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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

JATINDER DHILLON, Plaintiff and Respondent, v. JOHN MUIR HEALTH et al., Defendants and Appellants.	A143195 (Contra Costa County Super. Ct. No. MSN13-1353)

John Muir Health and the Board of Directors of John Muir Health (collectively John Muir) operate the John Muir Medical Center (hospital). John Muir appeals a writ of administrative mandamus compelling it to conduct, under the hospital's medical staff bylaws (bylaws), formal peer review proceedings of disciplinary actions imposed on plaintiff Jatinder Dhillon by the hospital's medical executive committees.[1] We agree with John Muir that the bylaws do not provide for formal peer review of the discipline imposed in this instance. Accordingly, we shall reverse the order and remand for entry of an order denying Dhillon's petition for writ of administrative mandamus.

[1] The hospital has two campuses, each of which has its own medical staff, bylaws, and medical executive committee. As relevant to this appeal, the bylaws adopted by the medical staff at both campuses are identical. Because Dhillon is a member of the medical staff at both campuses, the disciplinary actions were taken jointly by the medical executive committees at both campuses.

Background

A brief summary of the peer review process as it exists in California and under the terms of the hospital's bylaws provides context for the issue in this case.

Under California law, a hospital's medical staff is required to adopt written bylaws that establish formal procedures for evaluating "staff applications and credentials, appointments, reappointments, assignment of clinical privileges, appeals mechanisms and such other subjects or conditions which the medical staff and governing body deem appropriate." (Cal. Code Regs., tit. 22, § 70703, subd. (b).) The medical staff also must provide a means for enforcing its bylaws, including adoption of a peer review process, which is subject to minimum procedural standards set by statute. (*Smith v. Selma Community Hospital* (2008) 164 Cal.App.4th 1478, 1482; Bus. & Prof. Code, §§ 809-809.9 [minimum procedural standards for peer review proceedings].) As set forth *post*, the statutorily required peer review process is found in article VII of the bylaws. Formal hearings under article VII are conducted by a "judicial review committee."

As relevant here, article II, section 2.1-1, subdivision (b) of the bylaws require as a qualification of membership in the hospital's medical staff that, among other things, the individual "be able to work cooperatively with others so as not to . . . disrupt medical staff or hospital operations." In addition, section 2.7, subdivision (s) imposes on members of the medical staff the responsibility to continuously comply with the Medical Staff Code of Conduct.

Article VI of the bylaws governs "corrective action." Section 6.1-1, charges the medical department chairs with "carrying out delegated review and quality management functions." The article authorizes the departments to "counsel, educate, issue letters of warning, admonition or reprimand, or institute retrospective or concurrent monitoring (so long as the member is only required to provide reasonable notice of admissions and procedures) in the course of carrying out their duties without initiating formal corrective action." Under this provision, "medical executive committee approval is not required for these actions, although the actions should be reported by the department chair to the

medical executive committee. The actions shall not constitute a restriction of privileges or grounds for any formal hearing or appeal rights under article VII."

Under section 6.1-4, if the medical executive committee receives a request for action and concludes an investigation is warranted, "it shall direct an investigation to be undertaken. The medical executive committee may conduct the investigation itself: or may assign the task to an . . . ad hoc committee of the medical staff. . . . [The] committee shall proceed with the investigation in a prompt manner and shall forward a written report of the findings and recommendations to the medical executive committee as soon as practicable. The report may include recommendations for appropriate corrective action. The member shall be notified that an investigation is being conducted and shall be given an opportunity to provide information in a manner and upon such terms as the investigating body deems appropriate. The individual or body investigating the matter may, but is not obligated to, conduct interviews with persons involved; however, such investigation shall not constitute a 'hearing' as that term is used in article VII, nor shall the procedural rules with respect to hearings or appeals apply."

