

IN THE COURT OF COMMON PLEAS

CUYAHOGA COUNTY, OHIO

A. MARY WALBORN, M.D., <i>et al.</i> ,)	CASE NO. CV-02-479572
)	
<i>Plaintiffs</i>)	
)	JUDGE DANIEL GAUL
<i>v.</i>)	
)	
UHHS/CSAHS-CUYAHOGA, INC.)	FINDINGS OF FACT AND
)	CONCLUSIONS OF LAW
<i>Defendant</i>)	
DANIEL GAUL, J.:		

This action is before the court following a permanent injunction hearing consolidated with a non-jury trial on the merits. The parties to this action are as follows: the plaintiff doctors (hereafter "the Plaintiffs"); the defendant and counterclaimant UHHS/CSAHS-Cuyahoga, Inc. ("Cuyahoga Inc."), d/b/a St. John West Shone Hospital ("St. John"); and new-party counterclaim defendant the Cleveland Clinic Foundation ("the Clinic").

INTRODUCTION

On August 23, 2002, the Plaintiffs filed the instant action and moved the court for a temporary restraining order. Since that date the Plaintiffs properly amended their complaint. In Count I of the amended complaint, the Plaintiffs have asked the court to declare that St. John's "Conflict of Interest Credentialing Policy" ("Credentialing Policy") is contrary to Ohio law as applied to the Plaintiffs and on its face. In Count II of the amended complaint, the Plaintiffs have asked the court to mandate that St. John make its Credentialing Policy and the standards upon which it is based available for the Plaintiffs' inspection. St. John in turn, has properly filed a second enforceable counterclaim, seeking a declaration from the court that the Credentialing Policy is valid and enforceable both on its face and as applied to the Plaintiffs and the Clinic.

On August 23, 2002, the administrative and presiding judge of the Common Pleas Court issued a temporary restraining order preventing St. John from enforcing the Credentialing Policy, which order has been extended by agreement of the parties through the date of this judgment. The matter now having been fully tried, the court's findings of fact and conclusions of law follow.

FINDINGS OF FACT

A. The Parties

1. Plaintiffs are primary care internal medicine physicians who reside in and around Cleveland, Ohio and who are employed by the Clinic. They practice primarily at the Clinic's Westlake/Lakewood Family Health Center in Westlake, Ohio ("Clinic Westlake Facility").

2. Counterclaim Defendant the Clinic is an Ohio nonprofit corporation that operates a multidisciplinary tertiary care referral center located at 9500 Euclid Avenue, Cleveland Ohio and operates an acute care hospital at the same location. The Clinic owns the Clinic Westlake Facility where Plaintiffs practice medicine.

3. St. John is an acute care hospital located in Westlake, Ohio. It is owned and operated by Cuyahoga, Inc., a Ohio nonprofit corporation formed in 1999 that also owns St. Vincent Charity Hospital ("St. Vincent") in Cleveland. That corporation has two members, each with 50 percent ownership: University Hospitals Health System, Inc. ("UHHS") and the Sisters of Charity of St. Augustine Health System, Inc. ("CSAHS").

B. Establishment and Initiation of Policy, 1999-2001

4. On November 7, 2001, St. John announced a new "Medical Staff Development Plan." In a memo to its medical staff, St. John indicated that under the new policy, staff members who "have entered into employment agreements with competing health systems...or whose medical practice is managed by a competing health system which results in a material conflict of interest will not be eligible for appointment or reappointment to the Medical Staff." The memo further described that the new policy would be effective immediately, and that applicants would be asked to self-disclose their employment relationships. Pltf. Ex. 1; Tr. 310 (DeGrandis).

5. The announcement was made in a memorandum from St. John's president, Fred DeGrandis, to the entire St. John medical staff – including the Plaintiffs. Tr. 83-84 (Walborn), 222 (Knapp). The November 7, 2001 memorandum included a detailed explanation of the Credentialing Policy. Deft. Ex. Y.

6. The Credentialing Policy deems two classes of individuals not to be qualified to apply or reapply to the St. John medical staff: (1) individuals with "material financial relationships;" and, (2) individuals with a "material conflict of interest." The policy, in pertinent part, reads:

(1) As a prerequisite to receiving an application for appointment or reappointment to [the St. John] Medical Staff, a Practitioner must complete a Request for Application. In satisfactorily completing a Request for Application, the Practitioner must describe in detail all material relationships, if any, that the Practitioner has with a health system(s) (or its controlled entity) nor affiliated with University Hospitals Health System. * * *

(3) Practitioners who have either a material financial relationship (as defined below) or a material conflict of interest (as defined below) will not be eligible to receive an application for appointment or reappointment to [the St. John] Medical Staff, and will not receive an application or reapplication packet from [St. John], unless the Practitioner indicates in the Request for Application that he/she is planning to terminate the material financial relationship or material conflict of interest upon or before appointment or reappointment to the Medical Staff. In the event that the Practitioner has a material financial relationship or material conflict of interest and indicates an intent to terminate such relationship/conflict, the Practitioner will receive an application for appointment or reappointment, which will be processed contingent upon such termination.***

(5) A "material financial relationship" with a health system (or its controlled entity) not affiliated with University Hospitals Health System shall include, but not be limited to:

(a) An employment relationship;

(b) An independent contractor relationship, whereby the individual receives more than de minimis compensation (it being understood that an individual providing services on an infrequent basis will not be deemed to have a material financial relationship), and

(c) A contractual relationship pursuant to which an individual's professional practice or the professional practice employing the individual is managed by a health system (or an entity controlled by such health system) not affiliated with University Hospitals Health System.

A material financial relationship does not include membership on the medical staff of a health system (or its controlled entity) not affiliated with University Hospitals Health System.

(6)A "material conflict of interest" shall include, but not be limited to, holding a position (paid or unpaid) as an administrator, director, or trustee with any hospital, health care system, and/or health care entity not affiliated with University Hospitals Health System.

Pltf. Ex. 2.

7. In 1999, St. John's owners made the Credentialing Policy a part of the affiliation agreement between UHHS and CSAHS. Tr. 387-89 (Cicero), Deft. Ex. A. The affiliation agreement states that "each physician whose existing or renewed staff privileges at [St. John and St. Vincent] expires after January 1, 2000 will be renewed only if the physician is not employed by a hospital system, other than UHHS or its Affiliates, that competes with either

Buyer or, in the reasonable judgment of the respective Boards of Trustees of Buyer, does not receive as an independent contractor or otherwise, material support from a hospital system, other than UMRS or its Affiliates, that competes with either Buyer." Deft. Ex. A at § 7.4. Through the Credentialing Policy, the owners of St. John sought to ensure the long term viability of St. John and St. Vincent, improve the quality of care at St. John and St. Vincent, and bring the quality initiatives established at UHHS to St. John and St. Vincent. Tr. 388 (Cicero); 476 (DeGrandis).

