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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

PAUL J. NUGENT, M.D.,

Plaintiff and Respondent,

v.

SAINT AGNES MEDICAL CENTER et al.,

Defendants and Appellants.

F043928

(Super. Ct. No. 02CECG03774)

OPINION

APPEAL from a judgment of the Superior Court of Fresno County. Jane A. Cardoza, Judge.

Emerich & Fike, David R. Emerich and David A. Fike, for Defendants and Appellants.

John D. Harwell, for Plaintiff and Respondent.

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In this case a hospital's Judicial Review Committee (a peer review committee consisting of five physicians, hereinafter "the JRC") conducted a 10-day evidentiary hearing and concluded that Dr. 257's treatment of 10 hospital patients had shown a deficiency in Dr. 257's conduct reasonably likely to be detrimental to patient safety. The JRC proposed that Dr. 257's exercise of privileges at the hospital be subject to certain conditions. The hospital's bylaws permitted an appeal of the JRC's decision to an "appeal board" of the hospital's board of trustees. The bylaws provided that "[t]he Board

of Trustees may sit as the appeal board, or its chairperson may appoint an appeal board which shall be composed of not less than five members of the Board of Trustees." The hospital medical staff's bylaws listed the grounds for appeal of a JRC's decision.[1] One of the three listed grounds was "action taken arbitrarily, unreasonably, or capriciously." The hospital staff's Medical Executive Committee ("hereinafter MEC"), which had initiated the peer review proceedings involving Dr. 257, appealed and contended that the JRC's proposed action was "unreasonable" because the JRC's proposed action did not include the MEC's recommendation that Dr. 257 be assisted by a second surgeon when performing surgery at the hospital and did not, in the MEC's view, reasonably address the several deficiencies found by the JRC in Dr. 257's professional conduct. The JRC's findings of deficiencies in Dr. 257's conduct reasonably likely to be detrimental to patient safety were not disputed by any party on the MEC's appeal to the appeal board. The appeal board agreed with the MEC and concluded that the "JRC findings and conclusions cannot be reconciled with the JRC's modest recommended restrictions of Dr. 257's clinical privileges." The appeal board further stated "[t]his is because the JRC's recommended restrictions do not address major areas of deficiency in Dr. 257's practice

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[1] "Hospitals are required by law to have a medical staff association which oversees physicians who are given staff privileges to admit patients and practice medicine in the hospital. A hospital's medical staff is a separate legal entity, an unincorporated association, which is required to be self-governing and independently responsible from the hospital for its own duties and for policing its member physicians. (Health & Saf. Code, §§ 1250, subd. (a), 32128; Cal. Code Regs., tit. 22, § 70701, subd[s]. (a)(1)(D), (a)(1)(F); Bus. & Prof. Code, § 2282; see *Anton v. San Antonio Community Hosp*. (1977) 19 Cal.3d 802, 809-810 [140 Cal.Rptr. 442, 567 P.2d 1162].) A medical staff and its MEC operate under bylaws created by the medical staff. (Cal. Code Regs., tit. 22, § 70703, subd. (b).)" (*Hongsathavij v. Queen of Angels/Hollywood Presbyterian Medical Center* (1998) 62 Cal.App.4th 1123, 1130, fn. 2 (*Hongsathavij*).) The bylaws utilized in the present case were the Bylaws of the Medical Staff of Saint Agnes Medical Center" (hereinafter "Bylaws" or sometimes "the bylaws").

found to exist by the JRC." The appeal board recommended that the board of trustees adopt the more stringent conditions on Dr. 257's clinical privileges recommended by the MEC, and the board of trustees did so.

Dr. 257 petitioned the superior court for a writ of administrative mandamus. He sought reinstatement of the more lenient conditions that had been recommended by the JRC. The superior court agreed with Dr. 257. The court stated: "The appeal board's finding that the JRC's findings and conclusions were supported by substantial evidence should have concluded the matter; the appeal board was not entitled to substitute its own judgment on the ultimate question of the action to be taken against [Dr. 257]."

