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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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 SEVEN

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| MICHAEL H. TOLWIN,<br><br>Plaintiff and Appellant,<br><br>v.<br><br>CEDARS-SINAI MEDICAL CENTER et al.<br><br>Defendants and Respondents. | B184632<br><br>(Los Angeles County Super. Ct. No. BS086297) |

APPEAL from a judgment of the Superior Court of Los Angeles County, Dzintra Janavs, Judge. Affirmed.

John D. Harwell for Plaintiff and Appellant.

Catherine I. Hanson and Gregory M. Abrams for California Medical Association and the California Psychiatric Association, as Amicus Curiae on behalf of Plaintiff and Appellant.

Bingham McCutchen, Susan L. Hoffman and Hwannie Lee; Gordon D. Simonds, Jr.; Greines, Martin, Stein & Richland, Robin Meadow and Jens B. Koepke, for Defendants and Respondents.

Michael H. Tolwin, M.D., a psychiatrist, appeals from the judgment denying his petition for a writ of administrative mandamus, directed to Cedars-Sinai Medical Center (Cedars) and the Medical Staff of Cedars-Sinai Medical Center (medical staff), seeking to vacate the decision of Cedars's board of directors (Board) confirming the report and recommendation of the Board's appeal committee regarding Dr. Tolwin's medical disciplinary matter. Dr. Tolwin contends Cedars's peer review system violates California law and the original recommendation of the hearing committee to rescind his summary suspension, subsequently modified by the medical executive committee (MEC) and the Board's appeal committee, should be reinstated. We affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

1. *Restrictions on Dr. Tolwin's Staff Privileges and His Subsequent Summary Suspension*

On April 30, 1998 Michael L. Langberg, M.D., senior vice-president for medical affairs and chief medical officer of Cedars, imposed a summary restriction on Dr. Tolwin's clinical privileges at Cedars in the form of a mandatory review of Dr. Tolwin's next 10 admissions to the hospital by the department of psychiatry's peer review committee. In a letter to Dr. Tolwin, Dr. Langberg described his concerns about four cases, one involving a three-month admission, the others involving Dr. Tolwin's documentation practices. These concerns had previously been the subject of discussions between Dr. Tolwin and the medical director of the psychiatric unit at the hospital, Dr. Alan Schneider, and the chair of the psychiatry department, Dr. Peter Panzarino.

Following its review of Dr. Tolwin's next 10 admissions and an interview with Dr. Tolwin, the peer review committee concluded Dr. Tolwin's clinical performance fell below the standard of care for both the department of psychiatry and the community and recommended immediate removal of Dr. Tolwin's staff privileges. The committee also recommended that Dr. Tolwin be ineligible for reinstatement for two years and that, in the event of reapplication for staff privileges, he demonstrate satisfactory completion of specified educational and clinical supervision requirements. These recommendations were adopted by Dr. Langberg. On May 26, 1998 Dr. Tolwin was notified of the charges

against him and advised his staff privileges were suspended immediately and his privileges and membership on the medical staff would be terminated subject to his right of appeal. An amended notice of charges was provided to Dr. Tolwin on June 24, 1998.

2. *Dr. Tolwin's Appeal and the Report of the Hearing Committee*

Pursuant to his rights as detailed in the medical staff's bylaws,[1] Dr. Tolwin, through counsel, requested a hearing on all charges against him, as well as a review of the April 30, 1998 summary restriction and the May 26, 1998 summary suspension and recommendation for termination of all privileges and membership. Cedars convened a hearing committee of physicians from inside and outside the department of psychiatry, which heard testimony, including expert testimony, on 30 hearing dates between July 1998 and October 2002.[2] Both parties were permitted to present closing briefs. After reviewing the briefs, the hearing committee heard oral argument on December 9, 2002.[3]

The hearing committee issued its decision and written report on February 5, 2003, concluding, "By his conduct and performance Dr. Tolwin has failed to meet applicable

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[1] Business and Professions Code section 809, subdivision (a)(8), declares the Legislature's intent "that written provisions implementing Sections 809 to 809.8, inclusive [governing peer review of professional health care services], in the acute care hospital setting shall be included in medical staff bylaws that shall be adopted by a vote of the members of the organized medical staff and shall be subject to governing body approval, which approval shall not be withheld unreasonably." "It is these bylaws that govern the parties' administrative rights." (*Unnamed Physician v. Board of Trustees* (2001) 93 Cal.App.4th 607, 617*; Kaiser Foundation Hospitals v. Superior Court* (2005) 128 Cal.App.4th 85, 97.)

