



### Case summary

## California federal district court dismisses cardiologist's lawsuit

The U.S. District Court for the Eastern District of California (the “Court”) granted a hospital’s motions to dismiss and strike a cardiologist’s lawsuit alleging whistleblower retaliation, interference with economic interests, unfair trade practices, and violations of 42 U.S.C. §§1981 and 2000d against a hospital and one of its department chairs.

Methodist Hospital of Sacramento (the “Hospital”) placed Lin Lee-Tzu Lin, MD, a physician board certified in cardiology and internal medicine who held privileges at the Hospital, on summary suspension in April 2011 because the Hospital claimed that Lin failed to satisfy the medical staff’s requirements for a blood transfusion and thus posed a danger to patients.

Lin’s lawsuit claimed that the Hospital actually placed her on summary suspension in retaliation for a report she submitted regarding an incident the month prior involving a department chair in the Hospital.

On March 16, 2011, the physician department chair was performing a colonoscopy on a patient who went into cardiac arrest. The patient was resuscitated and transferred to the ICU. The department chair informed Lin of the situation and left the patient, who later died.

Lin prepared a “death discharge summary,” which stated the patient had not been hemodynamically stable enough for a colonoscopy. Lin believed the department chair breached the standard of care by not consulting a cardiologist to first stabilize the patient before the procedure and by abandoning the patient when the procedure failed.

Following her summary suspension, Lin requested a peer review hearing before the Hospital’s Judicial Review Committee (JRC) to challenge it. After a delay, a date for the hearing was communicated to Lin and her lawyer, but neither appeared. The JRC recommended to the Hospital’s governing board that the failure to appear be considered as Lin’s waiver of her rights to a peer review hearing. Lin appealed this recommendation to the Hospital’s governing board, which adopted

and affirmed the JRC’s recommendations.

The Hospital argued that Lin’s state law claims should be dismissed under California’s anti-SLAPP (strategic lawsuit against public participation) statute, the relevant portion of which states, “[a] cause of action against a person arising from any act of that person in furtherance of the person’s right of petition or free speech ... in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.”

The Court ruled the Hospital’s peer review process is protected for purposes of an anti-SLAPP suit. The Court delivered two reasons why Lin’s state claims should be struck.

First, Lin failed to show she had exhausted the Hospital’s internal review procedure. The Hospital provided the Court with portions of its bylaws outlining the hearing process, which stated, “[u]nder no circumstances shall the hearing be conducted without the presence of the Practitioner unless Practitioner has waived such appearance or has failed without good cause to appear after appropriate notice.”

Because neither Lin nor her lawyer attended the JRC hearing, the Court found that she had not exhausted her judicial remedies and therefore did not show a reasonable probability that she could succeed in her claims for violations of the California Business and Professions Code, of interference with the right to practice, and prospective economic advantage.

Second, Lin failed to show she submitted a complaint, grievance, or report other than the death discharge summary as the basis for her whistleblower retaliation claim. Since those summaries were routinely prepared for all patients and were not reports that addressed the quality of care, the Court agreed with the Hospital that they could not be used as the sole basis for Lin’s claim in this case.

Finally, the Court dismissed Lin’s federal claims.

First, the Court held that Lin had not identified herself as a racial minority nor identified a contract she was prevented from making for her U.S.C. §1981 claim. Second, the Court held that her §2000d claim was

barred by the statute of limitations. ☒

#### Source

*Lin v. Dignity Health-Methodist Hosp. of Sacramento*, 2014 WL 3401451 (E.D. Cal. July 11, 2014).



#### Case summary

## North Carolina appeals court reverses order to produce review documents

### Court of appeals reverses order compelling hospital to produce peer review information

The North Carolina Court of Appeals (the “Court”), in an unpublished opinion, reversed a county Superior Court order for a hospital to produce peer review information. The Court ruled in a matter related to an orthopedic surgeon’s lawsuit alleging unfair and deceptive trade practices, breach of contract, and negligent infliction of emotional distress.

Clifford Roberts Wheelless, III, MD, held active staff privileges with Maria Parham Medical Center, Inc. (the “Hospital”) in Henderson, North Carolina. The Hospital’s medical executive committee (MEC) conducted a peer review of Wheelless’ clinical skills in 2005. The Hospital initiated a separate peer review the following year in response to allegations that Wheelless violated the Hospital’s disruptive physician policy.

Wheelless requested a hearing to address those allegations. The Hospital and Wheelless executed a mediated settlement agreement (MSA) before the hearing date. Terms of the MSA included the MEC terminating all pending actions against Wheelless and changing his staff privileges from active staff to consulting staff. Wheelless claimed the Hospital failed to comply with the MSA by refusing to call Wheelless for consultations when patients requested him.

In February 2009, the North Carolina Medical Board contacted Wheelless in regard to an anonymous complaint submitted against him that referenced the Hospital’s previous peer review proceedings.

Wheelless filed a complaint against the Hospital

in August 2011. Several of Wheelless’ claims failed to survive summary judgment; some progressed to discovery. In March 2012, Wheelless served the Hospital with formal discovery requests. Pursuant to N.C. Gen. Stat. §131E-95, the Hospital objected to requests for materials related to peer reviews on grounds that it was privileged information. Wheelless filed a motion to compel, but a judge upheld the Hospital’s claim of statutory privilege.

Wheelless again filed a motion to compel in December 2012, relating to depositions of three witnesses arising from the earlier peer review. Wheelless claimed that the exception for malice from N.C. Gen. Stat. §131E-95(a)(2013) should apply to the privileged information. A second judge determined that Wheelless failed to provide evidence of malice and upheld the Hospital’s claim of privileged information.

In April 2013, a third judge determined that Wheelless had successfully demonstrated evidence of malice in a second set of requests for admission and ordered the Hospital to disclose the information. The Hospital appealed this order.

In its decision to reverse the April 2013 order, the Court stated that the third judge failed to demonstrate a substantial change in circumstances that warranted the judge overruling the previous two judges’ decisions on the matter. ☒

#### Source

*Wheelless v. Maria Parham Med. Ctr., Inc.*, 2014 WL 2979731 (N.C. Ct. App. July 1, 2014).

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