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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4579-08T1

KOTTA RAMAMURTHY, M.D.,

Plaintiff-Appellant,

v.

JFK MEDICAL CENTER, SOLARIS HEALTH SYSTEM, and JOHN P. MCGEE, individually and in his capacity as President and Chief Executive Officer of Solaris Health System,

Defendants-Respondents.

Telephonically Argued February 23, 2010-
Decided May 21, 2010

Before Judges Axelrad, Fisher and Sapp-Peterson.

On appeal from the Superior Court of New Jersey, Chancery Division, Middlesex County, Docket No. C-34-09.

Joseph M. Gorrell argued the cause for appellant (Brach Eichler, L.L.C., attorneys; Mr. Gorrell, of counsel and on the brief; Eric W. Gross, on the brief).

William M. Honan argued the cause for respondents (Fox Rothschild, L.L.P., attorneys; Mr. Honan, of counsel and on the brief; Sarah Beth Johnson, on the brief).

PER CURIAM

Plaintiff, Dr. Kotta Ramamurthy, appeals the ninety-day suspension of his clinical privileges at defendant John F. Kennedy Medical Center ("JFK" or "hospital"). We affirm.

Plaintiff is a medical doctor licensed to practice in New Jersey and has had staff privileges at JFK since 1975. On June 10, 2007, M.M. presented to JFK's emergency room with complaints of "diffuse abdominal pains." Dr. Moheb Abdelmalek, the ER doctor on call, ordered diagnostic testing, the results of which reported an impression of "high-grade small bowel obstruction." Dr. Abdelmalek discussed the case with Dr. Edgar R. Hobayan, a surgeon, who instructed that M.M. be "admit[ed] to Medicine."[1] Dr. Daniel Mondrow, the physician on call that day, was contacted and he admitted M.M. around midnight. Dr. Mondrow then contacted Dr. Richard Constable, Chief of General Surgery at JFK, who at the time was leaving the hospital to attend to a family emergency. He later called his secretary and asked her to "do [him] a favor, call Dr. [Ramamurthy] and let him know that he has this patient in the emergency room[.]" A phone conversation subsequently took place at about 8:00 p.m. on June 11 between plaintiff and Audrey Irish, R.N., in which plaintiff

[1] Dr. William Oser, Vice President for Medical Affairs, whose office was responsible for helping with resolution of conflicts in patient care disputes, testified that Dr. Hobayan requested that the patient be admitted to "the medical service." Plaintiff's brief uses the term "Department of Medicine."

gave an order for a CT scan, Demerol,[2] Vistaril[3] and renewed intravenous fluids.

On June 11, plaintiff examined M.M. and ordered a CT scan of M.M.'s abdomen and pelvis and prescribed medication. According to the testimony given at the June 3, 2008 hospital hearing by Angela Wei, R.N., who was present when plaintiff examined M.M., plaintiff lifted up M.M.'s gown, examined her and told her that he was going to perform surgery and may have to "take part of the colon out . . . ." Wei heard plaintiff call the operating room and schedule the surgery for M.M., and while simultaneously flipping M.M.'s chart, he then stated, "oh, I was - - oh, patient self pay?" Wei testified that Ramamurthy left the area shortly thereafter. Plaintiff maintains that he cancelled the surgery because M.M.'s chart indicated that another surgeon, Dr. Hobayan, had already been consulted. M.M. succumbed while still hospitalized four days later.

Dr. Barry Ellman, Chairman of the Department of Surgery, and Dr. Oser met with Drs. Constable and Hobayan to discuss M.M.'s treatment, after which plaintiff was advised in a letter dated June 22, that a "more formal review and possible

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[2] Demerol is used to treat moderate-to-severe pain. www.drugs.com/demerol.html.

[3] Vistaril is used as a sedative to treat anxiety and tension. www.drugs.com/vistaril.html.

corrective action will be necessary." In a letter dated July 17, JFK notified plaintiff that Dr. Matthew Smith, President, Medical/Dental Staff, had appointed an ad hoc committee of three senior surgeons to investigate the matter and report back to him.

Dr. Smith testified that although his intent was for the review panel to conduct a formal investigation, "the three surgeons involved marched to their own drummer and they did a very informal thing." He indicated that although "they reviewed the records, they did not speak with any of the physicians involved in the case, not the least of which was Dr. Ramamurthy, who they also did not speak with[.]" Consequently, Dr. Smith did not use or present the review panel's findings because he determined that they did not follow the proper procedure. Dr. Smith appointed a second ad hoc investigative committee chaired by Dr. Jerold Grubman (Grubman Committee). Plaintiff met with only two of the five Grubman Committee members. However, when they issued their report, their findings and recommendations reflected a consensus of the committee members. Plaintiff was subsequently invited to the November 20, 2007 Medical Executive Committee (MEC) meeting to discuss the Grubman Committee's report, but chose not to attend. On December 11, 2007, the MEC voted to recommend a ninety-day suspension of plaintiff's

clinical privileges. Plaintiff was not extended an invitation to attend the December 11 meeting.