8. Such goals are reasonably related to the operation of a hospital. Indeed, the Cleveland Clinic Health System's western region CEO, Dr. Louis P. Caravella, agrees that ensuring the continued viability of a hospital is a legitimate basis upon which to implement a policy or program:

For a not-for-profit hospital to be able to provide care, it has to be viable. If it isn't viable, you cannot fulfill your mission, which is provide care in the community. So one would have to say that the hospital has to remain viable if it wants to fulfill its mission to provide care.

Tr. 653 (Caravella).

[A hospital] board has a fiduciary responsibility to ensure that the hospital is capable of carrying out its mission, and if the hospital is in bankruptcy, it can't do that, so they have a responsibility to see that the hospital exists.

Tr. 654 (Caravella).

C. Flawed Implementation of Policy

9. Due to changes in leadership, and the implementation of many of the other strategic initiatives contemplated in the Affiliation Agreement, St. John's implementation of the Credentialing Policy was delayed until November, 2001. Tr. 391-92 (Cicero). The implementation of the Credentialing Policy was handled at the hospital level.

10. Under the St. John medical staff bylaws, physicians on the St. John medical staff agree to be bound by those bylaws. Deft. Ex. PPP.

11. A physician's agreement to be bound by the provisions of the St. John medical staff bylaws includes an agreement to "[a]bide by the Medical Staff Bylaws, rules and regulations; abide by the Departmental and Divisional rules and regulations... [and] [a]bide by Hospital policies, rules and regulations," which include policies outside of the medical staff bylaws set by Cuyahoga, Inc., including the Credentialing Policy. Deft. Ex. PPP, at § 3.5.4. .

12. The Credentialing Policy at St. John is one portion of the St. John Medical Staff Development Plan, which encompasses all of St. John's policies, procedures, goals and strategic initiatives for developing, governing and building its medical staff. Tr. 295-96 (DeGrandis). .

13. In connection with the 2002 reapplication cycle, St. John's provided applications for reappointment to its medical staff, as well as "entity affiliation forms" to the Plaintiffs. Tr. 306; 428-30. The entity affiliation form asks the practitioner to indicate whether or not he or she has a "material financial relationship with a health system not affiliated with UHHS/CSAHS-Cuyahoga, Inc. or University Hospitals Health System," in the form of an employment relationship or contractual relationship. All of the Plaintiffs indicated that they had a "material financial relationship" with a competing health system on their entity affiliation forms. Pltf. Exs. 3, 13-20; Tr. 430-31 (DeGrandis).

14. By virtue of their employment with the Clinic, each of the Plaintiffs had "material financial relationships," as the term is defined in Credentialing Policy, and disclosed their

conflicts of interest in completing entity affiliation forms. Tr. 444 (DeGrandis), Plft. Ex. 3, 13-20.

15. The Plaintiffs all completed and submitted both the applications for reappointment and the entity affiliation forms in a timely manner. Tr. 444-45 (DeGrandis).

16. St. John's president, Fred DeGrandis, indicated that the Plaintiffs would be denied applications for reappointment on April 10, 2002, but did not inform the Plaintiffs of his decision until June. Pltf. Exs. 3, 7, 13-20.

17. On June 11, 2002, the Plaintiffs were notified by St. John that their "requests for applications" for reappointment to the medical staff were being denied because they had a "material financial interest with a competing health system, which is in conflict with the Hospital's Conflict of Interest credentialing [sic] Policy." The Plaintiffs were informed that they had a right to hearing before an administrative review committee if they requested such a hearing within 30 days. The June 11, 2002 correspondence enclosed a "Right to a Hearing Policy." Pltf. Ex. 7; Tr. 103-08 (Walborn).

18. The Right to a Hearing Policy provided that (1) the hearing committee would comprise the president and CEO of Cuyahoga, Inc. (Mary Morrison), the chief medical officer of Cuyahoga, Inc. (Dr. Fred Rothstein), and a third individual selected by the chairman of the board of directors of Cuyahoga, Inc. Further, the Right to a Hearing Policy provided that the Plaintiffs "will only be permitted to present evidence at the hearing that relates specifically to the reason(s) set forth in the above-described notice [the June 11, 2002 correspondence providing the reason for the denial] that resulted in the Practitioner's Request being denied (e.g., evidence relating to whether the Practitioner has a material financial interest that violates the Conflict of Interest Credentialing Policy that has been incorporated into the Hospital's Medical Staff

Development Plan)." No appeal to or consideration by St. John's medical staff was contemplated or permitted in the Right to a Hearing Policy. Pltf. Ex. 7.

19. On June 18, 2002, the Plaintiffs requested a hearing to appeal the denial of the renewal of their privileges. Pltf. Ex. 8; Tr. 109 (Walborn).

20. Having received no response, the Plaintiffs again requested a hearing on the denial of the renewal of their privileges on July 9, 2002. Pltf. Ex. 9; Tr. 114-15 (Walborn).

21. On July 19, 2002, St. John notified the Plaintiffs that one hearing would be scheduled (apparently for all the Plaintiffs) on August 28, 2002. St. John's correspondence transmitted a new copy of the Right to a Hearing Policy to the Plaintiffs. This hearing policy contained changes and new requirements from the policy that was transmitted on June 18, although those changes were not identified for the Plaintiffs. Specifically, the new Right to a Hearing Policy contained new requirements regarding (1) the Plaintiffs' waiver of their rights and due process if they failed to arrive on time for the hearing, and (2) the Plaintiffs' waiver of rights and due process if they failed to provide copies of certain materials prior to the hearing. The hospital did not provide the Plaintiffs with a copy of the Credentialing Policy. Pltf. Ex. 10; Tr. 117-20 (Walborn), 460-62, 510-12 (DeGrandis).

22. On July 31, 2002, the Plaintiffs wrote to St. John and asked for individual hearings, rather than one "group" hearing. The Plaintiffs again asked for copies of the Credentialing Policy and other documents related to the refusal to reappoint them to the medical staff. Pltf. Ex. 11; Tr. 120-21 (Walborn).