[2] "The function of the Hearing Committee is 'to provide a means for gathering and evaluating relevant information and evidence, resolving factual disputes and arriving at thoughtful conclusions and meaningful recommendations.'" (*Tolwin v. Cedars-Sinai Medical Center* (Apr. 24, 2000, B135140) [nonpub. opn.] (*Tolwin I*), at p. 2.) The principal parties before the hearing committee are the suspended staff member and the medical staff. (*Ibid*.)

[3] The hearing process extended for more than four years because of the unavailability of members of the committee and requests for continuances of scheduled hearing dates by both Dr. Tolwin (on 11 occasions) and Cedars (seven occasions).

standards of care." The hearing committee specifically found "there were significant clinical deficiencies in the ability of Dr. Tolwin to recognize, diagnose and treat certain types of personality disorders in an inpatient setting." It also found "significant issues with documentation and legibility that were below the applicable standard of care at Cedars and in the community." The hearing committee noted Dr. Tolwin had failed to address the concerns raised in the initial mandatory review of his admissions and did not self-correct his practice. It also concluded Dr. Tolwin's conduct at the hearing itself demonstrated a lack of insight as to the reasons for the actions taken against him.

The committee recommended that Dr. Langberg's April 30, 1998 summary restriction of Dr. Tolwin's clinical privileges (mandatory review of his next 10 admissions) be sustained, finding the medical staff had established by a preponderance of the evidence, based on information known at the time, the failure to restrict Dr. Tolwin's clinical privileges may have resulted in imminent danger to patients and therefore was reasonable and warranted. However, the hearing committee concluded the medical staff had not similarly established a failure to summarily suspend Dr. Tolwin's clinical privileges on May 26, 1998 may have resulted in imminent danger to patients. Nonetheless, based upon the information provided to Dr. Langberg by the peer review committee and by the chairman of the department of psychiatry and his representatives, the hearing committee found "Dr. Langberg's action was reasonable and warranted as of May 26, 1998 (the date he took the action)."

The hearing committee also noted it had found "a number of disturbing irregularities" in its review of Dr. Tolwin's case on the part of the medical staff that "potentially interfered with the process of peer review at the time of those meetings [in May 1998]." Because of those irregularities, the hearing committee recommended rescinding the summary suspension of Dr. Tolwin's privileges and immediately reinstating Dr. Tolwin to active staff status with certain restrictions, including, during the two years following his reinstatement, that one of every four admissions by Dr. Tolwin exceeding two weeks in length be reviewed; Dr. Tolwin complete an approved course in dynamic psychotherapy; and Dr. Tolwin demonstrate compliance with all chart

documentation requirements, including timely completion of admission notes, and adequate communication with hospital personnel.

3. *Review of the Hearing Committee Recommendations by the MEC*

As provided by the medical staff bylaws and hearing manual, the MEC automatically reviewed the hearing committee's report and recommendation after receiving briefs from Dr. Tolwin and the medical staff.[4] As reflected in its report to the Board, dated March 12, 2003, the MEC determined Dr. Tolwin had been afforded a fair hearing and, with two exceptions, the recommendations of the hearing committee were supported by the evidence, consistent with the delivery of good patient care and the protection of patients from harm and consistent with all applicable rules, policies and accepted practices at Cedars. However, the MEC concluded the evidence did not support the hearing committee's recommendation the May 26, 1998 summary suspension be rescinded and its proposal that one of every four of Dr. Tolwin's admissions that exceed two weeks in length be submitted for proctoring for the next two years. Instead, the MEC recommended to the Board the summary suspension of Dr. Tolwin's privileges be upheld and Dr. Tolwin's reinstatement be conditioned on submission of the first 10 admissions that exceed two weeks in length for concurrent proctoring. All other conditions for reinstatement recommended by the hearing committee were incorporated into the MEC's recommendation to the Board.

4. *Dr. Tolwin's Appeal to the Board*

On May 9, 2003 Dr. Tolwin appealed the MEC's decision to the Board, which convened its appeal committee to review the matter. The appeal committee reviewed the entire record of the hearing committee and considered additional evidence (both

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[4] As we explained in *Tolwin I*, the MEC reviews the report of the hearing committee and, if it chooses, the record, to ensure the procedures utilized by the hearing committee were fair to the aggrieved physician and the recommendations made to the Board are supported by the evidence and consistent with Cedars's constitution, rules and regulations, protocols and policies, as well as with the accepted practices of the medical staff and the hospital's various departments.

documents and testimony) presented by representatives of Dr. Tolwin and the medical staff, as well as a letter provided by Cedars's chief of staff in response to a specific request for further information regarding the reasons the MEC declined to follow the hearing committee's recommendation regarding rescission of the summary suspension and modified its recommendation regarding the post-reinstatement monitoring condition.

