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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

PAUL BRESSMAN,

Plaintiff and Appellant,

v.

SAN ANTONIO COMMUNITY
HOSPITAL,

Defendant and Appellant.

E053236

(Super.Ct.No. CIVRS900140)

OPINION

APPEAL from the Superior Court of San Bernardino County. Joseph R. Brisco,
Judge. Affirmed in part; reversed in part.

Zaro Sillis & Ramazzini; Hardy Erich Brown & Wilson and Stephen L. Ramazzini
for Plaintiff and Appellant.

McDermott Will & Emery, Thomas A. Ryan and Jessica J. Thomas for Defendant
and Appellant.

I

INTRODUCTION

Paul Bressman, a medical doctor, appeals from a judgment denying his petition for writ of mandate. In his petition, Bressman challenged the final administrative decision upholding the suspension of his clinical privileges after an administrative hearing of the Judicial Hearing Committee (JHC) of San Antonio Community Hospital. The hospital cross-appeals, challenging the court's unfavorable findings in the judgment.

We are the sixth body called upon to review the evidence against Bressman after rulings against him by the Medical Executive Committee (MEC), the JHC, the hospital's appeal board and board of trustees, and the superior court. As these other bodies have found, we also find that there is sufficient evidence to support suspension of Bressman's clinical privileges.

We affirm the judgment.

II

STANDARD OF REVIEW

It is not the function of the courts to resolve differences of medical judgment regarding standard of care: "This principle is particularly applicable to the type of professional decision under review. Courts are ill-equipped to assess the judgment of qualified physicians on matters requiring advanced study and extensive training in medical specialties." (*Bonner v. Sisters of Providence Corp.* (1987) 194 Cal.App.3d 437, 447-448, citing *Unterthiner v. Desert Hospital Dist.* (1983) 33 Cal.3d 285, 294-295, 298 (*Unterthiner*); *Cipriotti v. Board of Directors* (1983) 147 Cal.App.3d 144, 154.)

The proper roles of the superior court and the appellate court have been discussed exhaustively in *Hongsathavij v. Queen of Angels etc. Medical Center* (1998) 62 Cal.App.4th 1123 (*Hongsathavij*) and *Huang v. Board of Directors* (1990) 220 Cal.App.3d 1286. Because of the importance of the standard of review, we cite a lengthy passage from *Hongsathavij* explaining fully how the standard of review operates throughout the multiple levels of medical review proceedings:

“In *Huang*, the governing body on appeal overruled the judicial review committee’s decision in favor of the complaining physician and issued its own decision against the physician. The superior court looked only to see if there was substantial evidence supporting the governing body’s action, and finding such evidence, it sustained the governing body’s decision. On appeal, the *Huang* court found that the superior court had, in essence, misfocused its inquiry. A threshold issue in all such cases is whether the governing body applied the correct standard in conducting its review. The superior court in *Huang* had not addressed this preliminary question. The Court of Appeal in *Huang* found that the correct standard of review had not been applied by the governing body. The governing body had improperly used its independent judgment rather than implementing the substantial evidence standard required by the bylaws. Under such circumstances, it was thus not appropriate for the superior court to limit its review to whether substantial evidence supported the decision of the governing body. (*Huang, supra*, 220 Cal.App.3d] at p. 1294.)

“Consistent with the analysis in *Huang*, the superior court essentially must determine two issues. First, it must determine whether the governing body applied the

correct standard in conducting its review of the matter. Second, after determining as a preliminary matter that the correct standard was used, then the superior court must determine whether there was substantial evidence to support the governing body's decision. To the extent that other cases imply the superior court should review for substantial evidence the decision of the judicial review committee, we find such cases unpersuasive. (See, e.g., *Gaenslen v. Board of Directors* (1985) 185 Cal.App.3d 563, 572 (*Gaenslen*); *Cipriotti v. Board of Directors* (1983) 147 Cal.App.3d 144, 155.) Indeed, in *Gaenslen* and *Cipriotti*, the courts never had to distinguish carefully which of the decisions (that of the judicial review committee or of the governing body) they were reviewing, because the administrative decisions of both entities were the same.

