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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 THREE

KISHORE S. TONSEKAR, Plaintiff and Appellant, v. DOWNEY REGIONAL MEDICAL CENTER and THE MEDICAL STAFF OF DOWNEY REGIONAL MEDICAL CENTER, Defendants and Respondents.	B171545 (Los Angeles County Super. Ct. No. BS080061)

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

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

Fonda & Fraser and Kristen J. Heim for Defendants and Respondents.

INTRODUCTION

Plaintiff and appellant, Kishore Tonsekar, M.D., appeals the trial court judgment denying a petition for a writ of administrative mandamus. (Code Civ. Proc., § 1094.5.) Plaintiff sought an order directing defendants and respondents, the Downey Regional Medical Center (the Hospital) and The Medical Staff of Downey Regional Medical Center (Medical Staff), to set aside the summary suspension of plaintiff's staff privileges. Plaintiff asserts that the Board of Director's written decision was legally inadequate; the Board of Directors never found that failure to suspend him would result in the imminent danger to the health of any individual; and substantial evidence did not support the suspension.

We affirm the judgment of the trial court. The Board of Directors made adequate written findings advising plaintiff and this court of the basis of its decision to affirm the summary suspension of staff privileges. The appropriate decision makers at the Hospital made the finding that failure to suspend plaintiff's privileges presented a risk of imminent danger to the health of Hospital patients. Finally, the Board of Directors did not abuse its discretion by concluding that that finding was supported by substantial evidence.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Summary Suspension of Plaintiff's Privileges*

On February 23, 2001, Mark S. Minkes, M.D., Chairman of the Surgery Policy Committee (SPC) advised plaintiff by letter that the SPC had met to review plaintiff's care of three patients. Dr. Minkes wrote that, pursuant to the Medical Staff Bylaws (the Bylaws), the SPC had determined that plaintiff's care of the three patients "may have been 'inconsistent with applicable professional standards.' "[1] After discussing the matter

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[1] Article 7.2-1 of the Bylaws provides in pertinent part: "When reliable information indicates that a member may have engaged in, made, or exhibited acts, statements, demeanor, or professional conduct . . . that is reasonably likely to . . . be inconsistent with applicable professional standards . . . a request for an investigation . . . may be initiated by . . . the Chairman of any standing committee of the Medical Staff."

with the Hospital's Chief Operating Officer (COO), the SPC recommended that the Medical Executive Committee (MEC) conduct an investigation of plaintiff's care.

Dr. Minkes informed plaintiff that during the MEC investigation, the SPC was summarily suspending plaintiff's privileges in accordance with Article 7.3-1 of the Bylaws.[2]

2. *The MEC Investigation and Continuation of the Summary Suspension*

The MEC met on February 28, 2001 to investigate the summary suspension. Plaintiff did not attend. The MEC members and two other staff physicians with active staff status and general surgical privileges conducted a review of medical record of the three patients, including the pre-operative, intra-operative and post-operative management of these individuals. The MEC made the following factual findings:

"Patient #438849 [hereafter Patient 49] [¶] • There was delay in operative treatment [¶] • The operative procedure performed was extraordinary [¶] • The etiology of the multiple enterotomies was unclear [¶] • The rationale for not removing the tumor was unclear [¶] • The use of a third year medical student as the sole assistant during this complicated surgery on a critically ill patient was inappropriate[.]"

"Patient #441938 [hereafter Patient 38] [¶] • The surgeon injured the bile duct [¶] • There was delay in treating the complications post-operatively which lead to a critically ill near terminal outcome[.]"

"Patient #441369 [hereafter Patient 69] [¶] • The physician's surgical judgement and technique was below the standard of care for laparoscopic cholecystectomy[.]"

Based upon the foregoing findings, on March 5, 2001, the MEC advised plaintiff that it was necessary to continue the summary suspension of his staff privileges in order

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[2] Article 7.3-1 provides in pertinent part: "If as a result of concurrent . . . evaluation, it appears that failure to take summary action against a member may result in an imminent danger to the health of any individual, . . . the chief of the department in which the member holds privileges . . . , may summarily suspend . . . the Medical Staff membership or all or any portion of the clinical privileges of such member."

to protect the patient population. The MEC also advised plaintiff that the suspension would be reported to the Medical Board of California and that plaintiff had a right to request a hearing pursuant to Article VIII of the Bylaws, called the "Fair Hearing Plan." Plaintiff timely requested a hearing.

