Affirmed and Opinion filed March 3, 2026

In The

Fourteenth Court of Appeals

NO. 14-24-00017-CV

TOMAS G. RIOS, M.D., Appellant

V.

CHI ST. LUKE'S HEALTH BAYLOR COLLEGE OF MEDICINE MEDICAL CENTER, Appellee

On Appeal from the 55th District Court
Harris County, Texas
Trial Court Cause No. 2016-03350

OPINION

Appellant Tomas G. Rios, M.D. ("Dr. Rios"), appeals a judgment in favor of appellee CHI St. Luke's Health Baylor College of Medicine Medical Center ("the Hospital") following a jury trial. Dr. Rios argues the trial court erred in denying his motion for new trial, his motion for judgment notwithstanding the jury's verdict, and his request for injunctive relief because he prevailed at trial on his retaliation claim and because there is legally and factually insufficient evidence supporting seven of

the jury's findings. We affirm.

BACKGROUND[1]

Since 2005, the Hospital has had in place a Rapid Response Team ("RRT"). The RRT consists of highly trained nurses from the Intensive Care Unit ("ICU") and is "the safety net for the hospital to ensure patients' safety in the acute care floor." Under the Hospital's policies, patients in an acute medical condition are monitored by this team for any deterioration in their condition to determine if elevating the patient to the ICU is necessary for patient safety because "[t]ime matters." Tim Kraeter, the RRT's director, explained:

> The goal is to provide the most conservative treatment that's the most effective for the patient. That's sort of the standard for everybody in the hospital. There's always risks with the treatment, so we want to provide, you know, the least invasive treatment and try to keep them on the floor, try to keep them -- we know that gets them home faster. But if they need to go to the ICU, we also know it's time sensitive, and the outcome of the patient could depend -- and this is someone loved one we're talking about. The outcome can really depend on the time it takes to get those interventions.

To transfer a patient to the ICU, the RRT must obtain an order from the patient's attending physician, the resident physician, or the mobile ICU physician.

Dr. Rios worked as a hospitalist at the Hospital pursuant to admission privileges the Hospital granted to him in January 2015. In September 2015, Dr. Rios sent an email seeking changes to the RRT process to his supervisor, Victor Narcisse, M.D. ("Dr. Narcisse"), and his team at the Hospital. In the email, Dr. Rios listed Texas Occupations Code §§ 157.054, 162.0021, and 162.0022 and stated he was concerned "that the [RRT] system currently allows the unsolicited establishment of a patient-physician relationship between the 'mobile ICU' or 'medical specialist'

[1] The background is taken from the evidence in the trial record.

and the patients that are currently admitted under the hospitalist service." The email further provided:

> The current RRT system encroaches and interferes with care that is currently being provided by the Attending physician/Hospitalist. A suitable revision to the RRT system might be to have the initial RRT evaluation to be under the direction of the current attending provider of that patient. If/when the provider deems that higher level and/or escalation is necessary then he/she can request/initiate evaluation by the "mobile ICU."
>
> Furthermore, this current system depletes hospitalist morale and "takes away" responsibility from the physician. In addition, the decision to move a patient currently rests on a trainee (although usually very thorough) whose direction is being delegated by another physician (ICU MD) who (at that time) has not yet established a patient-physician relationship with the current patient.
>
> In all, I whole-heartedly feel that this system is not in the best interest of our patients. I hope that discussions at the executive level can be productive at refining the system and making BSLMC the best place to come for health care!

Shortly thereafter on October 8, 2015, Dr. Rios met with Dr. Narcisse and an attorney and recorded their conversation. In the conversation, Dr. Narcisse informed Dr. Rios that there were concerns regarding the level of care that Dr. Rios had provided in some cases and that those cases would be peer reviewed. Dr. Narcisse also informed Dr. Rios that if Dr. Rios resigned his privileges with the Hospital, then the peer review would not take place.

In October 2015, a peer-review committee evaluated Dr. Rios's level of care of three patients, found that Dr. Rios had fallen below the standard of care, and recommended his care of patients be "tracked and trended." Dr. Rios filed his original petition in the underlying suit against the Hospital in January 2016, alleging retaliation and seeking an injunction. In December 2016, the Hospital renewed Dr. Rios's admission privileges.

In June 2018, Dr. Rios sent an email to the Hospital's Chief Executive Officer and Chief of Staff, this time noting his concern that the "SICU" team disregarded his recommendation on a patient's care and his displeasure with ICU policies. In May and June 2018, other physicians filed complaints against Dr. Rios and expressed concerns about care he had provided, which resulted in a second peer review of some of his cases. The Hospital's Medical Executive Committee ("MEC") then issued a letter to Dr. Rios informing him that he was being placed on a Focused Professional Practice Evaluation Plan. The letter further stated:

> The MEC has determined that your interference in the care of critically ill patients puts these patients at risk of imminent harm. As a result the [Professional Practice Evaluation Committee] and the MEC have determined that you may not interfere with the Hospital Rapid Response Team in any manner. Further, you may not direct the care of any patients treated by the Rapid Response Team ("RRT"), or any patients in any Critical Care Unit. For any patient admitted under your directions/orders that is being treated by a RRT or Critical Care team member, the RRT or Critical Care Team Member's orders will be carried out. You will be consulted on all patient matters, but, you may not attempt to override the RRT or Critical Care orders.

The second peer-review committee found that two of Dr. Rios's cases involved a significant variance from the standard of care, which is classified as a "Category 4" "based upon interference of patient transfer to ICU."