As to the summary suspension issue, in his supplemental letter the chief of staff explained the MEC concluded, under the scope of authority granted by the medical staff bylaws, the appropriateness of a summary suspension must be judged by the factual information available to the chief medical officer (Dr. Langberg) at the time the suspension was issued. Thus, the MEC gave great weight to the hearing committee's determination, based on the information provided to Dr. Langberg prior to his decision to suspend Dr. Tolwin, Dr. Langberg's action was reasonable and warranted when taken. The MEC found, although the hearing committee stated the correct standard for evaluating a summary suspension, it failed to apply that standard, instead relying on information developed during the hearing process itself not only to determine whether Dr. Tolwin's staff privileges should be terminated but also to evaluate retrospectively the propriety of Dr. Langberg's summary suspension.

As to the monitoring condition, the chief of staff stated the MEC modified the hearing committee recommendation because it concluded, based on the severe deficiencies in Dr. Tolwin's performance identified by the committee, future patients might be exposed to harm if only one of four of Dr. Tolwin's admissions over the next two years were subjected to mandatory concurrent review.

By unanimous vote, the appeal committee recommended Dr. Tolwin's appeal be denied and the Board confirm the MEC's decision. In its report dated July 10, 2003, the committee found substantial evidence supported the MEC's determinations and it had appropriately altered the hearing committee recommendations with respect to (a) upholding Dr. Langberg's decision to summarily suspend Dr. Tolwin because Dr. Langberg had correctly applied the standard for suspension based on the information

then available to him and (b) the nature of monitoring to be imposed as a condition to Dr. Tolwin's reinstatement based on the hospital's need to protect its patients from harm.

At a meeting on July 28, 2003 the Board unanimously accepted the recommendations of its appeal committee.

5. *Dr. Tolwin's Petition for a Writ of Mandate*

On October 14, 2003 Dr. Tolwin filed a petition for writ of mandate, pursuant to Code of Civil Procedure section 1094.5, to direct Cedars and the medical staff to reinstate the decision of the hearing committee rescinding his summary suspension, as well as to eliminate any requirement for proctoring or concurrent monitoring of his patient admissions (whether as originally recommended by the hearing committee or as modified by the MEC and the Board). Cedars and the medical staff filed a verified answer to the petition on November 13, 2003. On May 17, 2005 the trial court denied the petition, concluding that both the MEC and the Board's appeal committee had properly reviewed the hearing committee's decision and that the modifications to the recommendations of the hearing committee were consistent with applicable law and in accord with their responsibilities under the medical staff bylaws and policy manual. The court also found both the MEC and the appeal committee had properly accorded "great weight" to the hearing committee's decision "when they recommended adoption of the Hearing Committee's most fundamental conclusion: in lieu of termination, Petitioner should be reinstated subject to certain restrictions. [¶] . . . [¶] The Appeal Committee applied the correct standard of review, and its recommendations are supported by substantial evidence in light of the whole record, and neither irrational nor unreasonable."[5]

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[5] The trial court observed the hearing committee had found Dr. Tolwin had not been deprived of a fair hearing, notwithstanding the "irregularities" it cited in recommending rescission of his summary suspension. The court then noted it, too, was "perturbed by the conduct described in the record," but held the MEC and appeal committee's conclusion that Dr. Tolwin was afforded a fair procedure is not erroneous.

## CONTENTIONS

Dr. Tolwin contends his petition for writ of mandate was erroneously denied because (i) Cedars's procedure for MEC and Board review of the hearing committee decision and recommendations violates California law and denies him a fair procedure and (ii) the MEC and Board appeal committee failed to give the findings and recommendation of the hearing committee to rescind his summary suspension the weight required by both Cedars's internal procedural manuals and California law.

