

Credentialing & Peer Review Legal Insider

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- P7 **California Court of Appeals upholds hospital's claim of anti-SLAPP protection**
A motion to strike a physician's lawsuit claiming denial of the right to practice is upheld based on a hospital's claim that the lawsuit resulted from protected freedom of speech.
- P8 **Lawsuit's dismissal upheld due to hospital's HCQIA immunity**
The Nevada Supreme Court upholds the dismissal of an anesthesiologist's lawsuit after he failed to show a hospital's peer review actions were not protected by HCQIA.

FSMB releases completed version of Interstate Medical Licensure Compact

Model legislation aims to ease the licensing process for physicians seeking to practice in multiple states

In an effort to streamline the process for physicians to obtain medical licenses in multiple states, the Federation of State Medical Boards (FSMB) recently released the final draft of its Interstate Medical Licensure Compact. The model legislation, if adopted by enough state legislatures, is seen as a way to address the growing need for physicians in underserved areas, as well as the increasing interest in telemedicine.

First used to settle boundary disputes among the American colonies, interstate compacts are voluntary agreements between two or more states designed to address a common problem. Over 200 interstate compacts are in effect today, governing issues that range from water resource management to regional planning and development.

The Interstate Medical Licensure Compact would create an alternative pathway for licensing eligible

physicians who wish to practice in multiple states by allowing participating states to share credentialing information. Through the compact, physicians would not have to submit a separate application for each state, as is currently the process.

"I think it has been long recognized that physicians, for various reasons, have a need to practice in multiple jurisdictions. It's not telemedicine alone, although that certainly seems to be ramping up," says **Lisa Robin**, FSMB chief advocacy officer.

There are many reasons why physicians would want to practice in multiple states, Robin says. They may be part of large integrated health systems, for example, or live near the border of another state. Advancements in technology have also made telemedicine more feasible. For several years, state medical boards have been exploring options to increase license portability so



Case summary

California Court of Appeals affirms dismissal of physician claims against hospital

The California Court of Appeals for the Second District, Division 3 (the “Court”), in an unpublished opinion, upheld the Superior Court of Los Angeles County’s decision to strike a physician’s lawsuit against a hospital and its medical staff claiming he was denied the right to practice medicine on the basis that the defendants’ actions were protected under state’s anti-SLAPP (strategic lawsuit against public participation) statute.

Cameron Adams, MD, held medical staff privileges at Cedars-Sinai Medical Center (the “Hospital”) in Los Angeles. On December 2, 2010, the Hospital learned that Adams had been videotaping and photographing hospital visitors because, as Adams told hospital staff, Adams believed he was being followed by the FBI, Homeland Security, the Drug Enforcement Agency, and the police.

Michael Langberg, MD, the Hospital’s senior vice president of medical affairs and chief medical officer, summarily suspended Adams’ privileges the following day and verbally informed Adams of the suspension. Langberg sent Adams a Notice of Action letter explaining the basis of the suspension and of his rights to request a peer review hearing within 30 days. Two weeks later a second letter was sent reminding Adams that failure to request a hearing would constitute a waiver of his rights to a hearing. Adams never requested a hearing.

The Hospital eventually reinstated Adams’ privileges in March 2012. In December 2012, Adams sued the Hospital and its medical staff, claiming that the summary suspension had deprived Adams of his right to practice medicine during the suspension and caused him emotional distress.

The defendants filed a motion to strike under the anti-SLAPP statute (Code of Civil Procedure section 425.16), arguing that Adams’ lawsuit arose from protected freedom of speech and right to petition activity from its peer review process. The defendants also asserted that Adams failed to exhaust administrative remedies and

thus had no likelihood of success in the case. The trial court granted the motion to strike under the anti-SLAPP statute. Adams appealed the decision.

In upholding the decision, the Court wrote that in order to invoke anti-SLAPP protection, the Hospital had to show that Adams’ lawsuit resulted from an act in furtherance of the Hospital’s right of petition or free speech, which is defined by the statute as “any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law.”