Dr. Rios's privileges were again up for renewal towards the end of 2018. On November 14, 2018, the Hospital's credentials committee recommended the denial of Dr. Rios's privileges based on the variances from the standard of care in the cases reviewed by the second peer-review committee. On November 26, 2018, the Hospital's MEC also recommended denial of the renewal of Dr. Rios's privileges after review of the cases at issue. On February 15, 2019, the Hospital sent Dr. Rios's a letter documenting its recommendation to deny the renewal of his privileges. The

letter noted that the recommendation was based on two cases from 2018 in which Dr. Rios's care for a patient involved a significant variance from the standard of care. It also provided details as to why Dr. Rios's care in those two cases involved a significant variance from the standard of care:

> In summary, [as to the first patient,] the external reviewer determined and the Credentials Committee and Medical Executive Committee agreed that overall physician care was not appropriate, in summary, for the following reasons: (1) diagnosis accuracy because of your failure to adequate[ly] and accurately recognize how ill this patient was at the time of decision making regarding intubation and escalation of care; (2) clinical judgment/decision making because you would have treated the patient less aggressively at the time she was showing clinical signs of respiratory failure, including with BiPAP, which was contraindicated in this patient and not consistent with the patient's acute clinical needs; (3) documentation because of your inappropriate documentation in the medical record.[2]
>
> . . . .
>
> In summary, [as to the second patient,] the external reviewer determined, and the Credentials Committee and Medical Executive Committee agreed, that overall physician care was not appropriate, in summary, for the following reasons: (1) diagnosis accuracy because of your failure to adequately and accurate[ly] recognize how ill this patient was at the two points of acute clinical decline; (2) clinical judgment/decision making because you would have treated the patient less aggressively when maximally aggressive management was warranted for a critically ill patient meeting criteria for septic shock and guideline based care for septic shock; (3) your documentation, both to improve completeness and because of the inappropriateness of some of your documentation in the medical record . . . .

After Dr. Rios requested and was granted a hearing before a fair hearing panel, the panel unanimously agreed that Dr. Rios's privileges should not be renewed. Dr. Rios then appealed the hearing panel's decision to the appellate committee, which

[2] The first patient ultimately died.

concluded the decision to not renew his credentials was supported by evidence and recommended that the Hospital's board of directors accept the recommendation that the Hospital deny the renewal of Dr. Rios's privileges.

Dr. Rios amended his petition against the Hospital, maintaining his allegation that the Hospital retaliated against him in violation of Health and Safety Code § 161.135 "through threats, discipline, additional oversight, false accusations, and sham peer reviews who reported wrongdoings and violations of the law." Dr. Rios also alleged that the Hospital violated his due process rights by violating Health and Safety Code § 241.101 and asserted a claim for injunctive relief pursuant to Civil Practice and Remedies Code. As to the injunctive-relief claim, Dr. Rios sought an injunction preventing the Hospital from reporting the nonrenewal of his privileges to the National Practitioner Data Bank ("Data Bank").

Dr. Rios's lawsuit was tried before a jury. On November 1, 2023, based on favorable jury findings, the trial court entered a take-nothing judgment in the Hospital's favor and denied all of Dr. Rios's requested relief. Dr. Rios filed a motion for new trial and a motion for verdict notwithstanding the jury's findings, which was overruled by operation of law. This appeal followed.

STATUTORY BASES FOR DR. RIOS'S CLAIMS

We first address the bases for Dr. Rios's claims against the Hospital for retaliation and injunctive relief.

Dr. Rios asserted a statutory claim for retaliation pursuant to Health and Safety Code § 161.135. *See El Paso Healthcare Sys., Ltd. v. Murphy*, 518 S.W.3d 412, 416 (Tex. 2017). Section 161.135 is titled "Retaliation Against Nonemployees Prohibited"[3] and provides:

[3] To curb the unlicensed practice of medicine and prevent possible abuses resulting from

> (a) A hospital . . . may not retaliate against a person who is not an employee for reporting a violation of law, including a violation of this chapter, a rule adopted under this chapter, or a rule of another agency.
>
> (b) A hospital . . . that violates Subsection (a) is liable to the person retaliated against. A person who has been retaliated against in violation of Subsection (a) may sue for injunctive relief, damages, or both.
>
> (c) A person suing under this section has the burden of proof, except that it is a rebuttable presumption that the plaintiff was retaliated against if:
>
> > (1) before the 60th day after the date on which the plaintiff made a report in good faith, the hospital, mental health facility, or treatment facility:
>
> . . .
>
> > (B) transfers, disciplines, suspends, terminates, or otherwise discriminates against the person . . . ; [or]
>
> . . .
>
> > (D) transfers, discharges, punishes, or restricts the privileges of the person . . . ;
>
> . . .
>
> (g) This section does not abrogate any other right to sue or interfere with any other cause of action.

Tex. Health & Safety Code Ann. § 161.135; *see Murphy*, 518 S.W.3d at 416.

Dr. Rios also sought injunctive relief pursuant to "TCPRC § 65.0011 [sic]," seeking an order preventing the Hospital from reporting the nonrenewal of his admission privileges to the Data Bank. (CR 235). *See generally* Tex. Civ. Prac. &

---

lay control of medical care in Texas, corporations were historically prohibited from employing physicians and receiving a fee for their services. *Renaissance Med. Found. v. Lugo*, 719 S.W.3d 505, 510 (Tex. 2025); *Gupta v. E. Idaho Tumor Inst., Inc.*, 140 S.W.3d 747, 752 (Tex. App.—Houston [14th Dist.] 2004, pet. denied); *see also St. Joseph Hosp. v. Wolff*, 94 S.W.3d 513, 539 (Tex. 2002) (plurality op.). Instead, physicians ordinarily provide medical care as independent contractors. *Renaissance Med. Found.*, 719 S.W.3d at 510; *see also Bodin v. Vagshenian*, 462 F.3d 481, 495 (5th Cir. 2006) (Owen, J., concurring); *Baptist Mem'l Hosp. Sys. v. Sampson*, 969 S.W.2d 945, 950 (Tex. 1998).

