before the trial court cannot be included as part of the record on appeal and must be disregarded as beyond the scope of appellate review].)

Furthermore, other than setting forth a synopsis of the new evidence, Johnson fails to provide any cognizable argument and supporting legal authority demonstrating how the majority of the new evidence has any relevance to the issue of whether the QAR for Patient Falls is a record of a medical staff committee responsible for evaluating and improving patient care. It is the duty of Johnson's counsel to support his claim with argument and citation to authority. "We are not obliged to perform the duty resting on counsel." (*Estate of Hoffman* (1963) 213 Cal.App.2d 635, 639.)

In any event, even if the new evidence is considered, it does not contradict Sutter's showing that the QAR for Patient Falls is privileged.

Johnson points out that Rebecca Welty, the regional quality management executive and a former interim quality management director, searched for Goss's report but she could not find it. She believed that the document was later found in the office Joseph Troja used to occupy, which is consistent with Sutter's representation that the document was found in the quality management department. Welty had reviewed the document but did not know whether it was completed by Goss. This does not contradict Goss's declaration that she had reviewed the document in question and that it was the one she prepared on the night of the incident.

Johnson emphasizes Troja testified that when he searched for the missing document, he was searching for a three-page, green QAR, and not a one-page QAR for Patient Falls, which he had never seen. Rather than defeating Sutter's showing, this helps to explain why Troja was unable to find the document during his search. He did not know that Plon, his predecessor, had generated a special form for the specific study she was conducting, so he did not know to look for that form.

Susan Gilpatrick, the quality improvement manager, testified that Sutter now uses a one-page QAR form she helped to develop, which is different than the previous three-page forms. This has no bearing on whether the QAR for Patient Falls form generated by Plon is a record of a medical staff committee. Gilpatrick stated the missing form had been found in her office, which was consistent

with what Sutter represented about the document being in the quality management department. She also stated the form she was shown--and that she understood to be Goss's report--was undated and unsigned, although Goss verified that the handwriting on the form belonged to her. The blank copy of the QAR for Patient Falls in the record reveals there is no signature line, so it is not surprising if Goss did not sign the one she prepared. More importantly, whether the form was signed is irrelevant because it has no bearing on whether it is a privileged document under section 1157.

Johnson asserts that Lisa Clark-Barlow, who was Goss's former nurse manager in the ICU but did not know if she was the manager on the night Richard fell, testified that she thought Plon was considering doing a study on patient falls for the Joint Commission on Accreditation of Health Organizations (JCAHO). She knew that Plon had a specific one-page form for patient falls, that her nurses had used the forms and passed them on to her, and that she forwarded the forms to Plon. She did not believe she had ever talked to Goss "[a]bout this particular fall and whether she passed an incident report along to [Clark-Barlow] about the fall after she filled it out." She also did not remember hearing about a patient who had broken his hip in the ICU.

The record discloses Clark-Barlow did not know why Plon was preparing the report on falls, and her belief that it was "a JCAHO thing" was speculation which she offered when pressed by Johnson's counsel. This is insufficient to contradict Plon's express declaration concerning why she was conducting the study and why

she devised the QAR for Patient Falls form. The fact that Clark-Barlow could not remember the fall or whether she had ever talked to Goss about it is not surprising considering that she could not even remember if she was the ICU nurse manager on the night of the accident. Her lack of recall does not refute or detract from Sutter's affirmative evidence that Goss prepared a QAR on Patient Falls and that this document is a record of a medical review staff within the meaning of section 1157.

The most damaging evidence on which Johnson relies is from the deposition of Janet Wagner, Sutter's chief administrative officer. Wagner testified that patient injuries were reported to the risk manager, who would input the information into a database otherwise know as "trended data," and that data may or may not be reviewed by the quality council. Wagner also stated that the quality council is not a peer review committee.