23. On August 20, 2002, Matthew Heinle, counsel for St. John, wrote to the Plaintiffs. Mr. Heinle indicated that the hearings would be rescheduled until August 28, 2002. The letter indicated that, consistent with the Right to Hearing Policy, St. John intended to introduce the

entity affiliation forms as evidence and ask questions concerning the Plaintiffs' employment by the Clinic. Pltf Ex. 12; Tr. 122-23 (Walborn).

24. The instant action was filed prior to the August 28 hearing date. No hearing ever took place regarding the Plaintiffs' privileges under St. John's Right to a Hearing Policy.

25. Under the Credentialing Policy, a practitioner "will not receive an application or reapplication packet unless the Practitioner indicates in the [entity affiliation form] that he/she is planning to terminate the material financial relationship or material conflict of interest." Pltf. Ex. 2.

26. St. John provided each of the Plaintiffs with reapplication packets, although all of the Plaintiffs indicated that they had a "material financial relationship" with a competing entity, and none of the Plaintiffs indicated that the relationship would terminate. Tr. 306-07, 445-46, 507 (DeGrandis).

27. St. Vincent utilizes an entity affiliation form that identifies both the "material financial relationship" and "material conflict of interest" criteria. Pltf. Ex. 36. St. John edited that form to eliminate identification of the "material conflict of interest." Pltf. Ex. 44; Tr. 532 (DeGrandis). As a result, St. John did not track or enforce the "material contract of interest" provision of the Credentialing Policy. St. John admitted that this was a failure to comply with the Credentialing Policy. Tr. 406 (DeGrandis).

28. The Credentialing Policy provides for exceptions, as follows:

The President and Chief Executive Officer of UHHS/CSAHS-Cuyahoga, Inc. may grant individual exceptions to this Policy for appropriate reasons. The reasons for such exceptions will be documented in writing, and the benefits accruing to the Hospital must sufficiently outweigh the risks presented by the economic conflict of

interest caused by the material financial relationship or material conflict of interest present between the Practitioner and the competing health system.... This documentation will become part of the Practitioner's credentialing file. Pltf. Ex. 2.

29. St. John has physicians on its staff that would fall under the "material conflict of interest" criteria. St. John admits that those physicians are responsible for large numbers of admissions at St. John. Tr. 528-30 (DeGrandis); Pltf. Exs. 39, 40.

30. In order to retain its relationship with two kidney specialists employed by MetroHealth, another competing health system, St. John made two exceptions to the Credentialing Policy but did not document the reasons for the exceptions. Tr. 299, 526-27 (DeGrandis), 414-15 (Cicero); Pltf. Exs. 37A, 37B. St. John admits that this is not in conformance with the Credentialing Policy. Tr. 415 (Cicero).

31. Independent or self-employed physicians are not considered at all under the Credentialing Policy. Tr. 286 (Mourany), 387-89 (Cicero).

32. St. John asked the Plaintiffs to leave employment with the Cleveland Clinic and join a UHHS-affiliated practice prior to denying renewal of their privileges. Tr. 310, 504-05 (DeGrandis).

33. St. John's Medical Staff Development Plan contains standards and procedures governing staff membership, but the applicable provisions have not been made available to the Plaintiffs or the public. Tr. 295-96 (DeGrandis).

34. St. John's board of directors adopts each revision to St. John's medical staff bylaws. Tr. 293-94 (DeGrandis).

35. St. John had the authority to, but did not direct its medical staff to change its bylaws to adopt the Credentialing Policy. Tr. 294-95 (DeGrandis).

36. St. John's medical staff was never asked to adopt the Credentialing Policy. Tr. 313 (DeGrandis).

37. The provisions of the medical staff bylaws concerning physician credentialing materially conflict with the provisions of the Credentialing Policy. Pltf. Exs. 2, 6.

38. St. John did not consider the Plaintiffs' skill, education or competence in its decision to deny their reappointment to its medical staff. Tr. 305, 492-95 (DeGrandis).

D. Failure to Make Policy Public

39. On July 9, 2002, the Plaintiffs requested copies of the new policy/standards and procedures for physician credentialing at St. John Pltf. Ex. 9; Tr. 114-15 (Walborn).

40. Mr. Heinle's August 20, 2002, letter gave a description of the Credentialing Policy but did not provide a copy of the policy and indicated that "[t]he other information that you have requested is confidential and cannot be disclosed." Pltf. Ex. 12; Tr. 122-23 (Walborn).

41. After the Plaintiffs filed their complaint, St. John produced a copy of the Credentialing Policy to counsel for the Plaintiffs but have not produced those provisions in the Medical Staff Development Plan respecting standards and procedures governing staff membership. Pltf. Ex. 2; Tr. 123 (Walborn).

E. Plaintiffs' Practices and the Clinic's Western Region Market

42. Prior to St. John's implementation of the Credentialing Policy, and thereafter subject to the agreed extension of the temporary restraining order, each of the Plaintiffs had privileges at St. John.

43. Although the Plaintiffs have claimed in this action that maintenance of their privileges at St. John is essential to the care of their patients, they have, by their own action or inaction, caused their privileges to be suspended for substantial periods of time. A doctor forfeits privileges when he or she fails to complete patients' medical records within 30 days after a patient's discharge. Tr. 231 (Knapp). While under suspension, Plaintiffs were unable to exercise any privileges at St. John, and therefore could not see, treat or otherwise arrange the care of patients at St. John. Tr. 250 (Gutierrez), 231 (Knapp), 437 (DeGrandis). During the period between January 1, 2000 and September 30, 2001, prior to the implementation of the Credentialing Policy and while holding current medical staff privileges, each of the Plaintiffs was under administrative suspension for failure to timely complete patient discharge summaries and reports. The Plaintiffs were suspended for the following periods:

Dr. Walborn:252 out of 638 days

Dr. Bohn:124 out of 638 days

Dr. Cetin:314 out of 638 days

Dr. Gannon:317 out of 638 days

Dr. Gutierrez:450 out of 638 days

Dr. Herbert:365 out of 638 days

Dr. Knapp:471 out of 638 days

Dr. Lochner:188 out of 638 days

Dr. Rice:5 out of 638 days

Deft. Ex. FFF, Plft. Exs. 3, 13-20. From August 1, 2002, just prior to Plaintiffs obtaining the temporary restraining order in this case, through February 20, 2003, Plaintiffs continued to permit themselves to be suspended for not completing patients' medical records:

Dr. Walborn:60 days

Dr. Bohn:28 days

Dr. Cetin:56 days

Dr. Gannon:16 days

Dr. Gutierrez:91 days

Dr. Herbert:7 days

Dr. Knapp:81 days

Dr. Rice:75 days

Deft. Ex. 000. Administrative suspensions may hurt patient care and the hospital itself, perhaps threatening its accreditation if its medical staff fails to keep its records current. Tr. 351-55 (Bronson), 436-37 (DeGrandis).