The hospital then appealed to this court. The hospital contends that the hospital's appeals board properly could and did conclude, on the facts of this case, that the JRC's recommendation as to the action to be taken to address Dr. 257's deficiencies was "unreasonable," and that the stricter conditions recommended by the appeal board and adopted by the hospital were lawful. As we shall explain, we disagree with the appellant hospital. We will affirm the order of the superior court denying the hospital's petition for a writ of administrative mandamus.

FACTS

In July 2000, following a peer review investigation, the MEC of the medical staff of Saint Agnes Medical Center gave notice to Dr. 257, an orthopedic surgeon, of the following recommended corrective action:

> "(1) All surgical cases must have a second opinion by an orthopedic surgeon or neurosurgeon who performs similar cases in his/her own practice and must be approved by the Department of Surgery;
>
> "(2) You must be assisted by an orthopedic surgeon, neurosurgeon, or vascular surgeon as appropriate to the case;
>
> "(3) You must make rounds on a daily basis and see patients in the hospital as per the Bylaws;

"(4) You must meet with and hear advice from the Infectious Disease consultant and formulate a plan for corrective action; and

"(5) Exercise of your privileges shall be subject to an on-going monitoring process that includes retrospective review of all surgeries with chart review as assigned by the Chairman of the Department of Surgery, and after twenty (20) cases, the date will be reassessed."

Respondent requested a hearing before a JRC with regard to the MEC recommendation.[2] On November 14, 2001, the JRC commenced hearing evidence concerning the corrective action recommended by the MEC. At the JRC hearing, the MEC presented evidence in support of its recommended corrective action (including expert testimony and review of patients' charts in evidence), and Petitioner presented evidence and put on witnesses in opposition to the MEC recommendation.[3] The evidence consisted of the MEC's presentation of 12 cases involving patient care performed by petitioner, including expert testimony, extensive review of the patients' charts in question and evidence relating to infection rates.

A. The JRC's Decision and Recommendation

On February 25, 2002, the JRC issued its "Statement of Decision, Including Findings of Fact, Conclusions, and Articulation of Evidence Pursuant to Bylaws Para. 7.4-10." The JRC decision contained findings supporting conclusions reached by the JRC in 10 of the 12 patient cases reviewed that deficiencies in respondent's professional conduct were "reasonably likely to be detrimental to patient safety."

The JRC recommended the following corrective action as its "Final Proposed Action:"

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[2] Where the MEC recommends corrective action and gives the physician notice thereof, the physician may request a hearing before a JRC in accordance with the bylaws. (Bylaws §§ 6.1-5 and 7.1 through 7.6.)

[3] At the JRC hearing, the physician is entitled to put on witnesses, present evidence and cross-examine witnesses presented by the MEC. (*Id*. at § 7.4-5.)

"Dr. 257's exercise of privileges at Saint Agnes Medical Center shall be subject to the following conditions:

"1. Adherence to the requirement of the Bylaws that he see his admitted patients on a daily basis; and

"2. Ongoing concurrent review of all medical records related to all of his surgical cases. In the event he has *twenty-five or more* surgical cases during the first year after the Proposed Final Action becomes effective, he shall be subject to such review for a period of one year. In the event he has *fewer* than twenty-five surgical cases during the first year after this Proposed Final Action becomes effective, he shall be subject to such review for as long as it takes him to complete twenty-five surgical cases. Specific attention and emphasis is to be placed on the pre-operative evaluation of all surgical cases."