Rem. Code Ann. §§ 65.001 ("The principles governing courts of equity govern injunction proceedings if not in conflict with this chapter or other law."), 65.011 (providing the grounds for an injunction under Civil Practice and Remedies Code).

Finally, in his response to the Hospital's motion to enter judgment, Dr. Rios mentioned Occupations Code § 160.013 for the first time. Section 160.013 provides: "If a court makes a final determination that a report or complaint made to the board was made in bad faith, the complaint shall be expunged from the physician's or applicant's individual historical record." Tex. Occ. Code Ann. § 160.013. Relying on § 160.013, Dr. Rios argued in his response that "[a]s a result, the Peer Review Defense simply does not apply to [Dr. Rios's] claim for equitable relief under Section 161.135." Thus, Dr. Rios requested that the trial court "order [the Hospital] did issue [sic] an expunged or voided report to the Texas Board or the National Practitioner Data Bank." On appeal, Dr. Rios argues the trial court abused its discretion in denying his claim for injunctive relief because of § 160.013.

APPLICABLE STATUTORY DEFINITIONS

Because it is helpful for our analysis below, we will first discuss relevant and applicable statutory definitions.

The Texas Legislature has explicitly found and provided that:

> (1) the practice of medicine is a privilege and not a natural right of individuals and as a matter of public policy it is necessary to protect the public interest through enactment of [Occupations Code] subtitle [B] to regulate the granting of that privilege and its subsequent use and control; and
>
> (2) the board should remain the primary means of licensing, regulating, and disciplining physicians.

Id. § 151.003. A "health care entity" is defined as including a hospital licensed under Health and Safety Code Chapters 241 or 577 and "Board" means the Texas Medical

Board. *Id.* § 151.002(1), (5). It is undisputed that the Hospital is a health care entity. *See id.*

The statute also defines "medical peer review" as meaning "the evaluation of medical and health care services, including evaluation of the qualifications and professional conduct of professional health care practitioners and of patient care provided by those practitioners." *Id.* § 151.002(7). Further, "medical peer review" includes evaluation of the:

> (A) merits of a complaint relating to a health care practitioner and a determination or recommendation regarding the complaint;
>
> (B) accuracy of a diagnosis;
>
> (C) quality of the care provided by a health care practitioner;
>
> (D) report made to a medical peer review committee concerning activities under the committee's review authority;
>
> (E) report made by a medical peer review committee to another committee or to the board as permitted or required by law; and
>
> (F) implementation of the duties of a medical peer review committee by a member, agent, or employee of the committee.

Id.

Additionally, a "medical peer review committee" is defined as meaning:

> a committee of a health care entity, the governing board of a health care entity, or the medical staff of a health care entity, that operates under written bylaws approved by the policy-making body or the governing board of the health care entity and is authorized to evaluate the quality of medical and health care services or the competence of physicians, including evaluation of the performance of those functions specified by Section 85.204, Health and Safety Code . . . .

Id. § 151.002(7)–(8); *see also St. Luke's Episcopal Hosp. v. Agbor*, 952 S.W.2d 503, 505 (Tex. 1997) ("The definitions of 'medical peer review committee' and 'medical peer review' clearly contemplate, among other things, the process known as 'credentialing'—the granting or retention of a doctor's hospital privileges.").

PEER-REVIEW-COMMITTEE IMMUNITY

Next, we discuss the peer-review-committee immunity provided under Texas law, which as discussed in detail below, is relevant and dispositive to Dr. Rios's asserted claims against the Hospital.

Texas Occupations Code Subtitle B addresses physicians, and it contains Chapter 160 titled "Report and Confidentiality Requirements." Subchapter A of Chapter 160 is titled "Requirements Relating to Medical Peer Review" and contains § 160.010 titled "Immunity from Civil Liability." *Id.* § 160.010. Specifically, § 160.010 provides:

> (b) A cause of action does not accrue . . . against a health care entity from any act, statement, determination or recommendation made, or act reported, without malice, in the course of medical peer review.
>
> (c) A person, medical peer review committee, or health care entity that, without malice, participates in medical peer review or furnishes records, information, or assistance to a medical peer review committee or the board is immune from any civil liability arising from that act.

Id. § 160.010(b)–(c); *see Agbor*, 952 S.W.2d at 505–06, 509.[4] "Thus, the plain meaning of the words used provides immunity from civil liability to a health-care entity for actions in the course of peer review, when such actions are done without malice." *Agbor*, 952 S.W.2d at 506. Accordingly, because the nonrenewal of Dr.