44. The Clinic's Regional Medical Practice division ("Regional Medical Practice") consists of 14 different facilities providing health care and patient services in Northeast Ohio. These facilities serve Cuyahoga, Lorain and Lake counties. Tr. 336-37 (Bronson).

45. One of the missions of the Regional Medical Practice is to establish strategically located family health centers to extend the Clinic's geographical coverage and to support the Clinic's main campus. Tr. 344 (Bronson). The New Physician Orientation Manual for the Regional Medical Practice recites precisely these goals. The manual for the Clinic's Regional Medical Practice division states:

The mission of the Division of Regional Medical Practice is to provide superior primary care and selected specialty Care services in convenient community settings and to support the mission of the Cleveland Clinic Foundation....

Objective:

Develop the largest market share for primary care

* * *

Integrate [e]fforts with [Cleveland Clinic] programs.

Deft. Ex. ZZZ, at Wal. 01657.

46. Dr. Walborn, along with Dr. Floyd Loop, the head of the Clinic, conceived of one such family health center on the west side of Cleveland. In 1995 Dr. Walborn opened that facility, the Clinic Westlake Facility at 30033 Clemens Road, Westlake, Ohio. Tr. 63, 137-38 (Walborn), 358 (Bronson).

47. Dr. Walborn is the Medical Director of the Clinic Westlake Facility. She is part of the management team of the Clinic, which owns and operates the Clinic Westlake Facility. Tr. 67, 125-26 (Walborn).

48. Dr. Walborn and the other Plaintiffs are all employees of the Clinic. They are also members of the internal medicine group at the Clinic Westlake Facility. Their primary care practice consist mostly of seeing patients in their offices at the Clinic Westlake Facility. From time to time, when a patient is hospitalized, depending on the hospital, the Plaintiffs will attend to their patients in the hospital. Tr. 163-166 (Walborn).

49. Primary care physicians who practice internal medicine provide a patient's "first line of care." Tr. 63 (Walborn). Typically, the Plaintiffs see only adult patients, and provide initial consultation and treatment for any non-surgical condition. Tr. 64 (Walborn).

50. With the exception of Dr. Cetin who is a doctor of osteopathy, each of the Plaintiffs is a doctor of medicine. Tr. 67, 72 (Walborn). Each of the Plaintiffs held privileges at the Clinic's Main Campus, Lakewood, Fairview and St. John hospitals. Tr. 68 (Walborn); Plft. Exs. 3, 13-20.

51. St. John is the closest hospital to the Clinic Westlake Facility, and had already been established at the time the Clinic chose the location of and established the Clinic Westlake Facility. Tr. 68, 70 (Walborn); 379 (Cicero).

52. The Clinic owns Fairview Hospital and operates Lakewood Hospital. Tr. 141 (Walborn), 369-70 (Bronson).

53. It is not normal for the Plaintiffs to treat inpatients at Lakewood and Fairview hospitals during the week. Rather, the Plaintiffs turn over care of their patients at Lakewood and Fairview hospitals to a hospitalist who is a member of their group, an employee of the Clinic and

who works exclusively in hospitals as opposed to in physician offices. On behalf of the Plaintiffs,

on a daily basis the hospitalist directs the care of inpatients at Fairview and Lakewood hospitals. Tr.163 (Walborn), Tr. 702 (Herbert), 722-23 (Rice).

54. Plaintiffs did not utilize a hospitalist to cover shifts at St. John during the week. Instead, the Plaintiffs alternated two-week shifts to cover St John. During those two weeks, the Clinic doctor on call would tend to all the patients of the other Plaintiffs. Tr. 180 (Walborn).

55. In 2002, after implementation of the Credentialing Policy, the Plaintiffs were offered an arrangement by St. John's president, Fred DeGrandis, under which an independent doctor at St. John would serve as the "hospitalist" for the Plaintiffs' patients – even though the Plaintiffs would have no privileges at St. John. Tr. 178-79 (Walborn). Dr. Walborn testified that "[b]ecause [the Plaintiffs] wouldn't have the ability to go in [to St. John] at night and write orders or direct care ... we would never voluntarily look at that arrangement." Tr. 170 (Walborn).

56. But the minutes of an internal medicine group meeting for the Clinic Westlake Facility indicate the Plaintiffs did just that. In considering alternative inpatient settings for Plaintiffs' Lorain County patients, it was recommended "[i]f [any of the Plaintiffs] have Lorain County patients, perhaps they could be admitted to Elyria Memorial and we could have the internist at Lorain cover our patients." Deft. Ex. MM; Tr. 170-72 (Walborn). None of the Plaintiffs then had medical staff privileges at Elyria Memorial Hospital. Tr. 172 (Walborn). Because the internists at Elyria Memorial are employed by the Clinic, however, the Plaintiffs would "voluntarily look" at an arrangement under which the Plaintiffs' patients were admitted to Elyria Memorial, even though they could not go into Elyria Memorial at night or on weekends, or write orders or direct care. Tr. 170, 172-73 (Walborn). This determination by Plaintiffs is consistent with the Clinic's directive that they should (1) develop the largest market share for primary care and (2) integrate efforts with Clinic programs.

57. Dr. Walborn is responsible for the operation and management of the Clinic Westlake Facility, and annually setting strategic plans for the Clinic Westlake Facility together with Dr. David Bronson, the head of the Clinic's Regional Medical Practice. Tr. 130, 132 (Walborn).

58. Among the Clinic Westlake Facility's annual goals are improving performance and finding ways to support the Clinic's objectives. Physician productivity at the Clinic Westlake Facility, for example, is measured on a monthly basis, and every physician receives a monthly report on how much money he or she has generated in billing and in net collections. Tr. 131-32 (Walborn). In fact, the Clinic Westlake Facility physicians are "constantly admonished to increase [their] productivity and see more patients." Tr. 561 (Bohn).

59. Another goal of the Clinic Westlake Facility, and indeed of the Clinic's Regional Medical Practice, is to develop the largest market share for primary care. Tr. 134-35 (Walborn), Deft. Ex. ZZZ, at Wal. 1657 ("Objective: ... Develop the largest market share for primary care.").