B. The Appeal Board Hearing and Decision

Faced with a JRC decision recommending corrective action which the MEC considered inconsistent with the JRC's factual findings and inadequate to protect patient safety since, in its view, the JRC decision failed to address intra-operative patient safety concerns,[4] the MEC appealed the JRC decision to an appeal board on two issues: (1) whether the JRC acted unreasonably regarding its Final Proposed Action; and (2) whether there should be a report to the Medical Board of California and the National Practitioner Data Bank of the decision, which the JRC decision did not specify.[5]

An appeal board (a subset of the Board of Trustees) consisting of five members and one alternate was appointed in accordance with section 7.5-4 of the Bylaws. The

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[4] The MEC argued in its brief to the Appeal Board that "the problem with the Decision is that the Final Proposed Order adopted by the JRC, does not adequately address and is inconsistent with the Findings of Fact and Conclusions, especially in the area of addressing intra-operative patient concerns."

[5] In accordance with the Bylaws, the JRC decision is required to specify whether the action should result in a report to the Medical Board of California and the National Practitioner Data Bank. (Bylaws § 7.5-6(b).)

appeal board review hearing was conducted on May 15, 2002, and oral argument was heard at that time. The appeal board issued its decision on May 28, 2002, stating:

> "1. The Appeal Board unanimously decides and recommends to the Board of Trustees that the following restrictions of Dr. 257's clinical privileges at Saint Agnes Medical Center apply for the longer of one year (12 months) or the time necessary to complete proctoring, as hereinbelow set forth, of Dr. 257 in his next 25 surgical cases performed at Saint Agnes Medical Center;
>
> "a. All surgical cases must have a second opinion by an orthopedic surgeon or neurosurgeon who performs similar cases in his/her own practice and must be approved by the Department of Surgery;
>
> "b. Dr. 257 must be assisted by an orthopedic surgeon, neurosurgeon or vascular surgeon as appropriate to the case;
>
> "c. Dr. 257 must make rounds on a daily basis and see patients in the hospital as per the Medical Staff Bylaws;
>
> "d. Dr. 257 must meet with and hear advice from the Infectious Disease consultant to the MEC and formulate a plan for corrective action; and
>
> "e. Dr. 257's medical staff privileges shall be subject to an on-going monitoring process that includes retrospective review of all surgeries with chart review as assigned by the Chairman of the Department of Surgery.
>
> "2. If adopted by the Board of Trustees, the decision and recommendation of the Appeal Board is reportable to the National Practitioner Data Bank since the JRC findings of fact and conclusions are unchallenged by any appeal and are a medical disciplinary cause or reason for imposing restriction son Dr. 257's clinical privileges, and since the restrictions will remain in place for more than 30 days over the next 12 months. If the Board of Trustees adopts this decision, the Appeal Board recommends that a report be filed with the National Practitioner Data Bank stating that following a peer review proceeding concerning the professional competence and conduct of Dr. 257, his clinical privileges at Saint Agnes Medical Center to conduct surgery are being restricted for more than 30 days over the next 12 months as a result of findings that his provision of medical care to certain of his patients was deficient." (Fn. omitted.)

The appeal board then set forth the reasons for its decision as follows:

> "The reasons for the decision and recommendation of the Appeal Board are as follows. The findings and conclusions of the JRC are that Dr. 257 was deficient in his professional care in a manner reasonably likely to be detrimental to patient safety in 10 of the 12 cases reviewed by the JRC. These JRC findings and conclusions were not challenged by an appeal to the Board of Trustees. These JRC findings and conclusions cannot be reconciled with the JRC's modest recommended restrictions of Dr. 257's clinical privileges. This is because the JRC's recommended restrictions do not address major areas of deficiency in Dr. 257's clinical practice found to exist by the JRC. The Appeal Board cannot reconcile the JRC's negative findings regarding Dr. 257's care of surgical patients with the JRC's modest restrictions of Dr. 257's clinical privileges and finds that the JRC's proposed restrictions are unreasonable in light of the JRC's findings. Accordingly, the Appeal Board decision has adopted the original recommendations of the MEC for restriction of Dr. 257's clinical privileges with the modification that those restrictions must be imposed for the longer of one year (12 months) or until the completion of 25 surgical cases by Dr. 257 at Saint Agnes Medical Center." (Fn. omitted.)