3. *The Judicial Review Committee Decision and Report*

On April 16, 2001, Mark Schneider, D.O., Chairman of the MEC, advised plaintiff in writing that the Hospital Board of Directors had appointed a three-member Judicial Review Committee (JRC), consisting of two general surgeons and an internist,[3] to conduct a formal hearing into plaintiff's summary suspension.

Dr. Schneider also advised plaintiff that JRC had scheduled a formal hearing for May 7, 2001. Dr. Schneider advised plaintiff that the JRC was directed to consider the following written charges: (1) "The pre-operative management and the intra-operative judgment and technique on [Patient 49] did not meet the standard of care." (2) "The intra-operative technique and post-operative management on [Patient 38] did not meet the standard of care." (3) "The intra-operative judgment and technique on [Patient 69] did not meet the standard of care."

The JRC held a hearing on May 7, 2001 from 8:00 a.m. to 4:30 p.m., and on May 10, 2001 from 6:30 p.m. to 9:00 p.m. Both plaintiff and the Hospital were represented by counsel. The hearing was transcribed by a certified court reporter. Plaintiff called two witnesses: Stanley Klein, M.D. and George Craig, M.D. The Hospital called four witnesses: Mark Minkes, M.D., Marc Grossman, M.D., Leo Gordon, M.D. and Kathy Foster, administrative director for patient plan and review services. The hearing officer admitted a number of written materials into evidence, including the medical charts of the three patients at issue.

The JRC issued an eight-page written decision on May 17, 2001. It reviewed the above-listed charges identified in Dr. Schneider's letter dated April 16, 2001. The JRC

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[3] On appeal, the Hospital explains, and plaintiff does not dispute, that none of the members of the JRC were affiliated with the Hospital.

concluded: (1) Patient 49: "Preoperative management and intraoperative judgment were deficient. Earlier operation was indicated and would in all likelihood have avoided life-threatening complications of delay in treatment of an obstructing large bowel carcinoma." (2) Patient 38: "The intraoperative technique on this patient was not found to be deficient, but the post-operative management was inadequate in that the complication of bile peritonitis was not diagnosed in a timely fashion, and reintervention was inappropriately delayed. This delay in diagnosis and reintervention led directly to life-threatening complications." (3) Patient 69: "The evidence presented did not show that the intraoperative judgment and technique exercised in this patient were deficient."

Based upon the foregoing conclusions, the JRC unanimously found that the preponderance of the evidence supported the continuation of the summary suspension of plaintiff's privileges, which, the JRC explained, was to remain in effect until further action by the Hospital's Medical Staff.[4]

Pursuant to the Fair Hearing Plan, plaintiff timely appealed the decision of the JRC to the Hospital's Board of Directors.

4. *Plaintiff's Appeal to the Board of Directors*

In his notice of appeal, plaintiff asserted the Hospital failed to follow proper hospital procedure on the basis that section 7.3-1 of the Bylaws (fn. 3, *ante*), and section 809.5 of the California Business and Professions Code[5] state that before a peer review

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[4] The JRC also recommended that if the suspension were to be lifted, the MEC "may consider appropriate mechanisms to assist [plaintiff] including collateral surgical consultation on patient admissions, further proctoring by first assistants who are experienced surgeons, and concurrent monitoring of post-operative care."

[5] Unless otherwise indicated, all statutory references are to the Business and Professions Code. Section 809.5, subdivision (a) provides: "Notwithstanding Sections 809 to 809.4, inclusive, a peer review body may immediately suspend or restrict clinical privileges of a licentiate where the failure to take that action may result in an imminent danger to the health of any individual, provided that the licentiate is subsequently provided with the notice and hearing rights set forth in Sections 809.1 to 809.4, inclusive, or, with respect to organizations specified in Section 809.7, with the rights specified in that section."

body may summarily suspend privileges it must find that failure to do so will result in "an imminent danger to the health of any individual." Plaintiff asserted that in February 2001, Dr. Minkes summarily suspended plaintiff's privileges without making such a finding. Plaintiff also asserted that the MEC and JRC violated the Bylaws and section 809.5 by failing to make such a finding. Lastly, plaintiff asserted that the decision of the JRC was not supported by substantial evidence.

The Appeal Board consisted of three non-physician members of the Hospital's Board of Directors.[6] It convened on June 11, 2001. Plaintiff was represented by counsel and the MEC was represented by Dr. Minkes. The Appeal Board received written submissions and heard an oral presentation from plaintiff. The Appeal Board reviewed the JRC report, and the documentary evidence and oral testimony given before the JRC.