Plaintiff requested a "Fair Hearing" Pursuant to Article VII of the JFK Medical/Dental Staff Bylaws (Bylaws). That hearing was conducted on June 3 and July 1, 2008, before a five-physician committee moderated by retired Judge Robert A. Longhi. Plaintiff participated in this proceeding and was represented by counsel. On July 29, 2008, the Fair Hearing Committee (FHC) voted to affirm the MEC's recommendation to suspend plaintiff's privileges for ninety days.

Plaintiff appealed the FHC's decision, pursuant to Article VII, Section 6 of the Bylaws, to the Appellate Review Committee, which, on November 12, 2008, affirmed the MEC's recommendation. The Board of Trustees (Board) reviewed the recommendations of the FHC and Appellate Review Committee and affirmed their recommendations to suspend plaintiff's privileges for ninety days, effective March 1, 2009.

Plaintiff filed a verified complaint against JFK, Solaris Health System[4] and John P. McGee[5] on February 18, 2009, seeking

[4] Solaris Health System "encompasses a wide array of organizations, services and facilities in the Central New Jersey area. The system includes acute care hospital JFK Medical Center, inpatient and outpatient rehabilitation centers, nursing and convalescent facilities and specialized treatment programs." http://www.solaris.org/about-us/.

preliminary and permanent injunctive relief. Specifically, plaintiff sought reversal of the suspension and an order preventing defendants from reporting the suspension to the New Jersey Division of Consumer Affairs and the Medical Practitioner Review Panel of the New Jersey State Board of Medical Examiners. Defendants filed an answer on March 23, 2009.

On May 11, 2009, Judge Frank M. Ciuffani, P.J.Ch., dismissed plaintiff's complaint with prejudice and granted defendants' motion for summary judgment. The present appeal followed.

On appeal, plaintiff contends that summary judgment was improperly granted because the trial court erred in holding that the Bylaws were not violated in the hospital's proceedings against plaintiff. Plaintiff argues that JFK violated its own Bylaws four times: (1) when the President of the Medical Staff, rather than the Chairman of the Department of Surgery, appointed the investigative committee in violation of Article VI(1)(b); (2) when only two members of the five-person committee interviewed appellant, violating Article XIV(4), which required the presence of at least fifty percent of the investigating committee to interview appellant; (3) when no record was made of

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(continued)

[5] John P. McGee is the President and CEO of Solaris Health System.

the first investigative committee's interview, in violation of Article VI(1)(c); and (4) when plaintiff was not invited to the December 11, 2007 MEC meeting. Additionally, plaintiff contests the trial court's determination that his failure to attend the November 20, 2007 MEC meeting constituted a waiver of his right to attend the December 11, 2007 meeting.

Summary judgment must be granted if "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). When reviewing a summary judgment motion, the trial court must decide "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party in consideration of the applicable evidentiary standard, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995). On appeal, we will review a grant of summary judgment de novo, using the same standard as the trial court under Rule 4:46-2(c). Turner v. Wong, 363 N.J. Super. 186, 198-99 (App. Div. 2003). We first decide whether there was a genuine issue of fact, and if there was not, we must then

decide whether the trial court's ruling on the law was correct. Walker v. Atl. Chrysler Plymouth, 216 N.J. Super. 255, 258 (App. Div. 1987). Because the parties here do not dispute that the Bylaws were not strictly followed prior to the hearing, no genuine issue of fact exists. Instead, the dispute centers around whether any deviations from the Bylaws tainted the hearing process to such an extent that plaintiff was denied a fair hearing.

Where a court reviews a decision of a hospital board, it "should focus on the reasonableness of the action taken" with reference to the "interests of the public, the applicant and the hospital." Garrow v. Elizabeth Gen. Hosp. & Dispensary, 79 N.J. 549, 565 (1979). The standard of review of a hospital board's determination is less rigorous than the substantial credible evidence test, as "the record should contain sufficient reliable evidence, even though of a hearsay nature, to justify the result." Ibid. See Nanavati v. Burdette Tomlin Mem'l Hosp., 107 N.J. 240, 249 (1987). Practitioners subject to corrective action are entitled to fundamental fairness, which requires notice of the charges against them as well as a hearing. Garrow, supra, 79 N.J. at 558 (citing Cunningham v. Dep't of Civil Serv., 69 N.J. 13, 19 (1975)). Fundamental fairness provides a limited right to counsel as well as limited pre-

hearing disclosure of the hospital's basis for bringing the corrective action. Zoneraich v. Overlook Hosp., 212 N.J. Super. 83, 91 (App. Div.), certif. denied, 107 N.J. 32 (1986).