60. Similarly, Dr. Walborn and the Regional Medical Practice try to integrate efforts of the Clinic Westlake Facility with other Clinic facilities, and the Clinic Westlake Facility seeks to support financially the Clinic-owned or -operated Lakewood and Fairview hospitals. Tr. 357 (Bronson), Tr. 594-95 (Caravella), Deft. Ex. ZZZ at Wal. 1724-25 ("The following are expectations we have for [Clinic Regional Medical Practice physicians] ... [the Clinic physician] uses [Clinic facilities] for all referrals when possible."). As Dr. Walborn testified, if physicians do not admit patients to hospitals, hospitals cannot survive. Tr. 141 (Walborn).

61. Since its inception, the Clinic Westlake Facility has experienced substantial growth in size, services and number of patients. Tr. 65 (Walborn).

62. When founded, the Clinic Westlake Facility consisted of five physicians. By 2003, it housed about 55 physicians. Tr. 65 (Walborn).

63. Initially, the Clinic Westlake Facility offered only primary care physician services, but it has expanded to provide treatment by subspecialists as well. Further, the Clinic Westlake Facility has the capability to treat patients in the office as well as in the hospital. Tr. 63, 65 (Walborn).

64. Dr. Walborn brought an 8,000-patient practice to the Clinic when she founded the Clinic Westlake Facility, the vast majority of patients with ties to Lakewood, Ohio. Because of her administrative duties, Dr. Walborn does not see as many patients as she previously did. Tr. 71 (Walborn).

65. The patient base of a primary care physician at the Clinic Westlake Facility after the second year of practice is up to 3,000 patients, and some physicians have more. Tr. 71-72 (Walborn).

66. The Clinic Westlake Facility now has approximately 200,000 patient visits a year, which is an increase from the approximately 180,000 visits in 2001. Tr. 138 (Walborn). That number has steadily risen since the opening of the Clinic Westlake Facility in 1995. Tr. 138 (Walborn).

67. A substantial portion of the Plaintiffs' base comes from Lorain County, and the communities of North Ridgeville, Avon, Avon Lake, Westlake and Bay Village, Ohio. Tr. 70, 138, 185 (Walborn), 247 (Gutierrez), 554 (Bohn), 685 (Gannon), 699 (Herbert), 717 (Rice). Geographic location of a patient is a primary, if not dominant determinant of the hospital at

which an individual will seek treatment. Tr. 220 (Knapp), 558 (Bohn), 678 (Cetin). St. John is closer to Plaintiffs' patients from Cleveland's northwest suburbs than are Lakewood and Fairview hospitals.

68. Dr. Walborn reported on the growth and success of the Clinic Westlake Facility in her five-year review, which Dr. Walborn testified contained accurate and truthful information that accurately reflected what she understood circumstances to be at the Clinic Westlake Facility. Tr. 136 (Walborn); Deft. Ex. L.

69. Although much of their patient base resides in the area adjacent to and surrounding St. John, in the first five years of the Clinic Westlake Facility, its doctors made referrals to subspecialists that resulted in support for the financial viability of Clinic-owned or operated Lakewood and Fairview hospitals. Tr. 142-43 (Walborn); Deft. Ex. L.

70. Twenty-five percent of the referrals went to subspecialists in the community resulting in business to the Clinic-owned or -operated Lakewood and Fairview hospitals. Tr. 142-43 (Walborn); Deft. Ex. L, at Wal. 2666 ("Main Campus benefits from our referrals as well. Although 25 percent of our referrals go to the community 75 percent are directed to main campus.").

71. The remaining 75 percent of the referrals from the Clinic Westlake Facility doctors went to subspecialists within the Clinic system. Tr.143 (Walborn); Deft. Ex. L.

72. The pie chart contained in the five-year review demonstrated that the most recent numbers showed 77 percent of all referrals for the month going to the Clinic, 5 percent to Lakewood, 2 percent to Fairview and 1 percent to St. John, despite the geographic distribution of the Plaintiffs' patients and the convenience of St. John's location. Tr. 148 (Walborn); Deft. Ex. L, at Wal. 2670.

73. Dr. Walborn's five-year review of the Clinic Westlake Facility showed her superiors at the Clinic that her facility was helping to promote the business of the Clinic, nearly to the total exclusion of St. John. Tr. 146 (Walborn); Deft. Ex. L.

74. In addition to Dr. Walborn's five-year review, the Clinic's Regional Medical Practice chair, Dr. Bronson, has further documented that the Clinic Westlake Facility has succeeded in increasing its market share on the west side of Cleveland and funneling that patient base to the Clinic and its facilities such as Lakewood, Fairview and Main Campus. Tr. 336 (Bronson); Deft. Exs. N, Q.

75. Dr. Bronson responded to an inquiry regarding the use of St. John by Clinic Westlake Facility physicians in a March 30, 2001 memorandum to Dr. Loop, the Clinic's chief operating officer, and Dr. Robert Kay, the Clinic's chief of staff and Dr. Bronson's supervisor. Dr. Bronson had never before reported to Dr. Loop and Dr. Kay regarding this issue. Tr. 358-59 (Bronson); Deft. Ex. N.

76. The memorandum stated that of 8,740 service codes billed by the Clinic Westlake Facility physicians, 8,257 – or 94 percent – were at the Clinic-owned or -operated facilities of Lakewood and Fairview hospitals. Conversely, 483 – or 6 percent – were at the hospital closest to the Clinic Westlake Facility, St. John. Service codes are industry standards that detail the type of service provided and can be used to track location of treatment. Tr. 364 (Bronson); Deft. Ex. N.

77. Of the more than \$5 million in professional charges the Clinic Westlake Facility physicians generated, 8 percent (\$405,388) was billed for services performed at St. John while the remaining 92 percent (\$4,602,475) were at Lakewood and Fairview hospitals. Deft. Ex. N. Professional charges reflect physician activity and reflect the amount billed by the physician for his or her services. Tr. 364-65 (Bronson).

78. In addition to physician professional charges, there is often a technical service charge accompanying patient care. Technical charges are what a hospital bills for the use of its equipment and staff when a physician uses the hospital in performing his or her professional services. Thus, for every inpatient professional charge there is a technical charge, which is often three to five times greater than the professional charge. The practical result is that Clinic-employed physicians were referring cases to Fairview and Lakewood hospitals and allowing those hospitals to realize technical charges of three to five times the professional charges. Tr. 364-66, 373-74 (Bronson); Deft. Ex. N.