On June 25, 2001, the Appeal Board issued a 15-page written recommendation to the Board of Directors. The Appeal Board explained: "The undersigned directors have acted as the 'Appeal Board' pursuant to Article VIII of the Bylaws . . . . This memorandum contains the recommendation of a majority of the appeal board to the Board of Directors for its consideration as the final appellate action in the matter . . . ."[7]

A unanimous Appeal Board rejected plaintiff's claims that there were procedural errors before the JRC. The Appeal Board explained: "Dr. Minkes took his action as authorized by the Bylaws, and based upon the standards stated therein. He clearly had an

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[6] Article 8.5-4 of the Bylaws provides in pertinent part: "The Board of Directors may sit as the appeal board, or it may appoint an appeal board which shall be composed of not less than three (3) members of the Board of Directors."

Article 8.5-5(a), provides in pertinent part: "The proceeding by the appeal board shall be in the nature of an appellate hearing based upon the record of the hearing before the JRC."

[7] Article 8.5-5(i), provides in pertinent part: "The appeal board shall present to the Board its written recommendations as to whether the Board should affirm, modify, or reverse the JRC decision, or remand the matter to the JRC for further review and decision. . . . After remand , the appeal board shall make its recommendation to the Board as provided in this Section 8.5-5(i).

adequate basis for the suspension decision given the information available to him on February 23rd, and he found that in the absence of a suspension there 'may' be imminent danger to a patient."

Substantively, a majority of the Appeal Board recommended that the conclusions of the JRC be reversed. One member dissented.

The majority of the Appeal Board explained that, as required by the Bylaws, it had given great deference to the Chairman of the SPC in making the summary suspension order, as well as the expert findings of the JRC. In fact, the Appeal Board stated that it adopted the findings of the JRC, but nevertheless recommended overturning the result.

The majority of the Appeal Board concluded that the initial summary suspension was based upon a misunderstanding of certain facts which came to light only after the SPC summarily suspended plaintiff's privileges, and that the continuation of the suspension was not supported by substantial evidence.[8]

In detail, the Appeal Board explained as to Patient 38 that at the time the SPC initially suspended plaintiff's privileges, the "prime driver" of the initial suspension was the belief that "the post-operative complications in the 49-year-old female were due to a surgeon's error in perforating a bile duct." The Appeal Board further explained, however, that, as it turned out, there was no evidence of surgical error, but that "her complications arose from a documented post-operative condition some cholecystectomy patients develop. This fact that there was no slip of the knife did not come to light until at least the end of March when the report was received about the patient's condition from USC."

The Appeal Board concluded that plaintiff would not have been suspended had it been known on February 23, 2001, as the JRC later found, that there was no surgical intra-operative error on Patient 38.

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[8] The Appeal Board explained: "We are here faced with a dilemma that is created by the differing standards used in the *emplacement* of a summary suspension and as should be used in the review and consideration of the *continuation* of the suspension." (Italics added.)

In conclusion, the majority of the Appeal Board recommended that the Board of Directors reverse the conclusion of the JRC and revoke the suspension of plaintiff's privileges. The majority further recommended that the Board of Directors refer the matter to the SPC for consideration of restrictions on plaintiff's privileges.

The dissenting member of the Appeal Board concluded that despite the JRC's rejection of the MEC's position on some of the charges, there remained an adequate record upon which to affirm the suspension. The dissenting member stated: "With respect to both [Patients 38 and 49, plaintiff] was cited by the JRC with delays in assessing a patient's condition and failures to take appropriate action upon receipt of sufficient information. In the case of patient [49] there were seemingly numerous requests for tests that the JRC found unnecessary. [Plaintiff] admits some delay himself, and seems to indicate he had trouble communicating about HMO approval for the tests. With respect to patient [38], delays were also cited by the JRC in causing the worsening of the patient's condition to the point where extreme life-threatening complications developed."

The dissenting member set forth a summary of the evidence with respect to both patients: "Patient [49]: Pre-operative management and intraoperative judgment and care were clearly deficient. An earlier operation was indicated on the 2nd day of hospitalization and would in all likelihood have avoided life threatening complications of delay in treatment of an obstructing large bowel carcinoma. After entering the Hospital on January 5th, this patient was transferred to a skilled nursing facility on January 25th and at the time of the hearing on May 7th the patient had not received treatment for carcinoma of the large bowel." As to Patient 38, the dissenting member explained: "While finding that there had been no surgical error the JRC did find that the post operative management was inadequate in that the complications of bile peritonitis were not diagnosed in a timely fashion, and reintervention was inappropriately delayed. On the 10th day of hospitalization for an uneventful laparoscopic cholecystectonmy this patient was transferred to USC and underwent immediate surgery. The JRC found that

the development of the life-threatening complications could have been avoided by proper post-operative follow-up that [plaintiff] did not provide."