[4] Under the Health Care Quality Improvement Act ("HCQIA"), federal law provides immunity for similar claims. *See* 42 U.S.C. § 11101. The HCQIA was passed out of concern for the increasing occurrence of medical malpractice and the need to improve the quality of medical care. *Poliner v. Tex. Health Sys.*, 537 F.3d 368, 376 (5th Cir. 2008); *Batra v. Covenant Health Sys.*, 562 S.W.3d 696, 715 (Tex. App.—Amarillo 2018, pet. denied). The willingness of medical professionals to review the performance of their peers is essential to policing the quality of health care. *Knatt v. Hosp. Serv. Dist. No. 1 of E. Baton Rouge Parish*, 373 Fed. App'x 438, 444 (5th Cir. 2010); *Batra*, 562 S.W.3d at 715. The HCQIA also restricts the ability of incompetent doctors to move from state to state without disclosure or discovery of damaging or incompetent performance. *Poliner*, 537 F.3d at 376; *Batra*, 562 S.W.3d at 715. The HCQIA immunity extends to peer review actions. *Poliner*, 537 F.3d at 377; *Batra*, 562 S.W.3d at 715.

Rios's admission privileges was a decision reached through the peer review process, he must prove that the Hospital retaliated against him by not renewing his privileges *and* that the Hospital acted with malice in the peer-review process leading to the nonrenewing of his privileges in order to prevail in his claims. *See id.*

THE TRIAL COURT'S CHARGE & THE JURY'S FINDINGS

On appeal, Dr. Rios argues the trial court erred in denying his request for injunctive relief because he prevailed on his retaliation claim based on the jury's answer to Question 1. Dr. Rios also argues the trial court erred in denying his motion for new trial and for judgment notwithstanding the verdict because there is legally and factually insufficient evidence supporting the jury's answers to Questions 2 and 4–8. Thus, we next list the jury's findings.

Question 1 concerned Dr. Rios's statutory claim for retaliation under Health and Safety Code § 161.135 and provided:

> Was [Dr. Rios's] report of a violation of law made in good faith and *a cause* of [the Hospital's] refusal to renew [Dr. Rios's] medical staff privileges at the hospital?
>
> . . . .
>
> The report was "*a cause*" of [the Hospital's] refusal to renew [Dr. Rios's] privileges at the hospital if [the Hospital's] refusal to renew his privileges at the hospital would not have occurred when it did but for the report being made.
>
> [Dr. Rios] does not have to prove the report was *the sole cause* of [the Hospital's] refusal to renew his privileges at the hospital.
>
> If you do not believe the reason [the Hospital] has given for refusing to renew [Dr. Rios's] privileges at the hospital, you may, but are not required to, infer that [the Hospital's] would not have renewed [Dr. Rios's] privileges at the hospital but for his report.
>
> . . . .
>
> Answer: Yes.

(emphasis added).

Question 2 concerned whether the Hospital had peer-review statutory immunity as to the nonrenewal of Dr. Rios's privileges by asking the jury to determine whether the Hospital acted with malice when it decided not to renew Dr. Rios's admission privileges following the peer-review process, as required by Occupations Code § 160.010(b)–(c):

> Did [the Hospital] act with a specific intent to cause substantial injury or harm to [Dr. Rios] in not renewing his medical staff privileges at the hospital?
>
> Answer: No

Because the jury answered "No" to question 2, it was not required to answer question 3.

Questions 4 through 7 concerned the Hospital's immunity under the HCQIA. *See* 42 U.S.C. § 11112(a)(1)–(4). Question 4 asked whether the Hospital was reasonable in believing that its decision to not renew Dr. Rios's privileges would be in the furtherance of quality healthcare—i.e., whether there was a reasonable basis for not renewing his privileges, even if there was a retaliatory motive:

> Did [the Hospital] fail to act in the reasonable belief that its actions were in the furtherance of quality health care in not renewing [Dr. Rios's] medical staff privileges at the hospital?
>
> Answer: No

Question 5, in essence, asked whether the Hospital acted in bad faith in obtaining the facts prior to deciding to not renew Dr. Rios's privileges:

> Did [the Hospital] fail to make a reasonable effort to obtain the facts prior to a final decision not to renew [Dr. Rios's] medical staff privileges at the hospital?
>
> Answer: No

Question 6 asked a question that again concerned whether the Hospital acted in bad faith and without adequate notice to Dr. Rios:

> Did [the Hospital] fail to afford [Dr. Rios] adequate notice and hearing procedures or such other procedures as were fair under the circumstances before making a final decision not to renew [Dr. Rios's] medical staff privileges at the hospital?
>
> Answer: No

Question 7 asked, in essence, whether the Hospital acted in bad faith and unreasonably by not renewing Dr. Rios's privileges based on what it knew:

> Did [the Hospital] fail to act in the reasonable belief that its actions in not renewing [Dr. Rios's] medical staff privileges at the hospital were warranted by the facts known to it?
>
> Answer: No

Finally, Question 8 asked the jury to determine Dr. Rios's damages, and the jury found that Dr. Rios did not suffer any damages.

STANDARD OF REVIEW

In a legal sufficiency review, we credit all evidence and inferences favorable to the trial court's decision if a reasonable factfinder could, and we disregard all evidence contrary to that decision unless a reasonable factfinder could not. *See City of Keller v. Wilson*, 168 S.W.3d 802, 828 (Tex. 2005). The evidence is legally insufficient if the evidence at trial would not allow reasonable and fair-minded people to find the fact at issue. *Id.* at 827. Under the factual sufficiency standard, we examine all of the evidence in a neutral light and consider whether the trial court's decision is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. *See Dow Chem. v. Francis*, 46 S.W.3d 237, 242 (Tex. 2001) (per curiam).