79. Dr. Bronson's March 30, 2001 memorandum stated that the Plaintiffs and the other Clinic physicians working at the Clinic Westlake Facility used St. John "only when the ambulances bring the patients there," and "the vast majority of [their] clinical activity is at [Clinic] Hospitals." Deft. Ex. N.

80. Two months later, on May 25, 2001, Dr. Bronson again wrote to his superiors to allay concerns over the use of St John. The May 25, 2001 memorandum stated that "94 percent of all charges for inpatient services by [Clinic] providers occurs at either Fairview or Lakewood hospitals. Additionally, 96.2 percent of surgical procedures are performed at Fairview and Lakewood hospitals. The only cases that go to [St. John] are thru (sic) the 911/ED mechanism." Deft. Ex. Q. Thus, in May 2001, Plaintiffs' direct supervisor, Dr. Bronson, was able to reassure the highest levels of the Clinic that Plaintiffs were doing their part to divert patient revenues from St. John to Clinic facilities.

81. As the number of physicians grew at the Clinic Westlake Facility, so too did the number of referrals to Clinic-owned or -operated hospitals steadily increase. In fact, it increased four-fold from the first quarter of 1999 to the first quarter of 2001. Tr. 370, 374-75 (Bronson).

82. In summary, the Clinic Westlake Facility has multiplied its employed physicians by 11 times since its inception, and has continuously increased the number of patients seen by its doctors. These patients tend to come from Lorain County, North Ridgeville, Avon, Avon Lake, Westlake and Bay Village, but they are treated almost exclusively at Lakewood and Fairview hospitals, not at the hospital closest to these communities – St. John. Thus Lakewood and Fairview hospitals, not St. John, enjoy the revenue, in the form of technical charges, generated by referral of patients to their facilities by the Clinic Westlake Facility physicians.

F. The Clinic's Main Campus Policy

83. As employees of the Clinic, Plaintiffs owe their employer a duty of loyalty, are obligated to act in a manner consistent with the Clinic's mission and objectives, and every physician under contract with the Clinic is answerable to its board of trustees. Tr. 126, 162 (Walborn), 215 (Knapp).

84. More specifically, by their one-year contracts of employment, each of the Plaintiffs agreed to abide by the medical staff bylaws of the Clinic ("Clinic Bylaws") (Deft. Ex. WWW), and the major policies of the professional staff of the Clinic ("Clinic Major Policies"). Deft. Ex. XXX; Tr. 126-28 (Walborn).

85. The Clinic Bylaws provide, among other things:

[O]nly physicians employed by or under contract to [the Clinic] or employed by or under contract with the Ohio Permanente Medical Group ... or pursuant to its agreement with [the Clinic] ... may submit an application for appointment to the Medical Staff pursuant to these Bylaws.

Deft. Ex. WWW, at CCF 561. Thus, in order even to submit an application for appointment to the Clinic medical staff, one must already be an employee of the Clinic. This has been the policy of the Clinic since its founding. Tr. 343 (Bronson).

86. The Clinic Major Policies provide, among other things:

Each member of the staff must support the mission and goals of the Foundation, recognize accountability to the Board of Trustees; accept governance by the Board of Governors, and abide by the established Code of Regulations and Bylaws of the Professional Staff. There must be a commitment by each member of the staff to provider is or her professional services solely within the scope of The Cleveland Clinic Foundation and strive to improve the overall organizational performance. Unless authorized by the Board of Governors, no member of the professional staff shall obtain staff privileges in any other health care institution.

Deft. Ex. XXX at Wal. 778.

Reappointment to the professional staff of The Cleveland Clinic Foundation is made by The Board of Governors following the annual professional review ("APR") of each individual staff member and is for one year from the date of this review Failure to reappoint a member of the professional staff following the APR is not subject to the appeal

Deft. Ex. XXX at Wal. 773.

87. The Clinic Major Policies set forth policies beyond the scope of a physician's skill, competence and education – the compliance with which are conditions of employment for Clinic-employed physicians. Failure to comply with the Clinic Major Policies may prompt the

Clinic not to renew a physician's employment contract, without benefit of appeal. Tr. 156 (Walborn). Furthermore, because employment is a prerequisite to applying for membership on the Clinic medical staff, termination of employment necessarily results in the inability to hold privileges at the Clinic. Deft. Ex. WWW, at CCF 561; Tr. 343 (Bronson).

88. In addition to the Clinic Bylaws and Clinic Major Policies, every new doctor at the Clinic Westlake Facility receives a copy of the Regional Medical Practice's new physician orientation manual. Deft. Ex. ZZZ. Deviation from the policies in the manual also could subject a physician to termination of his or her employment with the Clinic. Tr. 152 (Walborn).

89. The Cleveland Clinic Foundation operates the Main Campus, an acute care hospital in Cleveland (the "Main Campus").

90. Despite being labeled an acute care, or tertiary, facility, such hospitals differ little from community hospitals. That is, the latter offer a subset of the services performed at the former – the difference is that more complex procedures tend toward the tertiary care facilities. Over the years, however, as technology has developed, more complex procedures have been offered at community hospitals. Tr. 344-47 (Bronson).

91. The Main Campus hospital has a credentialing policy that excludes all but Clinic-employed physicians under contract with the Clinic, or its affiliated health maintenance organization, from having privileges to practice medicine at the Main Campus. Tr. 342-43 (Bronson); Deft. Ex. WWW, at CCF 561 ("Only physicians employed by or under contract to [the Clinic] – may submit an application for appointment to the Medical Staff pursuant to these Bylaws.").

92. In fact, under the Clinic's credentialing policy, in order even to obtain and submit an application for membership on the Clinic Medical Staff, a physician must first be employed

or under contract with the Clinic or its obligated health maintenance organization. Deft. Ex. WWW, at CCF 561.

93. The Clinic restricts the rights of its employed physicians to seek privileges to practice at other hospitals and facilities. "Unless authorized by the Board of Governors, no member of the professional staff shall obtain staff privileges in any other health care institution." Deft. Ex. XXX, at Wal. 00778.

CONCLUSIONS OF LAW

A. Jurisdiction of the Court

1. The question of whether a hospital board may enact policies that restrict medical staff membership on the basis of a physician's conflict of interest is a question of first impression under Ohio law.

2. Plaintiffs ask that this court apply Ohio Revised Code Section 3701.351 to this case to afford them the relief they seek. That statute provides, in relevant part:

§ 3701.351 STANDARDS, PROCEDURES FOR STAFF
MEMBERSHIP, PROFESSIONAL PRIVILEGES; DISCRIMINATION
PROHIBITED.