## DISCUSSION

1. *Standard of Review*

In an administrative mandamus action involving a disciplinary decision by a private hospital's board of directors or other governing body, the function of the appellate court is usually the same as the superior court's: First, we determine whether the hospital's governing board used the correct standard in conducting its review of the matter, an issue we consider de novo. (*Weinberg v. Cedars-Sinai Medical Center* (2004) 119 Cal.App.4th 1098, 1106-1107 (*Weinberg*); see *Huang v. Board of Directors* (1990) 220 Cal.App.3d 1286, 1294-1295.) Second, we review the administrative record to determine whether the governing body's findings are supported by substantial evidence in light of the whole record. (*Weinberg*, at p. 1107; *Hongsathavij v. Queen of Angels etc. Medical Center* (1998) 62 Cal.App.4th 1123, 1136-1137 (*Hongsathavij*).)

Whether the administrative procedures used by Cedars to discipline physicians satisfy California statutory law and comport with the common law requirement of a fair procedure is a question of law we review de novo. (See *Weinberg, supra*, 119 Cal.App.4th at p. 1114; see generally *Veguez v. Governing Bd. of the Long Beach Unified School Dist.* (2005) 127 Cal.App.4th 406, 414.)

2. *Cedars's Disciplinary Process Satisfies California Law and Provides Suspended Staff Members a Fair Procedure*

The core of Dr. Tolwin's challenge to Cedars's disciplinary system is his contention that permitting the MEC to substitute its own judgment for the hearing committee's recommendation if it views the evidence differently, as it did in rejecting the

recommendation to rescind Dr. Tolwin's summary suspension, and then authorizing the Board to review the MEC's recommendations, rather than the hearing committee's, violate California law, which, according to Dr. Tolwin, requires both the MEC and the Board's appeal committee to affirm the conclusions of the hearing committee if they are supported by substantial evidence. We previously rejected this argument in *Tolwin v. Cedars-Sinai Medical Center* (Apr. 24, 2000, B135140) [nonpub. opn.] (*Tolwin I*), which, although not a published decision, precludes relitigation of that issue under the law of the case doctrine. (*Davies v. Krasna* (1975) 14 Cal.3d 502, 507 [under the law of the case doctrine, "a matter adjudicated on a prior appeal normally will not be relitigated on a subsequent appeal in the same case"]; *Shelton v. Rancho Mortgage & Investment Corp*. (2002) 94 Cal.App.4th 1337, 1347 ["'The doctrine is generally applied upon retrial of a case following reversal of the judgment on appeal, and "deals with the effect of the *first appellate decision* on the subsequent *retrial or appeal*: The decision of an appellate court, stating a rule of law necessary to the decision of the case, conclusively establishes that rule and makes it determinative of the rights of the same parties in any subsequent retrial or appeal in the same case." [Citation.]' [Citation.]"]; see generally Cal. Rules of Court, rule 8.1115(b)(1) [unpublished opinion may be cited or relied upon "when the opinion is relevant under the doctrines of law of the case, res judicata, or collateral estoppel"].)

In *Tolwin I* we reviewed the superior court's denial of Dr. Tolwin's petition for a writ of mandate, which he had filed while his disciplinary matter was still pending before the hearing committee of physicians from inside and outside Cedars's department of psychiatry, challenging the MEC's role in the administrative process. In his petition and on appeal to this court, Dr. Tolwin asserted, because the hearing committee makes only nonbinding recommendations to the MEC, it is not the "trier of fact" within the meaning of California statutory and case law governing a disciplined physician's right to fair

procedure. (See, e.g., Bus. & Prof. Code, §§ 809.2, subd. (a)[6] [if licentiate requests a hearing, hearing must be held before an unbiased trier of fact], 809.4, subd. (a)(1) [physician has right to "written decision of the trier of fact, including findings of fact and a conclusion articulating the connection between the evidence produced at the hearing and the decision reached"].)[7] Yet the MEC, whose recommendations to the Board, rather than the hearing committee's recommendations, are reviewed by the Board's appeal committee, does not afford the physician the procedural rights required by law -- either as the trier of fact or an appellate body. (See, e.g., § 809.4, subd. (b)(1) [if appellate mechanism is provided, it must include right of affected physician to appear and respond].)

In concluding the peer review procedure at Cedars comports with the statutory requirements for a fair procedure, we emphasized the holding of our earlier decision in *Huang v. Board of Directors, supra*, 220 Cal.App.3d at page 1295, "'"[A] private hospital may not deprive a physician of staff privileges without granting him minimal due process of law protection." [Citations.] However, "[t]he common law requirement of a fair procedure does not compel formal proceedings with all the embellishments of court trial . . . 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 an [affected party] to present his position." [Citation.]'" (*Tolwin I*, *supra*, B135140 at p. 6.) We then found, contrary to Dr. Tolwin's assertions, that the MEC does not act as trier of fact in the Cedars's disciplinary process and that the written recommendation of the hearing committee, which does, satisfies the procedural requirements of section 809 et seq. setting forth the framework for the conduct of peer review proceedings.