Subsequently, the decision and recommendations of the appeal board were approved and adopted by the Board of Trustees of Saint Agnes Medical Center.

Respondent filed a petition for writ of administrative mandamus on October 22, 2002. On August 2, 2003, the court issued its order granting respondent's petition for the issuance of a peremptory writ setting aside the decision of the appeal board. In its order, the court concluded that the appeal board had failed to use the appropriate standard of review and had instead impermissibly substituted its own judgment for that of the JRC.

On September 17, 2003, appellants filed their appeal from the court's order.

THE SUPERIOR COURT DID NOT ERR IN REVERSING THE APPEAL BOARD'S DECISION

"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." (*Weinberg v. Cedars-Sinai Medical Center* (2004) 119 Cal.App.4th 1098, 1108.) "'The decision of the governing body is clearly the "final"

decision rendered in the multilevel administrative review process ….'" (*Hongsathavij*, *supra*, 65 Cal.App.4th at p. 1135.) Here, the final decision was the decision of the appeal board, as adopted by the hospital's board of trustees. "'[T]he law requires the hospital to exercise its discretion in conformity with procedural requirements of the staff bylaws and common law fair procedures.'" (*Huang v. Board of Directors* (1990) 220 Cal.App.3d 1286, 1293.) The superior court's role was described in *Hongsathavij* as follows: "First, it must determine whether the governing body applied the correct standard in conducting its review of the matter. Second, after determining as a preliminary matter that the correct standard was used, then the superior court must determine whether there was substantial evidence to support the governing body's decision." (*Hongsathavij*, *supra*, 65 Cal.App.4th at p. 1136.) The appellate court "conducts its own review of the administrative proceedings to determine whether the superior court ruled correctly as a matter of law. [Citation.]" (*Id*. at p. 1137.) The parties appear to agree that these are the applicable legal principles. They disagree, however, on whether the appeal board applied the correct standard of review in conducting its review of the JRC's decision. Dr. 257 contends that the appeal board did not apply the correct standard of review, but instead substituted its own independent judgment for that of the JRC. The hospital argues that the appeal board did apply the correct standard of review, and that the JRC's "final proposed order," which did not include any component of intra-operative monitoring of Dr. 257's surgeries, was not supported by the evidence. As we shall explain, we agree with Dr. 257.

A. The Medical Staff's Peer Review Procedure

Under the bylaws, the MEC may recommend that certain corrective action be taken against a member of the medical staff. (Bylaws, §§ 6.1-4, 6.1-5.) "The recommendation of the Medical Executive Committee shall become the final action unless the Member requests a hearing …." (Bylaws, § 6.2-1.) "When a hearing is requested, the Medical Executive Committee shall appoint a Judicial Review Committee

which shall be composed of no fewer than five members …." (Bylaws, §7.3-5.) "Membership on a judicial review committee shall consist of one member who shall have the same healing arts licensure as the accused, and where feasible, include an individual practicing the same specialty as the member. All other members shall have M.D. or D.O. licenses." (Bylaws, §7.3-5.) The physician must be given written notice of "[t]he reasons for the proposed action including the acts or omissions with which the member is charged." (Bylaws, §7.3-1(e); see also *Unnamed Physician v. Board of Trustees* (2001) 93 Cal.App.4th 607, 622-624.) At the JRC hearing, each side (i.e., the MEC and the physician) may present evidence and call witnesses. Both sides also have various other procedural protections described in the bylaws (e.g., to be provided with all of the information made available to the JRC, to have a record made of the proceedings and to obtain copies of the record, and to submit a written statement at the close of the hearing). (Bylaws, §7.4-5.) "The decision of the Judicial Review Committee shall be based on the evidence introduced at the hearing, including all logical and reasonable inferences therefrom." (Bylaws, §7.4-9.) The JRC "shall render a written decision which shall include findings of fact and a conclusion articulating the connection between the evidence produced at the hearing and the decision reached." (Bylaws, §7.4-10.) "The decision of the Judicial Review Committee shall be considered final, subject only to such rights of appeal or review as described" elsewhere in the bylaws. (Bylaws, §7.4-10.)