(A)The governing body of every hospital shall set standards and
procedures to be applied by the hospital and its medical staff in considering and

acting upon applications for staff membership or professional privileges. These standards and procedures shall be available for public inspection.

(B)The governing body of any hospital, in considering and acting upon applications for staff membership or professional privileges within the scope of the applicants' respective licensures, shall not discriminate against a qualified person solely on the basis of whether that person is certified to practice medicine, osteopathic medicine, or podiatry, or licensed to practice dentistry or psychology. Staff membership or professional privileges shall be considered and acted on in accordance with standards and procedures established under division (A) of this section. This section does not permit a psychologist to admit a patient to a hospital in violation of section 3727.06 of the Revised Code. * * *

(D)Any person may apply to the court of common pleas for temporary or permanent injunctions restraining a violation of division (A), (B), or (C) of this section. This action is an additional remedy not dependent on the adequacy of the remedy at law.

3. Furthermore, the court's review of this case is governed by R.C. 2305.01 and 2721.01 et seq.

B. Credentialing Policy, Applied to Plaintiffs

4. St. John violated the relevant portion of R.C. 3701.351(B), requiring accord between its Credentialing Policy and the policy's implementation, when (1) St. John sent the Plaintiffs reapplication packets despite their acknowledgment of a material financial relationship on the entity affiliation forms; (2) St. John enforced the "material financial relationship provision of the Credentialing Policy but failed to track or enforce the "material conflict of interest"

provision; and (3) St. John failed to document the exceptions to the Credentialing Policy it made on behalf of two MetroHealth physicians.

5. Nevertheless, the court is unwilling to enjoin enforcement of the Credentialing Policy merely because its execution was flawed. The court specifically concludes that, even if St. John applied the Credentialing Policy without error, Plaintiffs have suffered only insignificant harm, if any, as a result of such error and Plaintiffs' further pursuit of any remedy at the hospital level would be futile. The court need not mandate exhaustion of administrative remedies if such remedies would be futile. *See State ex rel. Cotterman v. St. Marys Foundry* (1989), 46 Ohio St. 3d 42, 44, 544 N.E.2d 887.

6. The court concludes that R.C. 3701.351(D) does not require full injunctive relief for any violation of section (B) of that statute when such relief would be ineffective.

C. Credentialing Policy, Facially

– Interpretation of R.C. 3701.351

7. Plaintiffs contend that the Conflict of Interest Policy is invalid as it constitutes "discrimination" prohibited by R.C. 3701.351.

8. Statutory language is interpreted according to the plain meaning of the words used in the statute. *See Cablevision of the Midwest, Inc. v. Gross*, 70 Ohio St.3d 541, 544, 639 N.E.2d 1154, 1994-Ohio-505 ("It is the responsibility of courts to enforce the literal language of a statute whenever possible. ...Absent ambiguity, the court must give effect to the plain meaning of a statute even when a court believes that the statute results in an unfavorable outcome.") (internal citation omitted).

9. By its own terms, R.C. 3701.351(B) prohibits the governing bodies of a hospital – here the Cuyahoga, Inc. board of trustees – from discriminating against a "qualified" person, certified or licensed as a medical doctor, osteopath, podiatrist, dentist or psychologist "solely on the basis of whether that person is certified to practice medicine, osteopathic medicine, or podiatry, or licensed to practice dentistry or psychology." R.C. 3701. 351(B).

10. Section 3701.351(B) goes on to provide that "[s]taff membership or professional privileges shall be acted upon in accordance with standards and procedures established under division (A) of this section." Thus, pursuant to R.C. 3701.351(A), "[t]he governing body of every hospital shall set standards and procedures to be applied by the hospital and its medical staff in considering and acting upon applications for staff membership or professional privileges" without restriction, so long as those standards and procedures do not discriminate against, between or among medical doctors, osteopaths, podiatrists, dentists and/or psychologists "solely on the basis" of their certification or licensure in any of those five enumerated categories. The General Assembly's choice of the word "solely" demonstrates its belief that a hospital may lawfully "discriminate" between applicants on other bases.

11. Here, the St. John Credentialing Policy sets forth standards and procedures based on a person's financial interests or employment relationships, or both, but not on an individual's certification or licensure. Thus, because it makes no distinction based on Plaintiffs' status as doctors of medicine or osteopathy, the Credentialing Policy does not violate R.C. 3701.351.

12. The Credentialing Policy applies uniformly to medical doctors, osteopaths, podiatrists, dentists and psychologists regardless of licensure or certification and does not "discriminate against a qualified person solely on the basis of whether that person is certified to practice medicine, osteopathic medicine or podiatry, or licensed to practice dentistry or psychology." The plain language of R.C. 3701.351 cannot form the basis for the relief requested by Plaintiffs.

13. Plaintiffs cite *Dooley v. Barberton Citizens Hosp.* (1984), 11 Ohio St.3d 216, 465 N.E.2d 58, specifically its syllabus, for the proposition that the Credentialing Policy violates R.C.

3701.351 because it considers grounds other than accepted measures of physician skill, education and competence in denying the Plaintiffs an opportunity to apply or reapply for privileges on the St. John medical staff.

14. In a situation somewhat analogous to the case at bar, the Eighth District Court of Appeals deferred to the judgment of hospital governing bodies as they related to eligibility for medical staff membership. *Siegel v. St. Vincent Charity Hosp. & Health Center* (1987), 35 Ohio App. 3d 143, 520 N.E.2d 249. The *Siegel* court upheld the hospital's decision to reject a doctor's application for reappointment to its medical staff, finding that the board could consider "non-cooperative and disruptive behavior; public disparagement of the hospital; and other incidents related to a business interest of Dr. Siegel which were in conflict with the hospital's plans for expansion" – in short, "reasons other than professional incompetence." *Siegel*, 35 Ohio App. 3d at 152. Application of *Siegel* here demonstrates that Cuyahoga, Inc. may make threshold requirements for staff privileges to exclude physicians whose business interests conflict with those of St. John.

15. Plaintiffs' argument to the contrary relies on a narrow reading of the syllabus in *Dooley*. In the body of its opinion, the *Dooley* court held that a hospital cannot discriminate against podiatrists as a class expressly enumerated in R.C. 3701.351(B) by using criteria unrelated to the podiatrists' education, skill or competence. While the court recognizes that the *Dooley* syllabus appears to state a more general holding suggesting its application to this case, based upon subsequent case law construing *Dooley* the court has determined *Dooley* does not prohibit a private hospital from considering factors outside a physician's professional competence.