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[6] Statutory references are to the Business and Professions Code unless otherwise indicated.

[7] Dr. Tolwin conceded that, other than not being the trier of fact or decision maker, the hearing committee procedures satisfy the requirements of a fair procedure. (*Tolwin I, supra*, p. 5, fn. 5.)

"The MEC does not make it[s] own factual findings. If the MEC determines additional evidence should be taken or if new and material facts are discovered which were not presented to the Hearing Committee, the [Cedars's] Manual provides that the appropriate procedure is for the MEC to remand the matter back to the Hearing Committee. The MEC's recommendation states whether it agrees with the Hearing Committee's recommendation or the manner in which that recommendation should be modified. The final action is taken by the Board." (*Tolwin I*, *supra*, B135140, at p. 7.) "The MEC's role occurs after the completion of the investigative process and the hearing before the trier of fact -- the Hearing Committee. [¶] . . . Nothing in the Business and Professions Code prohibits an interim review such as that conducted by the MEC. MEC is neither a trier of fact nor an appellate body such that the rights set forth in section 809.1 through 809.4 come into play." (*Id*. at p. 8.)

Four years after our decision in *Tolwin I*, Division Four of this court similarly approved the overall structure of Cedars's disciplinary process, and in particular the role of the Board in reviewing the MEC's recommendations, in *Weinberg*, *supra*, 119 Cal.App.4th 1098, a case in which Cedars's Board decided to terminate Dr. Weinberg's staff privileges, notwithstanding the recommendations of both the hearing committee and the MEC (by divided votes) not to do so: "[C]ase authority establishes that the governing body's precise role within the peer review process of a given hospital is determined by the bylaws and regulations of the medical staff. [Citations.] Here, the medical staff's constitution, rules, and regulations make the Board the final decision maker in the peer review process, but they do not limit its role to that of an appellate body reviewing the MEC's recommendation for the existence of substantial evidence or otherwise identify the standard governing the Board's decisions. We therefore conclude that the Board's decisionmaking is subject only to the standard found in section 809.05, subdivision (a)." (*Id.* at p. 1108.) That statutory provision bars arbitrary or capricious action by a hospital's governing body and requires that body -- in this case the Board -- to "give great

weight to the actions of peer review bodies."[8] (§ 809.05, subd. (a); see *Weinberg,* at pp. 1108-1109.) Accordingly, Division Four held nothing in section 809.05 nor relevant case law limited Board review of the hearing committee's recommendations to a determination whether they were supported by substantial evidence. (*Weinberg*, at p. 1110.)

The *Weinberg* court also rejected the contention section 809.05 restricts the Board's authority to act in disciplinary matters to those instances in which peer review bodies fail to initiate proceedings. (*Weinberg, supra*, 119 Cal.App.4th at p. 1114.) Dr. Weinberg's argument was premised on the first sentence of section 809.05, which provides, "'It is the policy of this state that peer review be performed by licentiates'"; section 809.05, subdivision (b), which states, "In those instances in which the peer review body's failure to investigate, or initiate disciplinary action, is contrary to the weight of the evidence, the governing body shall have the authority to direct the peer review body to initiate an investigation or a disciplinary action, but only after consultation with the peer review body. . . ."; and section 809.05, subdivision (c), which provides, "In the event the peer review body fails to take action in response to a direction from the governing body, the governing body shall have the authority to take action against a licentiate. . . ." Rejecting this argument, the court noted that section 809.05 expressly provides that its subdivision (a), which describes the role of governing bodies in the peer review process, constitutes a limitation on the general policy in favor of peer review by licentiates and emphasized that, under subdivision (a), the governing body of an acute care hospital performs a legitimate function in "'*all* peer review matters.'" (*Weinberg,* at p. 1114.)

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[8] Section 809.05 provides, "It is the policy of this state that peer review be performed by licentiates. This policy is subject to the following limitations: [¶] (a) The governing bodies of acute care hospitals have a legitimate function in the peer review process. In all peer review matters, the governing body shall give great weight to the actions of peer review bodies and, in no event, shall act in an arbitrary or capricious manner. . . ."