When a party challenges the legal sufficiency of the evidence to support an

adverse finding on an issue for which it had the burden of proof, that party must demonstrate on appeal that the evidence establishes, as a matter of law, all vital facts in support of the issue. *Id.* at 241. In reviewing such a matter-of-law challenge, we first examine the record for evidence that supports the finding, while ignoring all evidence to the contrary. *Id.* If there is no evidence to support the finding, we then examine the entire record to determine if the contrary proposition is established as a matter of law. *Id.* The issue should be sustained only if the contrary proposition is conclusively established. *Id.*

We review issues of statutory interpretation de novo. *See Murphy*, 518 S.W.3d at 418. We begin with the Legislature's words, looking first to their plain and common meaning. *Id.*; *Fitzgerald v. Advanced Spine Fixation Sys.*, 996 S.W.2d 864, 865–66 (Tex. 1999). In conducting this analysis, "we look at the entire act, and not a single section in isolation." *Murphy*, 518 S.W.3d at 418. This text-based approach to statutory construction requires us to study the language of the specific provision at issue, within the context of the statute as a whole, endeavoring to give effect to every word, clause, and sentence. *Id.*; *Ritchie v. Rupe*, 443 S.W.3d 856, 867 (Tex. 2014). When the statute's language "is unambiguous and does not lead to absurd results, our search . . . ends there." *Murphy*, 518 S.W.3d at 418; *Tex. Adjutant Gen.'s Off. v. Ngakoue*, 408 S.W.3d 350, 362 (Tex. 2013).

Finally, we review the trial court's ruling on an application for an injunction and a motion for new trial for an abuse of discretion. *See Golden Eagle Archery, Inc. v. Jackson*, 24 S.W.3d 362, 372 (Tex. 2000); *Livingston v. Livingston*, 537 S.W.3d 578, 587 (Tex. App.—Houston [1st Dist.] 2017, no pet.). A trial court abuses its discretion when it (1) acts arbitrarily and unreasonably, without reference to guiding rules or principles, or (2) misapplies the law to the established facts of the case. *Livingston*, 537 S.W.3d at 587. "The trial court does not abuse its discretion when

its decision is based on conflicting evidence and some evidence in the record reasonably supports the trial court's decision." *Id.*

A trial court may disregard a jury verdict and render a JNOV if no evidence supports the jury finding on an issue necessary to liability or if a directed verdict would have been proper. *See* Tex. R. Civ. P. 301; *Tiller v. McLure*, 121 S.W.3d 709, 713 (Tex. 2003); *Ft. Bend Cnty. Drainage Dist. v. Sbrusch*, 818 S.W.2d 392, 394 (Tex. 1991). A directed verdict is proper only under limited circumstances: (1) when the evidence conclusively establishes the right of the movant to judgment or negates the right of the opponent; or (2) when the evidence is insufficient to raise a material fact issue. *See Prudential Ins. Co. of Am. v. Fin. Review Servs., Inc.*, 29 S.W.3d 74, 77 (Tex. 2000).

DISCUSSION

On appeal, Dr. Rios presents several convoluted arguments advancing his position that the trial court erred in denying his motion for new trial, his motion for judgment notwithstanding the jury's verdict, and his request for injunctive relief because he prevailed at trial on his retaliation claim and because there is legally and factually insufficient evidence supporting seven of the jury's findings.

1. Dr. Rios did not establish malice, unreasonableness, or bad faith as a matter of law

We first address Dr. Rios's argument on appeal that he prevailed at the trial court due to the jury's finding that the Hospital retaliated against him when it refused to renew his medical privileges. Thus, according to Dr. Rios, he is entitled to an injunction ordering the Hospital to void its report to the Data Bank concerning the nonrenewal of Dr. Rios's privileges and to damages.

Dr. Rios, however, does not address the definitions in the jury charge, which provide that the retaliation was "a cause" and a "but for" cause of the nonrenewal,

but not *the sole cause*. Furthermore, Dr. Rios does not address the evidence of the two cases from which the Hospital determined that Dr. Rios's actions were a substantial variance from the standard of care, nor does he argue that the those cases were falsely or fraudulently advanced. In essence, Dr. Rios argues that the jury's answer to Question 1 means there is only one reason for nonrenewal of his privileges, and thus he is entitled to a finding of malice and an award of damages. This argument simultaneously ignores all of the evidence supporting the jury's response to Question 2—that the Hospital did not act with malice. Tangentially to this argument, Dr. Rios argues that the jury's findings to the remaining questions are inconsistent with its answer to Question 1.

The overarching purpose of the medical peer-review-committee privilege is to foster a free, frank exchange among medical professionals about the professional competence of their peers. *In re Christus Santa Rosa Health Sys.*, 492 S.W.3d 276, 280–81 (Tex. 2016) (orig. proceeding); *Irving Healthcare Sys. v. Brooks*, 927 S.W.2d 12, 17 (Tex. 1996). "This results in higher standards of medical care because an atmosphere of confidentiality allows for candid and uninhibited communication about the performance of physicians." *In re Christus Santa Rosa Health Sys.*, 492 S.W.3d at 281; *Mem'l Hosp.-The Woodlands v. McCown,* 927 S.W.2d 1, 3 (Tex. 1996) (orig. proceeding).