Once the investigation is complete, the medical executive committee may, among other things, issue letters of admonition, censure, reprimand or warning; recommend suspension of clinical privileges, or take "other actions deemed appropriate under the circumstances." (Bylaws, § 6.1-5, subd. (a).) "If corrective action as set forth in section 7.1-6 (a) – (l) is recommended by the medical executive committee, that recommendation shall be transmitted to the governing body. So long as the recommendation is supported by substantial evidence the recommendation of the medical executive committee shall be adopted by the governing body as final action unless the member requests a hearing, in which case the final decision shall be determined as set forth in article VII." (Bylaws, § 6.1-6, subd. (b).)

Article VII is entitled "Hearings & Appellate Review." Under section 7.1-6, a member is entitled to a hearing before the judicial review committee if the medical executive committee makes a recommendation "to the governing body outlined in this section 7.1-6 which . . . would adversely affect [the member's] exercise of clinical

privileges ('adverse recommendation')." The section continues, "Except as otherwise specified in these bylaws . . . any one or more of the following actions, if taken for medical disciplinary cause or reason, as defined in Business and Professions Code section 805 . . . , shall be deemed adverse and shall constitute grounds for a hearing: [¶] . . . [¶] (g) suspension of clinical privileges; [¶] . . . [¶] (i) significant restriction of privileges [with inapplicable exceptions]; requirement of consultation or other conditions of clinical privileges including mandatory consultation, assistants or other special conditions of admission or treatment; [¶] . . . [¶] (k) any other disciplinary action or recommendation that must be reported to the Medical Board of California."[2]

Business and Professions Code section 805, subdivision (a)(6) defines "medical disciplinary cause or reason" as "that aspect of a licentiate's competence or professional conduct that is reasonably likely to be detrimental to patient safety or to the delivery of patient care." Under Business and Professions Code section 805, subdivision (b)(3), the chief of staff of a medical or professional staff or other chief executive officer shall file a report with the medical licensing board within 15 days after "[r]estrictions are imposed, or voluntarily accepted, on staff privileges, membership, or employment for a cumulative total of 30 days or more for any 12-month period, for a medical disciplinary cause or reason." A report must also be filed "within 15 days following the imposition of summary suspension of staff privileges, membership, or employment, if the summary suspension remains in effect for a period in excess of 14 days." (Bus. & Prof. Code, § 805, subd. (e).)[3]

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[2] Contrary to the argument pressed by counsel, corrective action imposed under article VI that does not come within article VII, section 7.1-6 does not entitle the member to a hearing before a judicial review committee.

[3] Amicus curiae Sharp Healthcare's request for judicial notice of the "Comprehensive Study of Peer Review in California: Final report" is denied on the grounds of relevance.

Factual and Procedural History

In October 2011, following a meeting of the hospital's cardiothoracic surgery division, the chief of staff at the hospital's Concord campus received a complaint from a member of the medical staff that Dhillon had acted in a verbally abusive and physically aggressive manner toward her during the meeting. At Dhillon's request, an ad hoc investigation committee was formed to investigate the complaint.

In June 2012, after six meetings and numerous interviews over a four-month period (including an interview of Dhillon), the ad hoc committee issued a written report. The committee found that the complaint had merit, that Dhillon's behavior at the meeting "was not an isolated incident," and that Dhillon had violated the hospital's code of conduct. The committee found that the complaining physician had also violated the code of conduct. It stated that, although both Dhillon and the other physician "are excellent physicians, serving their patients and the community in an exemplary fashion for many years," neither of them "comported themselves in a professional manner."

Based on the committee's investigation and report, the medical executive committees of both campuses jointly determined that both Dhillon and the other physician would be required to attend the "Anger Management for Healthcare Professionals Program" at the University of California, San Diego. In addition, after completion of the program, both would be required for one year to "follow up" with the hospital's Physician Well Being Committee. Dhillon was assured that he was "an excellent physician" and that the corrective actions "does not reflect upon your clinical competence" but warned that "any future violation [of the code of conduct] may result in disciplinary action."