In an attempt to avoid the preclusive effect of the decisions in *Tolwin I* and *Weinberg* on his renewed challenge to the Cedars's disciplinary system, Dr. Tolwin argues the Legislature's enactment of section 2282.5, effective January 1, 2005, undermines the holdings of those cases endorsing the authority of the MEC and the Board under the medical staff's bylaws and hearing manual to independently review the evidence and findings of the hearing committee utilizing a "great weight" standard.[9] In adopting this section the Legislature declared, in part, "The final authority of the hospital governing board may be exercised for the responsible governance of the hospital . . . ; however, that final authority may only be exercised with a reasonable and good faith belief that the medical staff has failed to fulfill a substantive duty or responsibility in matters pertaining to the quality of patient care. It would be a violation of the medical staff's self-governance and independent rights for the hospital governing board to assume a duty or responsibility of the medical staff precipitously, unreasonably, or in bad faith." (Stats. 2004, ch. 848, § 1, subd. (b).)[10] According to Dr. Tolwin, section 2282.5 "puts

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[9] Section 2282.5 provides, in part, "(a) The medical staff's right of self-governance shall include, but not be limited to, all of the following: [¶] (1) Establishing, in medical staff bylaws, rules, or regulations, criteria and standards, consistent with Article 11 (commencing with Section 800) of Chapter 1 of Division 2, for medical staff membership and privileges, and enforcing those criteria and standards. [¶] (2) Establishing, in medical staff bylaws, rules, or regulations, clinical criteria and standards to oversee and manage quality assurance, utilization review, and other medical staff activities including, but not limited to, periodic meetings of the medical staff and its committees and departments and review and analysis of patient medical records. [¶] . . . [¶] (6) Initiating, developing, and adopting medical staff bylaws, rules, and regulations, and amendments thereto, subject to the approval of the hospital governing board, which approval shall not be unreasonably withheld."

[10] Two bills containing substantially similar versions of section 2282.5, both authored by Senator Kuehl, were passed by the Legislature, signed by the Governor and chaptered by the Secretary of State: Senate Bill No. 1325 (2003-2004 Reg. Sess.), Stats. 2004, chapter 699, and Senate Bill No. 1456 (2003-2004 Reg. Sess.), Stats. 2004, chapter 848. (The only difference is additional language in the later version of § 2282.5, subd. (a)(5), relating to the medical staff at hospitals operated by the Regents of the University of California.) Section 4 of Senate Bill No. 1456 provides the act will become

teeth into [section] 809.05, by specifically preventing the governing board from acting if the medical staff has done so" -- that is, Dr. Tolwin asserts the uncodified legislative declaration and findings, although not the language of section 2282.5 itself, confirm that section 809.05 restricts the Board's authority to act in disciplinary matters to those instances in which peer review bodies fail to initiate proceedings (the argument rejected by Division Four in *Weinberg*).

Nothing in section 2282.5 or the uncodified statement of legislative purpose that accompanied it supports Dr. Tolwin's argument. The provisions of section 2282.5 "do nothing more than provide for the basic independent rights and responsibilities of a self-governing medical staff" (stats. 2004, ch. 848, § 1, subd. (c)) by specifying certain rights and duties of self-governance for inclusion within a hospital medical staff's bylaws. For example, section 2282.5, subdivision (a)(2), confirms the medical staff's right to include in its bylaws "clinical criteria and standards to oversee and manage quality assurance, utilization review, and other medical staff activities . . . ." More broadly, section 2282.5 was intended to clarify that "the bylaws adopted by the medical staff of a hospital form[ ] a contractual relationship that governs both the hospital and the medical staff as to the quality of medical care provided by licensed physicians and surgeons." (See Sen. Comm. on Bus. & Prof., Rep. on Sen. Bill No. 1325 (2003-2004 Reg. Sess.), April 12, 2004.)

In explaining the need for this provision, however, the Legislature expressly declared (in language omitted by Dr. Tolwin) that the governing board of a hospital properly exercises an important role in ensuring the continued provision of quality medical care by acting whenever the medical staff itself fails to adequately address that issue and not simply, as Dr. Tolwin would have it, when the medical staff fails entirely to initiate disciplinary action: "The Legislature further finds and declares that the governing board of a hospital must act to protect the quality of medical care provided and the

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operative only if Senate Bill No. 1325 is also enacted and becomes effective on or before January 1, 2005. The uncodified legislative declaration and findings contained in section 1 of each bill are identical.

competency of its medical staff, and to ensure the responsible governance of the hospital in the event that the medical staff fails in *any* of its substantive duties or responsibilities. Nothing in this act shall be construed to undermine this authority . . . ." (Stats. 2004, ch. 848, § 1, subd. (b), italics added.)