Either side may request an appeal of the JRC's decision "[w]ithin 15 days after receipt of the decision of the Judicial Review Committee …." (Bylaws, §7.5-1.) "The grounds for appeal from the hearing shall be: (a) substantial failure of any person to comply with the procedures required by these Bylaws or applicable law in the conduct of the hearing and the rendering of the decision so as to deny petitioner a fair hearing; (b) the lack of substantive rationality of a Medical Staff Bylaw, Rule or Regulation relied upon by the Judicial Review Committee in reaching its decision; and/or (c) action taken arbitrarily, unreasonably, or capriciously." (Bylaws, §7.5-2.) Option "(c)" was the basis

for the MEC's appeal in the present case. "The Board of Trustees may sit as the appeal board, or its chairperson may appoint an appeal board which shall be composed of not less than five members of the Board of Trustees." (Bylaws, §7.5-4.) "'Board of Trustees' means the governing body of Saint Agnes Medical Center." (Bylaws, Definitions, #2, p. 1749.) In this case there was a five-member appeal board. None of the appeal board members were doctors. As the possible grounds for an appeal would suggest, "[t]he proceedings by the appeal board shall be in the nature of an appellate hearing based upon the record of the hearing before the Judicial Review Committee …." (Bylaws, §7.5-5.) Nevertheless, "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 Judicial Review Committee in the exercise of reasonable diligence and subject to the same rights of cross-examination or confrontation provided at the Judicial Review committee hearing; or the appeal board may remand the matter to the Judicial Review Committee for the taking of further evidence and for decision." (Bylaws, §7.5-5.) No additional evidence was presented to the appeal board in the present case. The bylaws also provide that in a proceeding before the appeal board, the parties may be represented by counsel and may present written statements in support of their respective positions. The appeal board "in its sole discretion … may allow … oral argument." (Bylaws, §7.5-5.) The appeal board "shall render to the Board of Trustees a decision in writing and shall forward copies thereof to each side involved in the hearing." (Bylaws, §7.5-6(a).) "The written decision shall contain the recommendations, specify the reasons for the action taken, and include the text of the report." (Bylaws, §7.5-6 (a).) "The Board of Trustees shall at its next meeting affirm, modify, or reverse the decision of the Judicial Review Committee or remand the matter to the Judicial Review Committee or remand the matter to the Judicial Review Committee for reconsideration." (Bylaws, § 7.5-6(b).) As we have already mentioned, the hospital's board of trustees adopted the decision of the appeal board and modified the decision of the JRC, thus granting the

MEC's request to impose intra-operative monitoring of Dr. 257's surgeries at the hospital.

B. The Bylaws Required The Appeal Board To Review For Abuse of Discretion

The ground for appeal in the present case ("action taken arbitrarily, unreasonably, or capriciously" – as stated in §7.5-2 of the Bylaws) appears almost to parrot the classic definition of the well known and often applied standard of review known as the abuse of discretion test. "'The term [judicial discretion] implies absence of arbitrary determination, capricious disposition or whimsical thinking. It imports the exercise of discriminating judgment within the bounds of reason.'" (*In re Cortez* (1971) 6 Cal.3d 78, 85.) "The concept of judicial discretion is difficult to define with precision. In the past we have described it as 'the sound judgment of the court, to be exercised according to the rules of law.' [Citation.] More recently we have said (quoting from another case) that the term judicial discretion 'implies absence of arbitrary determination, capricious disposition or whimsical thinking.' [Citation.] Moreover, discretion is abused whenever the court exceeds the bounds of reason, all of the circumstances being considered. [Citations.]" (*People v. Giminez* (1975) 14 Cal.3d 68, 72.) Most of the published appellate decisions discussing the abuse of discretion test involve an appellate court reviewing a trial court's ruling. A decision being reviewed under the abuse of discretion test """will not be reversed merely because reasonable people might disagree."""" (*People v. Carmony* (2004) 33 Cal.4th 367, 377.) Under the abuse of discretion test, "[a]n appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge." (*Ibid*.) """"[A] trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it."""" (*Ibid*.; see also *Gossman v. Gossman* (1942) 52 Cal.App.2d 184, 195; *In re Marriage of Rosevear* (1998) 65 CalApp.4th 673, 682-683; and 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 358, pp. 406-408.) Here, under the applicable bylaws, the appeal board