Plaintiff's argument that Article VI(1)(b) of the Bylaws was violated when the President of the Medical Staff appointed the investigative committee, rather than the Chairman of the Department of Surgery, is without merit. Article VI(1)(b) provides that "the Executive Committee may, if it chooses, request the Chairman of the Department concerned to form a committee to investigate the request for corrective action." Although the Chairman of the Department of Surgery did not himself appoint the members of the committee, plaintiff never objected to the committee's makeup or membership. Nor does plaintiff argue that there would have been a different outcome if the Chairman of the Department of Surgery had appointed its members.

Plaintiff next argues that Article VI(1)(c) of the Bylaws was violated because a quorum of the investigatory committee (fifty percent or more) did not meet with him. He invokes City of Asbury Park v. Dep't of Civil Serv., 17 N.J. 419, 422 (1955), where the court invalidated a hearing conducted without a quorum, and uses it to support his argument that the Grubman Committee should have had a quorum of its members present at its

meeting with appellant. Asbury Park, however, is distinguishable from the facts of this case because there, the hearing itself was conducted without a quorum. Ibid. Here, plaintiff concedes that he received a full hearing, as well as appellate review of that hearing, in accordance with hospital Bylaws. The FHC concluded that the quorum requirement of Article XIV did not apply to Article VI ad hoc committees such as the Grubman Committee because such committees are temporary and are limited in scope and purpose. Deference should be given to JFK's interpretation of its own Bylaws. See In re Petition of Adamar of N.J., Inc., 222 N.J. Super. 464, 469 (App. Div. 1988) (holding that reviewing courts should "accord substantial deference to an interpretation of a statute or regulation by the agency responsible for enforcing it."). Further, even if the FHC erred in its interpretation of Article XIV, plaintiff suffered no harm, as he was fully aware of the nature of the allegations against him and had the opportunity to fully challenge the Grubman Committee's recommendation during the fair hearing.

Plaintiff also contends that the Article VI(1)(c) requirement that a record be created of the investigatory committee meeting exists to ensure plaintiff's version of events is accurately presented to the MEC, and that because no record

was made, the Bylaws were violated. We reject this argument. Plaintiff had the chance to personally appear before the MEC in November of 2007 to present his version of the events as well as any substantive or procedural claims he might have, but chose instead not to appear on that date. Additionally, the Grubman Report reflected in detail the committee's work, including the interview two of its members conducted with plaintiff, and at no time did plaintiff claim that the report was inaccurate in its depiction of what occurred.

Plaintiff argues further that his failure to attend the November, 2007 MEC meeting should not have precluded an invitation being extended to him to attend the December, 2007 MEC meeting because Article VI(1)(d) of the Bylaws provides that a practitioner "shall be permitted to make an appearance before the [MEC]" when corrective action could result in suspension. We agree. Nonetheless, this meeting was not a hearing, and the fact that plaintiff later appeared at the fair hearing and was represented by counsel negates any error by the MEC in failing to invite him to the December meeting.

Finally, plaintiff argues that the trial court's decision to uphold his suspension was arbitrary and capricious because the court erroneously failed to address the length of his suspension in its written opinion. Plaintiff claims his

suspension is unfair because Dr. Hobayan, the first surgeon to become associated with M.M., received only a letter of reprimand, the lowest form of corrective action. In support of this position, plaintiff refers to his expert's report, which found plaintiff's actions reasonable because Dr. Hobayan was the "surgeon who should have seen the patient in the ER on the day of admission." Plaintiff therefore believes that the trial court should have considered Dr. Hobayan's actions and his corresponding punishment in evaluating the fairness of appellant's punishment.

In our limited review of the Board's determination, our task is not to substitute our judgment as to what is the appropriate sanction but to determine "the reasonableness of the action taken." Garrow, supra, 79 N.J. at 565. Dr. Hobayan's interaction with M.M. was far more constrained than plaintiff's involvement. Dr. Hobayan's role was limited to directing that M.M. be admitted to the hospital. Thereafter, another surgeon, Dr. Constable, was consulted, and Dr. Hobayan's involvement in the case ceased. By contrast, plaintiff ordered a CT scan for M.M. and prescribed medication for her by phone on June 11. On June 12, plaintiff personally examined M.M. and recognized that she needed surgery, yet chose not to perform that surgery and also chose not to contact Dr. Hobayan or another surgeon.

Plaintiff cancelled the operating room time he scheduled for M.M. and made no further arrangements for her care. Therefore, the disparity in the discipline the Board imposed between the two surgeons is supported by the differing circumstances of each physician's involvement with M.M.

Affirmed.