The dissenting member concluded: "Since the JRC report is unequivocal that in both instances [plaintiff] used poor judgment in (1) not appreciating the significance of information available to him at a given critical point in the patient's care and (2) delaying action on the basis of trying to gain additional information about the patient's condition, I would conclude that there is a pattern of gross negligence. In each instance, the JRC found [plaintiff] had information wholly sufficient upon which to make surgical and medical interventions that would have most certainly changed the course of the illness in each patient. This repetitive poor judgment in assessing information and in not taking action when it was warranted . . . is more than substantial evidence of a flaw in this doctor's practice habits and abilities warranting suspension of his surgical privileges."

5. *The Decision by the Board of Directors*

The following day, June 26, 2001, the Hospital's Board of Directors met and considered the Appeal Board recommendation and the JRC report. By letter dated June 28, 2001, the Board informed plaintiff that "[a]fter debate, the Board voted to uphold the prior decisions of the Medical Executive Committee and the Judicial Review Committee to suspend your privileges. The Board concluded that there was substantial compliance with the procedures in all phases of the decision making and review of the suspension of your privileges as required by Bylaws and applicable law, and that there was substantial evidence supporting the conclusions of the Judicial Review Committee. The Board's vote is now an effective and final action in this matter pursuant to Section 8.5-6 of the Medical Staff Bylaws."[9]

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[9] Article 8.5-6 of the Bylaws provides in pertinent part: "Within ten (10) days, if possible, but in any event within thirty (30) days, after the conclusion of appellate review, the Board shall render its final decision in writing, specifying the reasons, and shall send copies thereof to the member, the President of Staff, the MEC, the Credentials Committee, and the CEO. In making its decision, the Board shall give great weight to the recommendation of the JRC. The Board may affirm, modify, or reverse the decision of the JRC, or it may remand the matter to the JRC for reconsideration, stating the purpose

The Hospital denied plaintiff's application for reappointment to the medical staff. On July 1, 2002, plaintiff's medical staff membership expired.

6. *Petition for Writ of Mandate – The Superior Court Action*

Plaintiff filed a petition for a writ of mandate, seeking to set aside and reverse the decision sustaining the summary suspension of his medical staff privileges. Defendants filed a verified answer.

The parties provided the trial court with the oral testimony before the JRC, a set of the Hospital Bylaws, correspondence to plaintiff and the written decisions of the MEC, JRC, and the Appeal Board.

The trial court denied plaintiff's petition for a writ of mandate, and entered judgment in favor of defendants. Plaintiff filed a timely notice of appeal.

CONTENTIONS

Plaintiff contends that: (1) the Board of Directors did not make adequate written findings; (2) the Board of Directors did not make the legally required finding that failure to summarily suspend plaintiff's privileges would result in imminent danger to the health of any individual; and (3) substantial evidence did not support the summary suspension because there was insufficient evidence that plaintiff's care presented a risk of imminent danger to the health of any individual.

STANDARD OF REVIEW

Code of Civil Procedure section 1094.5 permits review of hospital administrative decisions by means of a verified petition for a writ of mandate. (*Weinberg v. Cedars-Sinai Medical Center* (2004) 119 Cal.App.4th 1098, 1106.) Section 1094.5, subdivision (b), provides in pertinent part: "The inquiry in such a case shall extend to the questions whether … there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the

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for the remand. [¶] . . . [¶] If the Board's proposed decision is in accord with the JRC's recommendation, it shall be immediately effective and final."

manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence."

Code of Civil Procedure section 1094.5, subdivision (d), provides in pertinent part: "[I]n cases arising from private hospital boards or boards of directors of districts organized pursuant to The Local Hospital District Law, . . . abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record."

In *Bonner v. Sisters of Providence Corp*. (1987) 194 Cal.App.3d 437, 444, the Court of Appeal explained the standard of review on appeal: "When the standard of review for the trial court is substantial evidence, i.e., when the trial court 'must uphold the hospital judicial review committee's decision unless administrative findings viewed in light of the entire record are so lacking in evidentiary support as to render them unreasonable,' the standard of review for the appellate court is the same. [Citation.] Like the trial court, we also review the administrative record to determine whether its findings are supported by substantial evidence in light of the whole record, our object being to ascertain whether the trial court ruled correctly as a matter of law."

