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State High Court Holds Doctor's Suit Against Hospital Was SLAPP

By STEVEN CISCHKE, Staff Writer

A lawsuit brought by a hospital physician arising out of a disciplinary recommendation against him by the hospital's peer review committee is subject to the anti-SLAPP statute, the California Supreme Court unanimously ruled yesterday.

The court upheld the dismissal of a suit brought by George Kibler, a physician and surgeon, against Northern Inyo Hospital, an acute-care facility in Bishop, and other staff members.

After what were described as a series of hostile encounters between Kibler and other staff members, the hospital's peer review committee summarily suspended Kibler based on his "continuing and recently escalating unprofessional conduct of extremely hostile and threatening verbal assaults, threats of physical violence, including assault with a gun, and related erratic actions of a hostile nature toward nursing and administrative personnel."

The hospital also filed suit against Kibler to enjoin workplace violence. The suit settled pursuant to an agreement wherein the hospital reinstated Kibler's staff privileges and Kibler agreed to take anger management classes and "refrain from hostile, violent, intimidating, or demeaning conduct toward hospital personnel, and to not keep or carry a firearm on the premises."

The agreement also released the hospital of liability for all damages resulting from Kibler's suspension.

Kibler then filed suit against the hospital and various staff members alleging causes of action for defamation, abuse of process and interference with his practice of medicine.

The defendants filed a motion to strike the complaint as a SLAPP brought solely to harass them.

The anti-SLAPP statute allows for the early dismissal of suits brought in retaliation for conduct protected by a "person's right of petition or free speech under the United States or California Constitution in connection with a public issue," where the plaintiff cannot show that he will probably prevail at trial.

The statute defines "act in furtherance of a person's right of petition or free speech" as including statements made in connection with executive, legislative or judicial proceedings, or "any other official proceeding authorized by law."

Mono Superior Court Judge Edward Forstenzer, sitting on assignment in Inyo Superior Court, held that the peer review constituted an "official proceeding authorized by law" and dismissed Kibler's suit. After the Court of Appeal affirmed, Kibler appealed to the state Supreme Court.

The American Medical Association argued in an amicus brief that the phrase "any other official proceeding authorized by law" refers to proceedings before government bodies, and

does not include hospital peer review proceedings.

The AMA pointed out that the identical phrase appearing in another statute had been limited by the court to actions involving "government agencies."

But Justice Joyce L. Kennard, writing for the court, said that the rule that identical statutory language should be interpreted the same way applies only when the statutes in question cover the "the same or an analogous subject," which was not the case in the example raised by the AMA.

Kennard noted that :

"[T]he Legislature has granted to individual hospitals, acting on the recommendations of their peer review committees, the primary responsibility for monitoring the professional conduct of physicians licensed in California. In that respect, these peer review committees oversee "matters of public significance," as described in the anti-SLAPP statute."

The justice explained:

"[P]eer review of physicians . . . serves an important public interest. Hospital peer review, in the words of the Legislature, 'is essential to preserving the highest standards of medical practice' throughout California."

Kennard also noted that hospital decisions resulting from peer review proceedings are subject to judicial review by administrative mandate, thus according such decisions a status comparable to those of quasi-judicial public agencies.

Attorneys who argued in the Supreme Court were Donald W. Odell of Lone Pine for the plaintiff, John D. Harwell of Manhattan Beach for the California Medical Association as amicus for the plaintiff, Jon B. Eisenberg of Horvitz & Levy for the hospital, and Barry S. Landsberg of Manatt, Phelps & Phillips in West Los Angeles for Catholic Healthcare West and the Regents of the University of California as amici in support of the hospital.

Amicus briefs supporting the hospital were also filed on behalf of the California Hospital Association, and the Association of Southern California Defense Counsel.

The case is *Kibler v. Northern Inyo County Local Hospital District* , 06 S.O.S. 3775.