Wagner's statements are taken out of context by Johnson. It appears Wagner was simply distinguishing the quality council from the PPIMC, by referring to the latter as the peer review committee, since it is the committee that reviews physician performance. Wagner stated that the risk manager would forward information to either the quality council or the PPIMC, which were subsidiaries of the MEC. Wagner did not state that the quality council was not a medical staff committee charged with evaluating and improving patient care. In fact, she stated it was "a committee of the medical staff for process improvement."

Accordingly, Johnson's reliance on the aforementioned deposition testimony is misplaced.

IV

Johnson claims section 1157 applies only to malpractice actions and is inapplicable in this case, which alleges that Richard suffered elder abuse while under Sutter's care. (See Welf. & Inst. Code, §§ 15610.07, 15610.57.)

Johnson's argument is contrary to the plain language of section 1157 and to the Legislature's intent in enacting the statute. Section 1157 unambiguously states that neither the proceedings nor the records of medical committees responsible for the evaluation and improvement of quality of care "shall be subject to discovery." "[T]he term 'discovery' in section 1157 is to be given its well-established legal meaning of a formal exchange of evidentiary information between parties to a pending action . . . ." (*Arnett v. Dal Cielo* (1996) 14 Cal.4th 4, 24.) The prohibition is not limited to discovery in malpractice actions; rather, the immunity applies to any civil action not specifically exempted by section 1157 (*Willits v. Superior Court, supra,* 20 Cal.App.4th at pp. 101-102 [applying section 1157 in a negligence action by a nurse, who contracted HIV as the result of a needle stick injury she incurred while drawing blood from an AIDS patient]; *California Eye Institute v. Superior Court* (1989) 215 Cal.App.3d 1477, 1484-1485 [applying section 1157 in an action by a physician claiming malicious and wrongful interference with staff privileges]), and to certain criminal actions, although there is a split of authority on this latter point. (*Scripps Memorial Hospital v. Superior Court, supra,* 37 Cal.App.4th at pp. 1728-1730 [section 1157 protects records of certain health care committees

from discovery in a criminal action]; compare *People v. Superior Court* (*Memorial Medical Center*) (1991) 234 Cal.App.3d 363, 387 [records and proceedings of all hospital peer review committees are not immune from discovery in a criminal action].)

To interpret section 1157 in the manner Johnson suggests would undermine the legislative policy of encouraging candor and frankness in the meetings and records of medical staff committees in order to improve patient care. This is so because the privilege would be limited to malpractice actions, and committees would have to guard against documenting matters that could reflect adversely on the hospital or medical staff in case they were subjected to other types of lawsuits. As *People v.* Superior Court (*Memorial Medical Center*), *supra*, 234 Cal.App.3d 363 explained: "[S]ection 1157 is an attempt to prevent a chilling effect on the accurate evaluation of health care facilities which would lead to a decline in the quality of health care in California. [¶] In balancing a plaintiff's concern in obtaining access to . . . committee records versus the public interest in a high-quality health care system, the Legislature drew a distinction between the rights of the individual, and the rights of the many. The confidentiality bestowed by section 1157, then, has its price: it denies a plaintiff access to information which could prevent her from recovering . . . . Yet it is clearly the judgment of the Legislature that this price is worth paying in order to protect the prospective health of the public as a whole." (*Id.* at p. 373.)

Accordingly, we decline to adopt Johnson's position that statutes prohibiting elder abuse must take precedence over the

privilege set forth in section 1157. "It is not our function as a judicial body to reweigh the competing interests considered by the Legislature based on our perception of which consideration may or may not be more important." (*California Eye Institute v. Superior Court, supra,* 215 Cal.App.3d at p. 1486.)

For all the reasons stated above, the trial court erred in denying Sutter's motion for a protective order with respect to the QAR for Patient Falls completed by Goss.

DISPOSITION

Let a peremptory writ of mandate issue, directing the trial court to vacate its order and to enter a new order in favor of Sutter. Having served its purpose, the alternative writ is discharged, and the stay previously issued by this court is vacated upon the finality of this opinion. The parties shall bear their own costs in this writ proceeding. (Cal. Rules of Court, rule 56.4(a).)

SCOTLAND, P.J.

We concur:

BLEASE, J.

SIMS, J.