Moreover, "[t]he appellate court thus 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." (*Hongsathavij v. Queen of Angels Etc. Medical Center* (1998) 62 Cal.App.4th 1123, 1137.)[10]

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10 Plaintiff complains that the trial court judgment did not adequately explain the basis of its decision. Because we independently review the administrative decision and record, and not the trial court judgment, we have no occasion to address this argument. (*Hongsathavij v. Queen of Angels Etc. Medical Center*, *supra*, 62 Cal.App.4th at p. 1136.) On this point, we do not consider, nor do we rely upon, the reasoning of the trial court as set forth in its tentative statement of decision.

DISCUSSION

1. *Adequacy of the Board of Director's Written Findings*

Plaintiff complains that the Board of Directors in its final written decision of June 28, 2001, failed to make adequate written findings advising plaintiff of the basis of its decision. We disagree.

Section 809.4 provides in pertinent part: "(a) Upon the completion of a hearing concerning a final proposed action for which a report is required to be filed under Section 805, the licentiate and the peer review body involved have the right to receive all of the following: [¶] (1) A written decision of the trier of fact, including findings of fact and a conclusion articulating the connection between the evidence produced at the hearing and the decision reached. [¶] . . . [¶] (b) If an appellate mechanism is provided, it need not provide for de novo review, but it shall include the following minimum rights for both parties: [¶] . . . [¶] (3) The right to receive the written decision of the appellate body."

By its express terms, section 809.4 mandates that the fact finding bodies, here the JRC, provide a written decision, stating the findings of fact and articulating the connection between the evidence and the decision reached. Section 809.4, subdivision (b)(3), imposes no such requirement upon the appellate body, here the Board of Directors, to articulate the connection between the evidence and the decision reached.

Nevertheless, in compliance with Article 8.5-6 of the Bylaws, the Board provided plaintiff with a written statement articulating the basis of its decision – substantial evidence supported the decision of the JRC. [11]

Article 8.5-4 of the Bylaws, permitted the Board of Directors, in its discretion, to appoint an Appeal Board composed at least three members of the Board of Directors.

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[11] In *Weinberg v. Cedars-Sinai Medical Center, supra,* 119 Cal.App.4th at page 1108, the court explained: "Generally, case 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."

The Bylaws referenced in the Discussion are quoted in the Procedural and Factual Background.

Article 8.5-5(i), of the Bylaws, then required the Appeal Board to present to the full Board of Directors its written *recommendations* as to whether the Board of Directors should affirm, modify, or reverse, the JRC decision.

Providing extensive written findings and articulating the connection between the evidence and the decision reached, the Appeal Board complied with the Bylaw requirements. A unanimous Appeal Board found no procedural improprieties. Substantively, a majority found the evidence did not support the decision of the JRC, with one member dissenting.

Significantly, pursuant to Article 8.5-5(i) of the Bylaws, the written decision of the Appeal Board constituted a recommendation or a tentative decision to be presented to the entire Board for its full consideration. By operation of Article 8.5-5(i), and Article 8.5-6 of the Bylaws, upon receipt of the Appeal Board decision, the Board of Directors was then required to render its final decision in writing and to specify the reasons for its decision.

Pursuant to the Bylaws, the Board of Directors was free to accept or reject the recommendation of the Appeal Board. Moreover, the Bylaws did not require the Board of Directors to state why it agreed or disagreed with the Appeal Board. Instead, it was the function of the Board of Directors to review the decision of the JRC, based upon the written recommendations of the Appeal Board. (See Arts. 8.5-4 & 8.5-5(i) of the Bylaws.)

While the June 28, 2001, letter to plaintiff does not expressly so state, it is clear from the record that, substantively, the Board of Directors adopted the position of the dissenting member of the Appeal Board. The dissenting member of the Appeal Board found substantial evidence supported the decision of the JRC and articulated in writing the connection between the evidence presented and the decision reached. Likewise, in its June 28, 2001 letter, the full Board of Directors concluded that substantial evidence supported the decision of the JRC to summarily suspend plaintiff's privileges.

Plaintiff claims, however, that the decision by the Board of Directors did not comply with the rationale and holding of the California Supreme Court decision in

Topanga Assn. for a Scenic Community v. County of Los Angeles (1974) 11 Cal.3d 506 (*Topanga*). There, the Supreme Court held that zoning boards, administrative fact finding bodies, "must render findings to support their ultimate rulings." (*Id*. at p. 510.)