In sum, section 2282.5, read together with section 809.05, confirms a hospital governing board properly *initiates* disciplinary proceedings only if the hospital's peer review committee fails to do so after consultation with the board, but appropriately *reviews* all disciplinary decisions to protect the quality of medical care at the hospital provided it does not act "precipitously, unreasonably, or in bad faith" in doing so. Contrary to the argument only implicitly advanced by Dr. Tolwin -- but made explicit in the brief filed by amici curiae California Medical Association and California Psychiatric Association -- authorizing the governing board to decline to adopt the recommendations of the peer review committee if it has a reasonable and good faith belief those recommendations do not adequately ensure the quality of patient care does not mandate limited, substantial evidence review of the peer review committee's actions.[11] To the contrary, permitting the governing board independently to review the evidence, albeit with appropriate deference ("great weight") to the expertise and judgment of the physicians on the peer review body, and to determine whether to follow the hearing committee's recommendations, is fully consistent with both the plain language of the governing statutes and the uncodified statement of legislative intent.

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[11] Amici insist permitting the governing board to exercise its independent judgment in disciplinary matters violates the Legislature's intent in adopting section 2282.5, as reflected in the uncodified statement of intent, because it requires no showing the medical staff failed to fulfill a substantive duty or responsibility regarding the quality of patient care. But the medical staff's primary substantive duty is to protect patients. Even if it conducted a fair hearing and made a recommendation supported by substantial evidence, if the governing board reasonably and in good faith believes the staff got it wrong -- that the recommendation will not adequately protect the quality of patient care or ensure the competency of the physicians on staff -- then it necessarily has determined the medical staff failed to fulfill that substantive duty.

3. *Cedars's Properly Followed Its Own Procedures in Dr. Tolwin's Disciplinary Process*

The Medical Staff bylaws provide the function of the hearing committee, the first step in formal disciplinary proceedings, is to recommend appropriate discipline after "gathering and evaluating relevant information and evidence [and] resolving factual disputes." (See *Tolwin I, supra*, B135140 at p. 2; *Weinberg, supra*, 119 Cal.App.4th at p. 1103.) The MEC reviews the hearing committee's report to ensure the committee utilized a fair procedure and its recommendations are supported by the evidence. Although not bound by the hearing committee report and recommendations, the MEC is to give great weight to its actions. Following its review, the MEC provides a written recommendation to the Board. (*Tolwin I*, at pp. 3-4; *Weinberg*, at p. 1103.) Upon request of the affected staff member, the Board appoints a special appeal committee to independently review the record and to recommend final action to the Board. In making its final determination, the Board is not limited in its role "to that of an appellate body reviewing the MEC's recommendation for the existence of substantial evidence." (*Weinberg*, at p. 1108.) Nonetheless, the Board must give "great weight" to the actions of the hearing committee and the MEC. (§ 809.5, subd. (a); see *Weinberg*, at pp. 1109-1110.)

Dr. Tolwin contends Cedars violated its own internal peer review procedures because neither the MEC nor the appeal committee and the Board gave "great weight" to the hearing committee's findings. However, Dr. Tolwin supports this argument only by the conclusory assertion that, because those bodies "substituted their own judgment" for the hearing committee's by rejecting its recommendation his summary suspension be rescinded, they necessarily failed to accord due weight to the committee's findings as required by both Cedars's internal procedural manuals and California law. That argument misperceives not only the "great weight" standard but also the reasoning of the MEC and the Board.

First, neither the MEC nor the Board is precluded by the "great weight" standard from exercising independent judgment based upon its view of the relevant evidence. (See

*Weinberg, supra*, 119 Cal.App.4th at p. 1111 ["the Board was properly entitled to exercise its own judgment about the evidence, after giving due weight to the hearing committee's findings"].) Rather, the requirement is that they accept the hearing committee's findings to the extent they involve medical expertise, but remain free to reject the inferences drawn from those findings. (*Id*. at p. 1110.) That is exactly what happened in this case: The MEC, the appeal committee and the Board all adopted the central recommendation of the hearing committee that Dr. Tolwin be reinstated, subject to on-going monitoring of his new admissions and several other corrective conditions. That recommendation, in turn, was based upon the hearing committee's findings, accepted by the MEC and the Board, that Dr. Tolwin had failed to meet applicable standards of care and specifically that there were significant clinical deficiencies in his ability to diagnose and treat certain types of personality disorders as well as substantial problems with his case documentation, but that a review of all the evidence failed to establish that permitting Dr. Tolwin to continue to practice at Cedars would result in imminent danger to patients.