undertook a review "in the nature of an appellate hearing based upon the record of the hearing before the Judicial Review Committee." (Bylaws, §7.5-5.) The appeal board was to decide whether the JRC's decision was "action taken arbitrarily, unreasonably, or capriciously." (Bylaws, §7.5-2.) In other words, the appeal board was to decide whether the JRC abused its discretion in disagreeing with the recommendation of the MEC and in refusing to recommend intra-operative monitoring of Dr. 257's hospital surgeries. The appeal board's task was not simply to decide whether the MEC's recommendation of intra-operative monitoring was preferable to, or wiser than, the JRC's rejection of that recommendation.

C. The JRC Did Not Abuse Its Discretion

Here, the JRC explained why it rejected the MEC's recommendations. The JRC stated:

> "For the reasons set forth in greater detail below, we affirm the conclusion of the Medical Executive committee (the "MEC") that there have been deficiencies in the medical practices of Dr. 257 warranting the step of imposing conditions upon his continued exercise of Clinical Privileges pursuant to Section 6.1-4(d) of the Bylaws.
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> "We do not, however, adopt as our Final Proposed Action the MEC Recommendations submitted in July 2000, but instead submit a set of modifications.
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> "The modifications herein take into account our findings with respect to certain evidence presented during the Hearing from which we conclude that Dr. 257's medical practices have improved in certain material ways since the time of the MEC's Recommendations. We conclude that the *content* of the recommendations of the MEC was reasonable and warranted in light of the medical evidence available to the MEC at the time, and we submit a modified version of those recommendations as our Final Proposed Action solely on the basis of the evidence of those improvements. Our Decision is calculated to achieve the objectives of the MEC in the different setting we now face. [¶] … [¶]
>
> "The MEC presented evidence concerning alleged deficiencies in practice with respect to twelve medical charts, and concerning an allegedly

excessive aggregate infection rate for patients under Dr. 257's care during an investigatory period preceding the MEC's recommendations.

"As set forth below, we find that some but not all of the MEC's conclusions pertaining to Dr. 257's practice in connection with specific charts had merit, and that the meritorious contentions are sufficiently numerous and significant to warrant the Proposed Action set forth herein. We also find that there is merit to the MEC's conclusion that Dr. 257's infection rate was excessive for the period under review:

The JRC's decision also stated:

"**WE FIND**, by a preponderance of the evidence, that:

"1. If one includes instances of self reported infection in the results, Dr. 257's infection rate for all orthopedic surgeries he performed for the period January 1, 1999 to September 30, 1999 was 7.8%, and his infection rate for lumbar laminectomy/fusion procedures performed during the same period was 14%.

"2. No infection rate for any other physician about whom testimony was given, including all other orthopedic surgeons at Saint Agnes Medical Center during that period of time, as well as the following orthopedists who testified on behalf of Dr. 257 – namely, Drs. Kostuik, Lester and Tooke – has exceeded 4%.

"3. After September 30, 1999, Dr. 257's infection rate dropped to zero, despite a statistically meaningful number of surgeries (68 in the year 2000 alone) and the rate has remained zero through the time of the JRC hearing.

"**WE CONCLUDE:**

"1. Dr. 257's infection rate in 1999 was excessive. Moreover, because other orthopedists operated in the same operating rooms at Saint Agnes Medical Center, the excessive infection rate at the time was attributable to deficiencies in Dr. 257's professional conduct, reasonably likely to be detrimental to patient safety.