On the administrative record presented, defendants complied with the rational and holding of the *Topanga* case. Plaintiff was provided in-depth written findings by the MEC, the JRC and the Appeal Board. The board was empowered by the Bylaws to reject or adopt the recommendation of the Appeal Board. In addition, the board explained that because substantial evidence supported the decision of the JRC, it had voted to affirm the summary suspension of plaintiff's privileges.

In *Weinberg v. Cedars-Sinai Medical Center, supra,* 119 Cal.App.4th 1098, citing the *Topanga* case, the court explained: "Code of Civil Procedure section 1094.5 requires administrative agencies rendering adjudicatory decisions subject to administrative mandamus to 'set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order.' [Citation.] Such findings are sufficient when 'they apprise the interested parties and the courts of the basis for administrative action.' " (119 Cal.App.4th. at p. 1112.)

In this case, the Board of Directors' June 28, 2001 letter fully apprises this court of the basis for the board's decision; substantial evidence supports the decision of the JRC. Moreover, the opinion of the dissenting member of the Appeal Board, which was impliedly adopted by the Board of Directors, further explains and articulates the connection between the evidence and the decision reached.

2. *Finding of Imminent Danger to Health of Any Individual*

Plaintiff complains that the Board of Directors did not make the required finding that failure to summarily suspend plaintiffs' privileges would result in imminent danger to the health of any individual. (See § 809.5, subd. (a).) We conclude the Board of Directors made appropriate findings to affirm the summary suspension of plaintiff's privileges.

Both section 809.5 and Article 7.3-1 of the Hospital Bylaws place the burden on the peer review bodies to determine whether failure to summarily suspend privileges may

result in the imminent harm to any individual. Article 7.3-1 of the Hospital Bylaws also permits the president of the staff, and the chief of a department in which a member holds privileges to make this determination.

In this case, in his February 23, 2001 letter to plaintiff, Dr. Minkes, the Chairman of the Surgery Policy Committee, advised plaintiff that his privileges were summarily suspended pursuant to Article 7.3-1 of the Hospital Bylaws. Thus, from the initial correspondence, plaintiff was advised that his suspension was based upon the conclusion that failure to suspend his privileges would result in the imminent harm to an individual.

Pursuant to Article 7.2-3, the role of the MEC was then to conduct an informal investigation. Following the investigation, the MEC was required to take action pursuant to section 7.2-4, which could include recommending suspension of staff privileges. (See Art. 7.2-4(g) of the Bylaws.)

The MEC determined that plaintiff's care of Patient 38 "lead to a critically ill near terminal outcome." In addition, the MEC found that it was charged with the responsibility to protect the patient population and, on that basis, decided to continue the summary suspension of plaintiff's privileges. On this record, while it did not employ the "imminent danger" language, the conclusion is inescapable that the MEC found that failure to suspend plaintiff's privileges would result in the imminent danger to the health of an individual.

The JRC then conducted a formal hearing, received evidence and heard testimony from witnesses. The JRC found that plaintiff's care of Patients 38 and 49, led directly to life-threatening complications. Again, like the MEC, the JRC did not employ the "imminent danger" language. However, based upon the JRC's use of the "life-threatening complication" language, coupled with its conclusion that the preponderance of the evidence supported the summary suspension, there is no question that the JRC concluded that failure to suspend plaintiff's privileges would result in the imminent danger to the health of an individual.

As to the role of the Board of Directors in this procedural process, Article 8.5-5(a) of the Bylaws provides: "The proceeding by the appeal board [or the Board of Directors]

shall be in the nature of an appellate hearing based upon the record of the hearing before the JRC, provided that the appeal board may accept additional oral or written evidence subject to a foundational showing that such evidence could not have been made available to the JRC in the exercise of reasonable diligence." In addition, both section 809.05[12] and Article 8.5-5 required the Board of Directors to give great weight to the recommendation of the JRC.

Thus, based upon the foregoing, the role of the Board of Directors was limited to determining whether substantial evidence supported the decision of the JRC. (See *Huang v. Board of Directors* (1990) 220 Cal.App.3d 1286, 1295 ["Under the hospital's bylaws the appeal board was required to conduct proceedings 'in the nature of an appellate review,' which meant that it was required to apply the substantial evidence test in reviewing the findings of the judicial review committee."].) In other words, it was not the duty of the Board of Directors to make an independent determination as to whether the failure to suspend plaintiff's privileges would result in the imminent danger to the health of any individual. Thus, there was no requirement upon the Board of Directors to use such "imminent danger" language in its statement of decision. The board satisfied its statutory duty (§ 809.05), and the duties imposed by the Hospital Bylaws (Arts. 8.5-5 & 8.5-6), by determining that substantial evidence supported the decision of the JRC.