Although the MEC and the Board thus accorded appropriate deference to the hearing committee's findings, they rejected its recommendation that Dr. Tolwin's summary suspension be rescinded based on the committee's apparent misapplication of the governing standard: The hearing committee erroneously evaluated the degree of patient risk and the consequent need for an immediate suspension of Dr. Tolwin based on the evidence developed during the post-suspension hearing process, rather than by evaluating the factual information actually available to the chief medical officer (Dr. Langberg) at the time the suspension was issued. In light of the hearing committee's finding that Dr. Langberg's decision to suspend Dr. Tolwin was reasonable and warranted based on the information then available to him, it was well within the Board's authority, as provided by the bylaws, to affirm the summary suspension notwithstanding the hearing committee's contrary recommendation.

4. *The Board's Decision To Affirm Dr. Tolwin's Summary Suspension Was Not an Abuse of Discretion*

As discussed, the hearing committee concluded Dr. Langberg's summary suspension of Dr. Tolwin was "reasonable and warranted" as of May 26, 1998, the date of the action, based on the information then available to Dr. Langberg. In light of that finding, fully supported by the record, the MEC recommended and the Board determined the summary suspension should be affirmed. That decision by the governing body of Cedars was not an abuse of discretion. (*Weinberg, supra,* 119 Cal.App.4th at pp. 1106-1107; *Hongsathavij, supra,* 62 Cal.App.4th at pp. 1136-1137.)[12]

Summary suspension is proper "where the failure to take that action may result in an imminent danger to the health of any individual." (§ 809.5, subd. (a).) The medical staff bylaws incorporate the statutory standard and vest responsibility for making that determination to the hospital's senior vice president for medical affairs, at the relevant time Dr. Langberg. An after-the-fact determination of the propriety of such a summary suspension must be based on an evaluation of the information then available to the decisionmaker. (*Medical Staff of Sharp Memorial Hospital v. Superior Court* (2004) 121 Cal.App.4th 173, 185 ["at the time the suspension was issued, the hospital had information that showed Dr. Pancoast could not safely admit patients . . . . Under these circumstances section 809.5 authorized the hospital to prevent her from admitting

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[12] Dr. Tolwin and amici curiae California Medical Association and California Psychiatric Association argue the trial court erroneously concluded, if the summary suspension was warranted at the time, "it was not subject to rescission as a matter of law." Whether or not the trial court misstated the governing legal principle, the question before us is only whether it correctly ruled the Board's decision to affirm the summary suspension was not an abuse of discretion. (See *Hongsathavij, supra*, 62 Cal.App.4th at p. 1137 [appellate court "does not review the actions or reasoning of the superior court, but rather conducts its own review of the administrative proceedings to determine whether the superior court ruled correctly as a matter of law"].) Stated somewhat differently, we need not (and do not) decide when a summary suspension, properly imposed at the time, may be rescinded by a hospital's governing board based on subsequently developed evidence, but whether in the circumstances of this case the Board abused its discretion in failing to do so.

patients pending a full hearing on whether her staff privileges should have been terminated."]; see also *Sahlolbei v. Providence Healthcare, Inc.* (2003) 112 Cal.App.4th 1137, 1149-1150 [immediate suspension of staff privileges warranted when it appears necessary to avoid imminent danger to the health of patients; any other proposed termination or restriction of staff privileges must be deferred until formal hearing on charges].) In contrast, the proposed termination of staff privileges may not be implemented prior to the formal hearing process and is properly assessed on the basis of evidence developed during the hearing process itself. (See *Sahlolbei*, at pp. 1147-1150; *Medical Staff of Sharp Memorial Hospital*, at pp. 181-182 ["the overriding goal of the state-mandated peer review process is protection of the public . . . while important, physicians' due process rights are subordinate to the needs of public safety"].) In sum, if, as the hearing committee found and the MEC and the Board confirmed, it reasonably appeared to Dr. Langberg at the time of the summary suspension that Dr. Tolwin posed an imminent threat to patient safety, the suspension was warranted; and the subsequent decision not to rescind it was proper.

**DISPOSITION**

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

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

PERLUSS, P. J.

We concur:

JOHNSON, J.

WOODS, J.