"2. Thereafter, Dr. 257 apparently took steps conscientiously to resolve the infection rate on his own, making adjustments to the Medical Executive Committee's recommendations of July 2000 appropriate." (Fns. omitted.)

The JRC further stated:

> "[It is, we conclude, not practical to obtain the assistance of an orthopedic, neuro, or vascular surgeon in every case. Moreover, the likely primary reason for this recommendation – to ascertain and stem the surgical technique deficiencies that may have been leading to the high infection rate – appears no longer to be at issue.]"

The appeal board's stated rationale for rejecting the decision of the JRC was that "[t]he Appeal Board cannot reconcile the JRC's negative findings regarding Dr. 257's care of surgical patients with the JRC's modest restrictions of Dr. 257's clinical privileges and finds that the JRC's proposed restrictions are unreasonable in light of the JRC's findings." Unlike the appeal board, we can reconcile the JRC's findings with its recommendation – the five medical doctors on the JRC were simply not of the view that intra-operative monitoring was appropriate, especially in view of the fact that in the two years immediately prior to and during the JRC hearing Dr. 257 had an infection rate of zero. The hospital appears to argue that (1) the appeal board was entitled under the bylaws to "modify" a decision of the JRC, and (2) because the "modified' decision adopted by the appeal board is supported by substantial evidence, this court cannot disturb the decision of the appeal board. The flaw in the hospital's argument is that the appeal board cannot, under the bylaws, modify a JRC decision simply because the appeal board deems the JRC decision to be unwise. A restriction including intra-operative monitoring would certainly be reasonable in the present case, but this does not necessarily mean that the JRC's rejection of the MEC's recommendation of intra-operative monitoring was unreasonable. The JRC's recommendation was not "so irrational or arbitrary that no reasonable person could agree with it." (*People v. Carmony*, *supra*, 33 Cal.4th at p. 377.) The JRC's recommendation was the unanimous, reasoned judgment of five medical doctors.

Nor are we persuaded by the hospital's argument that a court should not interfere with decisions involving hospital staff privileges unless it can be shown that a procedure is "'substantively irrational or otherwise unreasonably susceptible of arbitrary or

discriminatory application …."" (*Rhee v. El Camino Hospital District* (1988) 201 Cal.App.3d 477, 489.) No one is contending that the procedure called for in the bylaws is unreasonable. Our conclusion is simply that the procedure called for in the bylaws must be followed. Here, it was not followed because the JRC's decision was not arbitrary, capricious or "unreasonable" within the meaning of the bylaws.

To the extent the hospital's argument that the JRC's decision was correctly found by the appeal board to be "unreasonable" may be construed as an argument that the JRC's decision was "so irrational or arbitrary that no reasonable person could agree with it" (*People v. Carmony*, *supra*, 33 Cal.4th at p. 377), and therefore an abuse of discretion warranting the modification made by the appeal board (i.e., the addition of the condition of intra-operative monitoring that had been expressly rejected by the JRC), we disagree. The hospital argues that some of the 10 medical charts found by the JRC to demonstrate deficient conduct by Dr. 257 involved DR. 257's intra-operative judgment. That is true, but it is also true that several of them involved Dr. 257's pre-operative evaluations of his patients and his delegation of certain tasks to others. The JRC relied on evidence that Dr. 257 began delegating less and taking tighter personal control of the tasks involved in his surgical procedures. The JRC's recommendation of concurrent review of all medical records related to his surgical cases was expressly stated by the JRC to be directed at his "problem with [his] pre-operative *evaluation* of his patients." Of the 10 cases in which the JRC found deficiencies in Dr. 257's care for patients, only one of them appears to have involved only poor intra-operative judgment in his actual performance of a surgical procedure.

DISPOSITION

The superior court's order denying the hospitals petition for writ of administrative mandamus is affirmed. Costs on appeal are awarded to respondent.

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Ardaiz, P.J.

WE CONCUR:

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Vartabedian, J.

_____
Harris, J.