3. *Substantial Evidence*

Plaintiff also claims that substantial evidence does not support the decision of the JRC. We disagree.

At the outset, pursuant to *Hongsathavij v. Queen of Angels Etc. Medical Center, supra,* 62 Cal.App.4th 1123, we review the decision of the Board of Directors, not the

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12 Section 809.05 provides in pertinent part: "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. [¶] . . . [¶] (d) A governing body and the medical staff shall act exclusively in the interest of maintaining and enhancing quality patient care."

JRC.[13] Pursuant to Code of Civil Procedure section 1094.5, we review the decision of the Board of Directors for abuse of discretion. Subdivisions (b) and (d) of section 1094.5 provide that an abuse of discretion is established if the findings are not supported by substantial evidence.[14]

In this case, looking to the JRC decision, the board did not abuse its discretion by determining that the JRC decision was supported by substantial evidence. The JRC found that plaintiff's care of Patients 49 and 38 led directly to life-threatening complications. As to Patient 69, the JRC found that the evidence presented did not show

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[13] In *Hongsathavij*, the court explained: "To the extent that other cases imply the superior court should review for substantial evidence the decision of the judicial review committee, we find such cases unpersuasive. . . . [¶] Accordingly, the [reviewing] court cannot focus exclusively on the decision of the judicial review committee, or there would be no purpose for the bylaw provision which permits review of that decision by the hospital's governing body, which then issues the final administrative decision in the matter. A review which does not exclude the governing body's determination is also consistent with the requirement that 'in cases arising from private hospital boards . . . abuse of discretion is established if the [reviewing] court determines that the findings are not supported by substantial evidence in the light of the whole record.' [Citation.]" (*Hongsathavij v. Queen of Angels Etc. Medical Center, supra,* 62 Cal.App.4th at p. 1136, italics omitted.)

[14] In *Huang, M.D. v. Board of Directors, St. Franci Medical Center, supra,* 220 Cal.App.3d 1286, the Court of Appeal articulated the substantial evidence standard of review: " 'The substantial evidence rule provides that where a finding of fact is attacked on the ground it is not sustained by the evidence, the power of an appellate court begins and ends with a determination whether there is any substantial evidence, contradicted or uncontradicted, which supports the finding.' [Citation.] The court must consider the evidence in the light most favorable to the prevailing party, giving him the benefit of every reasonable inference and resolving conflicts in support of the judgment. [Citation.] The court is without power to judge the effect or value of the evidence, weigh the evidence, consider the credibility of witnesses, or resolve conflicts in the evidence or in the reasonable inferences that may be drawn from it. [Citation.] Unless a finding, viewed in light of the entire record, is so lacking in evidentiary support as to render it unreasonable, it may not be set aside." (*Id*. at pp. 1293-1294.)

In addition, the testimony of a single witness may constitute substantial evidence. (*Oregel v. American Isuzu Motors, Inc*. (2001) 90 Cal.App.4th 1094, 1101.)

that plaintiff's care was deficient. We therefore set forth only the evidence related to Patients 49 and 38.

As to Patient 49, the JRC concluded that plaintiff's preoperative management and intraoperative judgment were deficient, an earlier operation was indicated and would have avoided life-threatening complications of delay in treating an obstructing large bowel carcinoma.

Dr. Minkes, Chairman of the Surgery Policy Committee, reviewed the charts of Patients 49 and 38. As to Patient 49, Dr. Minkes testified that Patient 49 was a 66-year-old male with an obstructed bowel condition. The patient had been without a bowel movement for 20 days, with a history of weight loss, as well as anemia. The patient was admitted on January 2, 2001 and X-rayed.

Dr. Minkes testified that plaintiff examined Patient 49 on the day of admission and ordered a CT scan, which, on January 6, 2001, showed findings consistent with an obstructing lesion at the splenic flexure. Plaintiff performed the surgery on Patient 49 on January 10, 2001, five days after the X-ray and four days after the CT scan.

Dr. Minkes testified that plaintiff had enough information to proceed with an operation on January 6, 2001. Dr. Minkes testified that delaying the surgery until January 10, 2001, caused this patient to become critically and life-threatening ill, as well as morbidly distended.

Dr. Minkes summarized that during the course of Patient 49's hospitalization, he suffered a perforated viscus and developed venus thrombosis. He also became septic, suffered respiratory failure, had several bouts of gastrointestinal bleeding that required transfusion, and sustained multiple enterotomies and significant intra-abdominal fecal contamination. Dr. Minkes explained that that underlying tumor was not resected on the date of surgery because plaintiff performed an inappropriate type of surgical procedure.