The Court cited the California Supreme Court case *Kibler v. Northern Inyo County Local Hospital Dist.* in its decision, which held that the anti-SLAPP motion to strike is available to hospitals in regard to their actions in their peer review process because it constitutes an official proceeding and deals with matters of public significance.


Because the summary suspension was part of the peer review process, as established in the Hospital’s medical staff bylaws, and since Adams was unable to provide any other causes of the interruption of his right to practice medicine and his emotional distress, the Court ruled that the Hospital had proven that the lawsuit resulted from a protected act.

Adams had also argued that since the summary suspension was conducted by a single administrator, Langberg, it didn’t constitute peer review. The Court disagreed and cited Business Professions Code section 809 subdivision (b), which states that a “peer review body” includes any designee of the peer review body. The Hospital’s medical staff bylaws designated its senior vice president of medical affairs and chief medical officer as having the power to make summary suspensions as part of its peer review mechanism.

In upholding the motion to strike, the Court affirmed the Hospital’s claim that Adams had failed to exhaust administrative remedies. Despite being made aware of his rights to a hearing several times in writing, Adams

failed to request a hearing to dispute the allegations that caused the summary suspension as outlined in the Hospital's medical staff bylaws.

The Court wrote, "By failing to request a hearing, Dr. Adams effectively 'waived any right to a hearing and accepted the recommendation or action involved.' Dr. Adams cannot circumvent the peer review process by

arguing that peer review is futile to him at this point in time because he failed to timely engage in the process and obtained reinstatement by other means." 

Source

Adams v. Cedars-Sinai Med. Ctr., No. 2014 WL 4162789 (Cal. Ct. App. Aug. 22, 2014).



Case summary

Nevada Supreme Court upholds dismissal of anesthesiologist's lawsuit against hospital

The Nevada Supreme Court (the "Court") upheld, in an unpublished opinion, a lower court's dismissal of an anesthesiologist's lawsuit against MountainView Hospital in Las Vegas, because the Hospital has immunity under the Health Care Quality Improvement Act of 1986 (HCQIA).


The Hospital had a peer review hearing for Steven Chung-Ming Wong, MD, to consider revoking Wong's medical staff membership and privileges. Wong received notice of the hearing, attended it without counsel, and had no objections before or during the hearing. The hearing committee decided to revoke Wong's privileges, a decision that was later upheld during an internal appeal. In response, Wong brought suit against the Hospital, seeking tort and contract damages.

In district court, the Hospital filed a motion to dismiss Wong's complaint for failing to state a claim and alleging HCQIA immunity. According to 42 U.S.C. section 11112(a), to be immune under HCQIA, a peer review action must be taken "(1) in furtherance of quality health care; (2) after a reasonable effort to obtain the facts in the matter; (3) after adequate notice and hearing; and (4) in the reasonable belief that the action was warranted based on the facts known."

In opposing the Hospital's motion to dismiss, Wong only challenged the adequate notice and hearing

requirement. As a result, the district court granted the Hospital's motion to dismiss all of Wong's claims except for breach of contract, breach of the implied covenant of good faith and fair dealing, and negligence. The district court reserved ruling on those claims to allow Wong to conduct discovery for the adequate notice and hearing requirement. During discovery, Wong filed a motion to compel, which the district court denied. The district court dismissed the remaining claims. Wong appealed both rulings.

The Court wrote that it would affirm the grant of summary judgment unless a reasonable jury could conclude from a preponderance of the evidence that the Hospital's actions fell outside the protection of HCQIA. The Court wrote that Wong had waived the three other requirements of the HCQIA because he only challenged the adequate notice and hearing requirement.

The Court ruled that "by failing to object at the outset of or during the peer review hearing, [Wong] waived all adequate notice and hearing challenges ... Accordingly, the district court did not err by granting [the Hospital's] motion to dismiss because HCQIA immunity precluded all of [Wong's] claims." 

Source

Wong v. Sunrise MountainView Hosp., Inc., et al. 2014 WL 3764807 (Nev. July 29, 2014).

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