While the other physician involved in the confrontation with Dhillon attended the anger management program, Dhillon was unhappy with the results of the investigation and retained legal counsel. The attorney wrote to the chief of staff claiming that the other physician's complaint was "false," and expressing "grave concern for the numerous failings of [the hospital's] internal 'investigative' process." The letter also "demand[ed]

that a neutral outside investigator be brought in to conduct a full, fair, impartial investigation." The hospital denied Dhillon's demands for further investigation.

Despite being afforded 14 months in which to complete the anger management program and having been given the option to complete an online program rather than the San Diego program, Dhillon refused to comply. Dhillon was warned that failing to complete the anger management program would lead to a limited suspension of his clinical privileges. The letter advises, "If such action is necessary, . . . the suspension is not reportable to the Medical Board of California or to the National Practitioner Data Bank. Moreover, there is no judicial review committee right triggered by such a suspension. However, you will be required to report this suspension on future attestation questions for professional application/reapplication as well as force the medical staff to disclose your failure to comply with [medical executive committee] requirements resulting in a suspension of clinical privileges."

When the period for compliance expired, Dhillon's clinical privileges at the hospital were suspended for 14 days. Thereafter, the medical executive committees reported to the hospital's governing body the actions that had been taken.

Dhillon demanded the hospital initiate judicial review committee proceedings to review both the requirement that he complete an anger management program and the 14-day suspension. When the hospital informed him that he had no further hearing rights under the bylaws, Dhillon filed the present petition for writ of administrative mandamus seeking to compel a judicial review committee hearing.

The court issued a peremptory writ "ordering a hearing before the judicial review committee or other appropriate body on both the initial and underlying complaint as well as the subsequent suspension." The court explained that section 7.1-6 of the bylaws entitles a practitioner to a hearing whenever clinical privileges are suspended. The hospital timely filed a notice of appeal.

Discussion

1. *Standard of Review*

Contrary to the hospital's argument, the medical executive committees' interpretation of the bylaws is not entitled to deference in these circumstances. Rather, "the rules of law generally applied to the interpretation of contracts are appropriate for the provisions in dispute in this case." (*Smith v. Adventist Health System/West* (2010) 182 Cal.App.4th 729, 753, italics omitted.) "To interpret and construe the governing documents at issue, we apply neutral principles of law de novo." (*Iglesia Evangelica Latina, Inc. v. Southern Pacific American Dist. of the Assemblies of God* (2009) 173 Cal.App.4th 420, 432.)

2. *The bylaws do not entitled Dhillon to a judicial review committee hearing on the initial complaint.*

Referral to an anger management program and the required "follow-up" with the hospital's wellness department are squarely within the department chair's authority to "counsel" and "educate" medical staff, and thus are also within the authority of the medical executive committees to "take other actions deemed appropriate under the circumstances." Nothing in article VI supports Dhillon's argument that the hospital's governing body was required to approve these actions before implementation. And section 6.1-4 permits a member to request a hearing before a judicial review committee only if corrective action as set forth in section 7.1-6 is recommended. The corrective action imposed here can in no way be considered a significant restriction or condition of clinical privileges under section 7.1-6(i), the only ground for a judicial review committee hearing that is remotely applicable.

Given the nature of the asserted misconduct, involving no question concerning Dhillon's medical competence or performance, a hearing before a judicial review committee would be highly inappropriate. As the hospital argues, "A [judicial review committee] is the opposite of an 'informal educational intervention[].' It is a major adversarial proceeding pitting a physician against a peer review body—typically hospital medical staff's executive committee—that, after a comprehensive evaluation, has

recommended certain adverse actions be taken against the physician in order to ensure that quality medical care is provided to the hospital's patients. [¶] The [judicial review committee] process involves 'a hearing before a neutral arbitrator or an unbiased panel.' [Citation.] It has many of the trappings of a superior court trial, except the [committee] is generally comprised of physicians who must call upon their own medical expertise to evaluate the medical issues—such as the appropriateness and quality of patient care—and to determine whether the adverse action taken against the physician was warranted." It is essentially "a second body of peers [that] independently determine[s] whether a peer review committee's recommendation . . . is reasonable and warranted." (*Mileikowsky v. West Hills Hospital & Medical Center* (2009) 45 Cal.4th 1259, 1269.)