Dr. Minkes testified that had plaintiff performed the surgery on January 6, "[m]ore than likely," all of the above-complications would have been avoided. He also testified that had the surgery been performed on January 6, the tumor could have been resected.

Dr. Leo Gordon testified on behalf of the MEC at the JRC hearing. Dr. Gordon was an attending surgeon within the Department of General Surgery at Cedars-Sinai Medical Center. Dr. Gordon reviewed the medical records of Patient 49.

Dr. Gordon testified that based upon the January 6, 2001 CT scan, plaintiff should have immediately performed a laparotomy. The risk of waiting was a perforation of the intestine, which occurred in the case of Patient 49. Dr. Gordon testified that on January 6, plaintiff ordered a grastrointestinal consultation, which Dr. Gordon concluded was inappropriate, because the intestinal blockage, whatever the cause, had already been diagnosed.

Dr. Gordon testified that Patient 49 was critically ill by the time he went to surgery on January 10, 2001. Dr. Gordon concluded that the operative procedure performed by plaintiff was not what a reasonable doctor would do in similar circumstances.

Dr. Gordon concluded that there was a delay in the surgical treatment of the bowel obstruction, which led to a perforated intestine. Dr. Gordon also concluded that the operation plaintiff performed, which did not remove the tumor, was illogical and not reasonable.

As to Patient 38, the JRC found that the intraoperative technique was not deficient, but the post-operative management was inadequate because the complication of bile peritonitis was not diagnosed in a timely fashion, reintervention was inappropriately delayed, and that the delay in diagnosis and reintervention led directly to life-threatening complications.

Dr. Minkes testified that Patient 38 was a 49-year-old female who was admitted for a routine laparoscopic cholecystectomy. She was hospitalized from February 14, 2001 to February 23, 2001 when she was transferred to the USC Medical Center.

Dr. Minkes testified that after plaintiff's surgery on Patient 38, she had persistent pain, an elevated white blood count, and elevated bilirubin. Dr. Minkes also testified that she went into respiratory distress and sustained sepsis, as well as renal failure. During surgery at the USC Medical Center, the surgeon discovered several liters of bilious

ascites in her peritoneal cavity. In the course of her post-operative care at USC, Patient 38 also sustained aspiration pneumonia and a Candida infection.

Dr. Minkes summarized that Patient 38 entered the hospital for routine surgery on February 14, but did not go home until March 8. Dr. Minkes testified that these complications were not the kind of complications which would normally occur after a routine laparoscopic cholecystectomy performed by a competent surgeon.

Dr. Gordon also reviewed the medical records of Patient 38. He testified that plaintiff's surgery on Patient 38 was routine or without problems. Dr. Gordon, however, testified that normally a patient that has a laparoscopic gallbladder surgery recovers uneventfully and is discharged within 24 to 48 hours. Patient 38 presented unusual signs, including continued pain, rapid heart rate, and a fever. She also suffered an unusual condition called ileus, which is paralysis of the intestine. Dr. Gordon noted that seven days after the surgery on February 21, 2001, Patient 38 had a documented bile leak.

Dr. Gordon testified that given these conditions, Patient 38 required a speedy post-operative evaluation. Dr. Gordon testified that despite the indicators, plaintiff delayed in seeking gastrointestinal consultation from a non-surgeon. Dr. Gordon testified that, in any event, a gastrointestinal consultation was no substitute for correct surgical judgment, which required surgical re-exploration of Patient 38.

Dr. Gordon testified that the treatment of Patient 38 required an operative look at the original surgery site by no later than February 19 or 20. Dr. Gordon testified that to a reasonable degree of medical probability, Patient 38's course would have been different had plaintiff performed a second surgery on February 19 or 20. Instead, the surgery was performed at USC on February 23.

The foregoing testimony constitutes substantial evidence in support of the JRC conclusions. (*Huang v. Board of Directors*, *supra*, 220 Cal.App.3d at pp. 1293-1294; *Oregel v. American Isuzu Motors, Inc*., *supra*, 90 Cal.App.4th at p. 1101.) The Board of Directors, therefore, did not abuse its discretion by concluding that substantial evidence supported the conclusions of the JRC and continuing the summary suspension of plaintiff's staff privileges.

DISPOSITION

The judgment is affirmed. Defendants are to recover costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KITCHING, J.

We concur:

CROSKEY, Acting P.J.

ALDRICH, J.