In this case, malice is necessary for the Hospital to incur liability for its review, decisions, and actions stemming from the medical peer review committee's recommendation. *See Agbor*, 952 S.W.2d at 505–06, 509; *Maewal v. Adventist Health Sys./Sunbelt, Inc.*, 868 S.W.2d 886, 893 (Tex. App.—Fort Worth 1993, writ denied) ("[W]e hold a presumption of absence of malice applies to medical peer review committee actions."); *Dall. Cnty. Med. Soc'y v. Ubinas-Brache*, 68 S.W.3d 31, 40 (Tex. App.—Dallas 2001, pet. denied) ("[F]or Ubiñas to establish that he was

entitled to relief, he had the burden to establish malice on the part of the DCMS and the TMA."); *see also* Tex. Occupations Code § 160.013 ("If a court makes a final determination that a report or complaint made to the board was made in bad faith, the complaint shall be expunged from the physician's or applicant's individual historical record.").[5] Because it was Dr. Rios's burden to prove the Hospital acted with malice, Dr. Rios must prove on appeal that he conclusively established the Hospital acted with malice in deciding not to renew his admission privileges. *See* Tex. Occ. Code Ann. § 160.010(b)–(c); *Dow Chem. Co.*, 46 S.W.3d at 241; *Agbor*, 952 S.W.2d at 505–06.[6] "Malice" means a specific intent by the defendant to cause substantial injury or harm to the claimant, which was addressed in Question 2 of the jury charge. Tex. Civ. Prac. & Rem. Code Ann. § 41.001(7). As noted, the jury found the Hospital did not act with malice when it chose not to renew Dr. Rios's privileges.

Dr. Rios bases all of his arguments on one piece of evidence: a recording of a conversation between Dr. Rios, Dr. Narcisse, and an attorney in 2015, three years before the second peer review recommended the nonrenewal of his privileges due to his care of two patients and before he was the doctor of either patient. Specifically, Dr. Rios points to the following exchange:

> DR. NARCISSE: Once they start the process, again, they haven't -- they haven't assembled the peer review and officially launched the

[5] To overcome the immunity provided in the HCQIA, the plaintiff has the burden to establish that the peer review process was unreasonable. *Moore v. John Deere Health Care Plan, Inc.*, 492 Fed. App'x 632, 636–37 (6th Cir. 2012); *Poliner*, 537 F.3d at 376–77; *Payne v. Harris Methodist HEB*, 44 Fed. App'x 652 (5th Cir. 2002) (per curiam).

[6] *See also Brooks*, 927 S.W.2d at 16 ("The provisions of [former Texas Rules of Civil Procedure art. 4495b, § 5.06, now Tex. Occ. Code § 160.010,] providing *immunity* from civil liability draw the line at malice."); *see also, e.g. Kinnard v. United Reg'l Health Care Sys.*, 194 S.W.3d 54, 57 (Tex. App.—Fort Worth 2006, pet. denied) ("In this case, [defendants] were engaged in a credentialing process, which 'inherently requires peer review.' As a result, under § 160.010 . . . , [defendants] are immune from liability for any cause of action arising from such activity so long as they acted without malice.").

investigation.

DR. RIOS: Well, Dr. Wilson said that if I resign my privileges.

DR. NARCISSE: So he told you?

DR. RIOS: Yeah, no, because I asked him because he -- what he was saying. He said, look, if you go through a peer review, and he kept saying if you go, if you go. And I said, well, you keep saying if I go. What's my alternative? And he says well, the alternative is you resign your privileges and this all goes away. That's what he said. They -- and put it in perspective. If on the other side they think that there's something there which would cost you your privileges, they always give you a way out.

DR. RIOS: Okay.

MR. LAW: And the way out is resignation.

DR. RIOS: Okay.

MR. LAW: Because I don't ever think that – I think it's the easy way out for them, but by the same token they want to tell you that it is to your benefit.

DR. RIOS: Right.

MR. LAW: Because, if you're wrong and if you lose, it gets reported to the bank and it's with you forever.

DR. RIOS: Right.

MR. LAW: So I think there's a couple of different ways to look at it. You could look at it that they're doing it for your benefit, but I don't ever think that.

DR. RIOS: No, they're doing it to save money because if not --

MR. LAW: They're doing it to save the time and heartache and emotional toll on everybody from having to go through it, if it were --

DR. NARCISSE: But I think that they also – that the tea leaves that have been presented to me is that they also, in addition to wanting me to resolve this, I think, they also want to give you your best chance of going forward.

DR. RIOS: Okay.

DR. NARCISSE: You know, I --

MR. LAW: I mean, you believe that.

DR. RIOS: Well, I don't think Herlihy believes that, Herlihy --

MR. LAW: He may not, he may not.

DR. NARCISSE: No, no. Herlihy is a different matter. 4 level.

DR. RIOS: Okay.

DR. NARCISSE: I'm talking about at the Wilson level.

DR. RIOS: Okay.

DR. NARCISSE: I think that -- I think that he definitively wants you to have a future.

DR. RIOS: Okay.

DR. NARCISSE: And I believe that based on what's been told to me that he believes that your future will be severely curtailed if you go through the peer review process. That's totally my interpretation, Tomas.

DR. RIOS: Okay.

DR. NARCISSE: And I'm going to apologize to you. I do not have any evidence of that. I have a series of telephone calls that, with a whole bunch of people who are going to deny that they ever had them with me. Okay? And so the reason why I wanted to disclose all the things to you is that at the end of the day, you're going to have to -- you're going to have to adjudicate my recommendation based on what you think about me.

MR. LAW: Well, you know, there's what I think. I think that whoever is telling you this is using you as a conduit--

DR. NARCISSE: Definitively.

MR. LAW: -- to get back to him.

DR. NARCISSE: Definitively.

DR. RIOS: Right.

MR. LAW: You know they're not saying it to you directly.

DR. NARCISSE: They can't.

DR. RIOS: No.

DR. NARCISSE: Not allowed to.