Since Dhillon's conduct in question presented no question calling for the application of medical expertise, and no sanction limiting his right to practice was imposed, no further review of the merits of the initial complaint or of the corrective actions imposed was required.

3. *The bylaws do not entitle Dhillon to a judicial review committee hearing on the 14-day suspension.*

The 14-day suspension based on Dhillon's failure to comply with previously imposed corrective action similarly does not fall within the grounds for hearing enumerated in section 7.1-6 of the bylaws. Section 7.1-6 unambiguously incorporates the provisions of Business and Professions Code section 805 into its definition of an action that would "adversely affect" a doctor's "exercise of clinical privileges." Section 7.1-6, consistent with section 805, provides for a hearing when clinical privileges are suspended *for medical cause or reason* or when a suspension is imposed *for any reason* that lasts longer than 14 days. It does not require a hearing when the suspension, as in this case, is imposed for only 14 days and is based solely on Dhillon's refusal to comply with informal corrective actions required by the medical executive committee.

Dhillon's arguments to the contrary are not persuasive. John Muir has not admitted that the suspension was imposed for medical cause or reason within the meaning of Business and Professions Code section 805. Dhillon quotes numerous

statements from John Muir's brief filed in the trial court which he asserts constitute an admission that the suspension was taken for medical cause or reason. He argues that John Muir should not be permitted to "change course in seeking to overturn the trial court's order by contradicting the very arguments it made to the trial court." However, the hospital's prior statements reflect no such change of position. Dhillon cites (1) a statement by the medical executive committee that the correctives action was "not only within the purview of the [medical executive committee] it is also our responsibility as the medical staff body who is charged to ensure the safety and quality of care delivered to our patients;" (2) a statement that the anger management program "was mandated precisely to improve the interactions in meetings necessary to enhance and protect patient care;" and (3) the statement that "[a]s a member of the medical staff, Dhillon agreed to follow the bylaws, which includes the provision that he 'work cooperatively with others so as not to adversely affect patient care.' " These statements merely emphasize the importance of professional conduct to the provision of safe and efficient medical care. They do not suggest any lapse in the quality of Dhillon's medical competence or performance. The statutory definition of medical cause or reason requires more than a general impact on patient care. It applies only to "that aspect of a licentiate's competence or professional conduct that is reasonably likely to be detrimental to patient safety or to the delivery of patient care." (Bus. & Prof. Code, § 805.)

Dhillon also argues that the medical executive committee was required to obtain approval from the governing body before suspending his clinical privileges. This argument finds some support in sections 6.1-5 and 6.1-6, which authorize a medical executive committee to recommend suspension as a disciplinary action. The failure to obtain prior approval in this case, however, was clearly not prejudicial because Dhillon had no right to peer review of the recommended discipline and that discipline presumably has now been ratified by the hospital's governing body. Under section 7.1-4, "Technical,

insignificant or nonprejudicial deviations from the procedures set forth in the bylaws shall not be grounds for invalidating the action taken."[4]

Disposition

The order granting Dhillon's petition for writ of administrative mandamus is reversed. Appellants shall recover their costs on appeal.

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Pollak, Acting P.J.

We concur:

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Siggins, J.

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Jenkins, J.

[4] Dhillon's argument that he has a right to a hearing under the Health Care Quality Improvement Act, 42 United States Code sections 11101 et seq., is also without merit. This federal legislation was enacted to "encourage physicians and surgeons to engage in effective professional peer review" (Bus. & Prof. Code, § 809, subd. (a)(1)) and "provides immunity from money damages for peer review actions taken in compliance with the statute's requirements." (*El-Attar v. Hollywood Presbyterian Medical Center* (2013) 56 Cal.4th 976, 988.) It does not give rise to an independent right to a hearing in this instance. (Bus. & Prof. Code, § 809, subd. (a)(2) [opting California out of the federal statute and adopting its own peer review system].)