16. For instance, the *Siegel* court admonished the appellant there for relying on the syllabus of *Dooley*, as do the Plaintiffs here, without reference to the facts upon which the syllabus was based. *Siegel*, 35 Ohio App. 3d at 151 n.4 (syllabus "must be interpreted with reference to the facts upon which it is predicated and the questions presented to and considered by the Court").

17. Furthermore, the Ohio Supreme Court has held that the discrimination aspect of R.C. 3701.351 is expressly limited to those "protected classes" set forth in the statute:

The goal of statutory construction is to ascertain and effectuate the intention of the General Assembly. It is a basic doctrine of construction that the express enumeration of specific classes of persons in a statute implies that the legislature intended to exclude all others: The Ohio Revised Code provides for the licensing of more than one dozen groups of health care practitioners. The fact that the legislature specifically enumerated only four of these groups in R.C. 3701.351 implies that it intended to exclude the others.

Fort Hamilton-Hughes Memorial Hosp. Center v. Southard (1984), 12 Ohio St.3d 263, 265, 466 N.E.2d 903.

18. The Eighth District Court of Appeals, too, construed *Dooley* and R.C. 3701.351 as prohibiting only discrimination based upon physician classification:

From our review of *Dooley*, supra, and its facts and rationale, absent the class-wide discrimination as the court was concerned with in *Dooley*, supra, we conclude that the Board of Trustees of a hospital still has substantial discretion in adopting bylaws and standards applicable to all applicants for medical staff privileges, provided such criteria are reasonable and non-discriminatory

Siegel, supra, at 151. See also *Holt v. Good Samaritan Hosp. and Health Center* (1990), 69 Ohio App.3d 439, 590 N.E.2d 1318 ("*Dooley* is clearly limited to preventing discrimination based upon a physician's classification. The classifications delineated in the statutes are osteopaths, podiatrists, and dentists. The [Plaintiff] is not claiming that his privileges were adversely affected because [Plaintiff was a member of a protected class of physicians]. Therefore, *Dooley* is not controlling.").

19. While each of the Plaintiffs is either a doctor of medicine or osteopathy, none of the Plaintiffs was discriminated against "solely on the basis of" his or her licensure. Rather, Plaintiffs claim that Cuyahoga, Inc.'s Credentialing Policy singled them out because they are employed by the Clinic. This is not a protected class enumerated in the statute and Cuyahoga, Inc. did not discriminate against the Plaintiffs in violation of R.C. 3701.351.

– The Business Judgment Rule

20. The board of a nonprofit hospital exerts ultimate authority over financial and staffing decisions of the hospital. This principle is unassailable under Ohio Supreme Court jurisprudence:

The board of trustees of a private hospital has broad discretion in determining who shall be permitted to have staff privileges. Courts should not interfere with the exercise of this discretion unless the hospital has acted in an arbitrary, capricious or unreasonable manner or, in other words, has abused its discretion.

Bouquett v. St. Elizabeth Corp. (1989), 538 N.E.2d 113, at paragraph one of the syllabus.

21. The law in Ohio is clear that in the absence of a demonstrable "abuse of discretion," the decisions of a hospital governing body regarding physician credentialing, medical staff governance and the financial operations of the hospital shall not be second-guessed in the courts. *See Kahn v. Suburban Community Hosp.* (1976), 45 Ohio St.2d 39, 340 N.E.2d 398; *Holt*, supra, at 444; *Siegel*, supra, at 152; and *Williams v. Hobbs* (1983), 9 Ohio App.3d 331, 331-332, 460 N.E.2d 287.

22. In recognition of the authority vested in the governing bodies of hospitals, courts apply a variation of the "business judgment rule" and refuse to second guess or interfere in the decisions of such bodies. In *Kahn*, the Ohio Supreme Court stated:

[T]he action of hospital trustees in refusing to appoint a physician to its medical staff, or declining to review an appointment that has expired or changing the requirements for staff privileges, is not subject to judicial review. A court may not substitute its judgment for that of the hospital trustees' judgment.

Kahn, supra, at 44-45.

23. Cuyahoga, Inc.'s decision to adopt and subsequently implement the Credentialing Policy was a reasonable means of protecting St. John's continued viability on Cleveland's west side.

24. Plaintiffs challenge St. John's decision to enact and implement the Credentialing Policy as unreasonable, arbitrary and capricious because it is claimed to be both discriminatory and unrelated to accepted measures of physician skill, competence and education. Generally, the measure of whether the decision of a governing body of a hospital is unreasonable and arbitrary and capricious is "whether the rules and/or regulations of a hospital either overtly or implicitly discriminate against a specified classification," and whether the rules/regulations are "reasonably related to the operation of a hospital." *Siegel*, supra, at 151 and paragraph one of the syllabus.

25. The facts adduced at trial make clear that the Clinic, through the Regional Medical

Practice and physician review procedures, demands strict adherence to a corporate policy that has resulted in a very dramatic pattern of patient referrals into the Clinic system. See, e.g., Findings of Fact 69-81. Obviously, the Clinic's corporate policy has been implemented at the expense of St. John.

26. In sum, given the competitive market for health care, as well as the facts adduced regarding the business practices mentioned above, the court finds that St. John's adoption and implementation the Credentialing Policy was not arbitrary or capricious. Therefore, the court will not substitute its judgment for that of St. John. The court concludes the Credentialing Policy is a valid corporate policy that could be applied to every physician requesting privileges at the hospital.

D. Failure to Make Policy Public

27. The court concludes that St. John has violated R.C. 3701.351(A) by failing to make public those portions of its Medical Staff Development Plan tantamount to "standards and procedures... applied by the hospital and its medical staff in considering and acting upon applications for staff membership or professional privileges." Subject to redaction of irrelevant material, the court orders that to the extent Plaintiffs' request for injunctive relief has not already been fulfilled during these proceedings, St. John shall hereafter make available for public inspection those standards and procedures, as well as its Credentialing Policy, and furthermore be under continuing obligation to do so.

E. Conclusion

28. In applying a form of the business judgment rule and determining that St. John's erroneous implementation of its policy does not warrant injunctive relief, the court finds in favor

of St. John on Count I of Plaintiffs' amended complaint and finds in favor of St. John on its second amended counterclaim.

29. To the extent St. John has not already made moot the relief sought in Count II of Plaintiffs' amended complaint, the court finds in favor of Plaintiffs on Count II of the amended complaint.

Costs shall be borne equally by the parties. Dated this 16th day of June, 2003.

IT IS SO ORDERED.

Daniel Gaul, Judge