DR. RIOS: Well, wait a minute. Dr. Herlihy has the ability and he's allowed to sit down and talk with me, but in multiple occasions has refused to do so.

MR. LAW: Okay. So let's take him out of the equation.

DR. RIOS: Well, he's the one. This is where it all started, though.

MR. LAW: I know, but he's a given.

DR. RIOS: Right, okay.

MR. LAW: We know we know where he lies and we know that he's going to say, --

DR. RIOS: Okay.

MR. LAW: -- and we know what he's going to do to try to get you out of there, don't we?

DR. RIOS: Okay, yes.

MR. LAW: Okay. So but I think some of this other information that you have was given to you to get to him --

DR. NARCISSE: Definitively.

MR. LAW: -- so that he could make a valid decision about what to do.

Dr. Rios, however, ignores that his admission privileges were renewed in December 2016 following that conversation; that he continued to have admission privileges for years following that conversation; that there was a second peer review years later unrelated to that conversation; that there was evidence that his care fell below the standard of care required in the cases reviewed by the second peer review; and that the decision to not renew his privileges was reviewed and affirmed by multiple individuals and levels of the Hospital's organization and peer review process.

Dr. Rios does not point to any evidence supporting a finding that the information relied on by the second peer-review committee was false or fraudulent, nor does he advance any argument disputing the legitimacy of the reasons that the record shows were the Hospital's bases for its decision not to renew his privileges.

Although Dr. Rios's appellate brief states that the information was false, the part of the record cited does not support that proposition. As noted, there is evidence in the record that the Hospital's decision not to renew his privileges was based on the recommendation of the second peer-review committee following Dr. Rios's substantial variance from the standard of care as to two patients. Accordingly, we cannot conclude that Dr. Rios established that the Hospital acted with malice, unreasonably, or in bad faith as a matter of law because the evidence noted supports a reasonable inference that the Hospital instead acted on reasonable concerns following a reasonable investigation documented through the peer review of Dr. Rios's cases. *See Dow Chem. Co.*, 46 S.W.3d at 241. Therefore, we must reject Dr. Rios's arguments that there is legally and factually insufficient evidence supporting the jury's answer to Question 2 and 4–7. *See* Tex. Occs. Code Ann. § 160.010(b)–(c).

2. The jury's answers are not inconsistent or irreconcilable

Dr. Rios argues the jury's findings are then inconsistent and irreconcilable because it found that the Hospital retaliated against him in its answer to Question 1. We disagree.

As noted above, there is evidence that the Hospital's decision was based on the second peer-review committee's findings about variance from the standard of care Dr. Rios provided to two patients. In other words, although there is evidence supporting a finding that the reporting of violations by Dr. Rios was *a cause* of the nonrenewal of his privileges, the evidence also indicates it was not *the only cause*, as there is evidence that the Hospital had valid, legitimate reasons for the nonrenewal of his privileges. Additionally, this evidence supports a rational inference that the Hospital did not act with malice or in bad faith when it decided not to renew Dr. Rios's privileges.

Viewing the jury's findings as a whole, they clearly indicate the jury believed there was no bad faith or malice in the Hospital's nonrenewal of Dr. Rios's privileges because Dr. Rios's reporting of a violation was not the *sole* cause for nonrenewal, but instead merely *a* cause. The jury's answers indicate that the jury found that the Hospital's actions were based on reasonable beliefs after adequate and good-faith investigation and the peer review process. Accordingly, contrary to Dr. Rios's argument, we cannot conclude that the jury's answer to Question 1 is inconsistent with the answers to the remaining questions nor does it entitle Dr. Rios to the relief he seeks as a matter of law.

3. There is legally and factually sufficient evidence supporting the challenged findings by the jury

Dr. Rios also argues that the trial court erred in denying his motion for new trial, motion for judgment notwithstanding the jury's verdict, and his claim for injunctive relief because there is legally and factually insufficient evidence supporting the jury's answers to Questions 2 and 4–8. However, viewing the evidence noted in this opinion in the light most favorable to the jury's answers to Questions 2 and 4–8, we conclude there is legally sufficient evidence supporting these findings. Furthermore, viewing all of the evidence in the record in a neutral light, we cannot conclude there is factually insufficient evidence supporting the jury's answers to Questions 2 and 4–8. *See Dow Chem.*, 46 S.W.3d at 242. Because there is legally and factually sufficient evidence supporting the jury's findings, including the finding that the Hospital acted without malice, we cannot conclude the trial court erred when it denied Dr. Rios's motion for new trial and motion for judgment notwithstanding the jury's verdict. *See Tiller*, 121 S.W.3d at 713; *Prudential Ins. Co. of Am.*, 29 S.W.3d at 77; *Golden Eagle Archery, Inc.*, 24 S.W.3d at 372; *Livingston*, 537 S.W.3d at 587.

4. The HCQIA does not invalidate the statutory peer review immunity under Texas law as to claims for injunctive or equitable relief

Next, Dr. Rios argues the injunctive relief allowed for in the federal HCQIA trumps the immunity provided in the Texas statute, and thus "Congress allowed physicians to at least seek injunctive and equitable relief for violations of state law, even where monetary damages are not authorized."

