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This Week's Feature

California Supreme Court “SLAPPS” Down a Physician’s Post-Peer Review Hospital Lawsuit By Karen C. Duncan

The California Supreme Court recently unanimously upheld the dismissal of a suit brought against a hospital and the hospital’s peer-review committee by a disgruntled physician. The court held that the private hospital peer review procedure which suspended the doctor from clinical practice was an official proceeding, akin to a court proceeding, and thus subject to an anti-SLAPP motion to strike by the hospital. *Kibler v. Northern Inyo County Local Hospital District*, --- Cal.Rptr.3d ----, 2006, WL 2022176 (Cal. 7/20/2006).

Peer review is the process by which a hospital committee of physicians evaluates the performance of the other physicians practicing at the hospital and makes determinations about their fitness to practice there. Lawsuits resulting from discipline decisions are often eventually dismissed because the process is immunized from damages (but not lawsuits) by the Health Care Quality Improvement Act of 1986 and state statutes.

Anti-SLAPP (Strategic Lawsuit Against Public Participation) motions to strike are special summary-judgment-like procedural devices which quickly and cheaply dispose of claims. Twenty-one states provide for Anti-SLAPP procedural motions to strike harassing lawsuits which inhibit the right of petition or free speech made in connection with a public interest or official proceeding. The motions can be valuable in reducing the cost of groundless claims because they may be used immediately after the petition is filed. Some state statutes stay discovery until after a ruling on the motion and provide for mandatory awards of attorney’s fees.

Typical Anti-SLAPP protection cases involve activists who speak out on environmental issues and are then sued for defamation in order to harass and silence the activist and drain his resources. In *Kibler*, the California Supreme Court held that the special motion to strike was available to a private hospital in a lawsuit brought by a hospital staff physician that arose out of a disciplinary recommendation by the hospital’s peer review committee. The physician, a psychiatrist, sued the defendant hospital for defamation and various other claims that flowed from his suspension from hospital practice for his violent and threatening behavior. Although the court recognized that the hospital peer review process deserved protection because it served an important public interest in preserving the highest medical practice standards, the court based its decision on the meaning of the California Anti-SLAPP statutory phrase which protected statements made in the course of court proceedings and “any other official proceeding authorized by law.” The court found that the Anti-SLAPP protection applied to medical peer review “quasi-judicial” proceedings because the proceedings were authorized by the California Business and Professional Code and subject to judicial review.

When a medical staff member is suspended from practicing in a hospital, it has inevitable long-term and deleterious effects on the physician’s carrier. Decisions by the unpaid peer review committees to discipline problematic staff members are difficult, distasteful and often rewarded by time-consuming lawsuits in retaliation. As a result, hospitals have had increasing difficulty convincing peer review committee members to voluntarily make hard decisions in judgment of their fellow physicians. The availability of quick and cheap Anti-SLAPP protection may ease the pain of making those decisions, and thereby improve patient care.

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