The federal HCQIA provides immunity for similar claims for peer-review actions as the Texas peer-review immunity. *See* 42 U.S.C. § 11101; *Poliner*, 537 F.3d at 377; *Batra*, 562 S.W.3d at 715. Dr. Rios's argument, however, misconstrues the HCQIA because the HCQIA's plain language does not provide for injunctive relief; instead, the HCQIA provides that there is immunity under it *only* for monetary damages. *See* 42 U.S.C. §§ 11111(a)(1); 11133(a); *Bryan v. James E. Holmes Reg'l Med. Ctr.,* 33 F.3d 1318, 1321 & n. 30 (11th Cir. 1994). Accordingly, federal courts have held that the HCQIA does not provide immunity over injunctive and equitable relief, as opposed to the argument Dr. Rios advances. *See, e.g.*, *Pal v. Jersey City Med. Ctr.*, 658 Fed. App'x 68, 75 (3d Cir. 2016) (per curiam) ("Immunity under the HCQIA does not extend to claims for injunctive relief."); *Cohlmia v. St. John Med. Ctr.*, 693 F.3d 1269, 1279 (10th Cir. 2012) ("HCQIA grants immunity only against a monetary damage award, 42 U.S.C. § 11111(a)(1), but not claims for injunctive or other equitable relief.").

Additionally, "the Texas statute complements the federal Act." *McCown*, 927 S.W.2d at 7; *see* Tex. Occ. Code Ann. § 160.001. Thus, the peer-review immunity under Texas law supplements HCQIA. The Texas statute provides for *broader* immunity than under the HCQIA for actions taken in relation to peer review by providing that no cause of action accrues based on actions related to the peer review process that are taken without malice, as well as immunity from "civil liability." *See*

Tex. Occ. Code Ann. § 160.010(b)–(c). Therefore, we conclude that Dr. Rios's arguments concerning his request for injunctive relief and the interplay between the HCQIA and the Texas statute are unmeritorious.

5. The trial court did not err in denying Dr. Rios's claim for an injunction and equitable relief

As to Dr. Rios's argument that the trial court erred in denying injunctive relief under § 160.013 and its equitable powers to stop the Hospital reporting to the Data Bank, we note that Dr. Rios did not obtain the necessary finding for this relief.

"To be entitled to a permanent injunction, a party must prove (1) a wrongful act, (2) imminent harm, (3) an irreparable injury, and (4) the absence of an adequate remedy at law." *Huynh v. Blanchard*, 694 S.W.3d 648, 674 (Tex. 2024) (quoting *Pike v. Tex. EMC Mgmt., LLC*, 610 S.W.3d 763, 792 (Tex. 2020)). When determining the appropriateness of a permanent injunction, a court should balance the competing equities, including the public interest. *Livingston*, 537 S.W.3d at 587. Although a litigant has the right to a trial by jury in an equitable action, only ultimate issues of fact are submitted for jury determination. *Huynh*, 694 S.W.3d at 675. But the determination of whether to grant an injunction based upon the ultimate issues of fact found by the jury is for the trial court, exercising chancery powers, and not the jury. *Id.* As a general rule, a jury does not determine the expediency, necessity, or propriety of equitable relief. *Id.* But questions regarding the facts that underlie the temporary-versus-permanent distinction must be resolved by the jury upon proper request. *Id.* at 676.

Section 160.013 provides: "If a court makes a final determination that a report or complaint made to *the board* was made in bad faith, the complaint shall be expunged from the physician's or applicant's individual historical record." Tex. Occ. Code Ann. § 160.013 (emphasis added). Here, the jury's findings negate the

necessary finding under § 160.013 for expunction—that the Hospital made the report in bad faith—and Dr. Rios does not point our attention to any request he made in the record for the trial court to make such a determination. *See id.* Furthermore, the statute's plain language states that it provides relief as to reports to the medical board, not the Data Bank. *See* Tex. Occ. Code Ann. § 160.013.

As to the trial court's general equitable powers to grant an injunction, the evidence noted in this opinion supports its decision to deny Dr. Rios's request for one. As noted, the reporting of the nonrenewal of a doctor's admission privileges is in the public interest and required by law,[7] and the evidence in the record supports the jury's finding that the Hospital did not act with malice when it chose not to renew Dr. Rios's privileges because there is undisputed evidence that his care for two patients fell below the required standard of care. The trial court's denial of his request for a permanent injunction is supported when viewed in light of the ultimate issues of fact found by the jury. *See Huynh*, 694 S.W.3d at 674. Thus, we conclude the trial court did not abuse its discretion when it denied Dr. Rios injunctive and equitable relief and reject this argument. *See id.*; *Livingston*, 537 S.W.3d at 587.

6. Summary

Having determined that all of Dr. Rios's arguments on appeal are unmeritorious, we overrule Dr. Rios's issues on appeal.

---

[7] *See* 42 U.S.C. §§ 11132, 11134, 11151(2) (requiring reporting of sanctions against physicians by state licensing boards); 45 C.F.R. §§ 60.1, 60.8 (designating the National Practitioner Data Bank as the report recipient); Tex. Occ. Code Ann. § 164.060(b)(4) ("Not later than the 30th day after the date the board takes disciplinary action against a physician, the board shall report that action, in writing, to . . . the United States Secretary of Health and Human Service or the secretary's designee . . . ."); *Van Boven v. Freshour*, 659 S.W.3d 396, 397–98 (Tex. 2022) ("Federal and state law require the Texas Medical Board to report a disciplinary action against a physician to the National Practitioner Data Bank in order to restrict the ability of incompetent physicians to move from State to State without disclosure or discovery of the physician's previous damaging or incompetent performance.") (internal footnote and quotation marks omitted).

CONCLUSION

We affirm the trial court's judgment.

/s Brad Hart
Justice

Panel consists of Justices Wilson, Hart, and McLaughlin.