“Accordingly, the superior court cannot focus exclusively on the decision of the judicial review committee, or there would be no purpose for the bylaw provision which permits review of that decision by the hospital's governing body, which then issues the final administrative decision in the matter. A review which does not exclude the governing body's determination is also consistent with the requirement that ‘in cases arising from *private hospital boards* . . . abuse of discretion is established if the [superior] court determines that the findings are not supported by substantial evidence *in the light of the whole record.*’ (Code Civ. Proc., § 1094.5, subd. (d), italics added.)

“As to the function of the Court of Appeal, our function in this context is the same as the superior court's, which was the same as the hospital's governing body. ‘Like the trial court, we also review the administrative record to determine whether its findings are supported by substantial evidence in light of the whole record, our object being to

ascertain whether the trial court ruled correctly as a matter of law.’ [Citations.] The appellate court thus does not review the actions or reasoning of the superior court, but rather conducts its own review of the administrative proceedings to determine whether the superior court ruled correctly as a matter of law. (*Gaenslen v. Board of Directors* [(1985) 185 Cal.App.3d 563,] 573, fn. 5.)

“Moreover, an appellate court must uphold administrative findings unless the findings are so lacking in evidentiary support as to render them unreasonable. (*Oskooi v. Fountain Valley Regional Hospital* (1996) 42 Cal.App.4th 233, 243; *Gaenslen v. Board of Directors, supra*, 185 Cal.App.3d at p. 572.) A reviewing court will not uphold a finding based on evidence which is inherently improbable (*Schaffield v. Abboud* (1993) 15 Cal.App.4th 1133, 1142), or a finding based upon evidence which is irrelevant to the issues. [Citations.] Therefore, even if a finding is supported by evidence, if that evidence is irrelevant to the charge, the decision must be reversed for insufficient evidence. [Citations.] Finally, we note that the opinion testimony of expert witnesses does not constitute substantial evidence when it is based upon conclusions or assumptions not supported by evidence in the record. (*Pacific Gas & Electric Co. v. Zuckerman* (1987) 189 Cal.App.3d 1113, 1135; see *Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651.)” (*Hongsathavij, supra*, 62 Cal.App.4th at pp. 1135-1137.)

In summary, the governing board—in this instance, the board of trustees—must use the substantial evidence standard to review the correctness of the administrative decisions by the JHC and the appeal board. The superior court must determine whether substantial evidence supports the board of trustees’s final decision. The Court of

Appeal—like the board of trustees and the superior court—must review the administrative record for substantial evidence to support whether the trial court ruled correctly as a matter of law.

III

FACTUAL AND PROCEDURAL BACKGROUND

A. The Sealed Record

The trial court granted Bressman’s motion to seal the entire administrative record based on the confidentiality of the medical records that were used in the administrative hearing. (Cal. Rules of Court, rules 2.550, 2.551.) The record in this court also contains the administrative record. The parties in their briefs, which were not sealed, freely refer to the evidentiary showings by each side. This court has not been requested to nor has it issued any separate order to seal this record. (Cal. Rules of Court, rule 8.46.) We therefore discuss the material facts generally without using specific indentifying detail that might infringe on patients’ confidential medical records. (*CenterPoint Energy, Inc. v. Superior Court* (2007) 157 Cal.App.4th 1101, 1108-1109, fn. 3.)

B. Summary of Hospital Proceeding

Bressman began working at the hospital in 1989. He was reappointed in 1992 for two years. Between 1994 and February 1997, Bressman was under a preceptorship and required to have a proctor for some procedures, including surgeries.

1. The 1997 Hematoma Case

In May 1997, after Bressman performed surgery to remove plaque from a major artery, the patient developed a hematoma. Despite worsening symptoms, Bressman

delayed surgery for two days and a peer evaluation concluded Bressman's care was an "[i]solated lapse in judgment" but "[d]etrimental to patient safety or to the delivery of quality care within the hospital."

2. The 1998 Old Graft Case

In November 1998, Bressman surgically placed an access graft on a patient's left arm without closing an old right arm graft that still had blood flow. After surgery, the right graft began oozing and bleeding, causing a code blue. The peer evaluation concluded Bressman's care showed an "[i]solated lapse in judgment" with "[n]o Corrective Action Indicated."

3. The 1999 Hernia Case

In May 1999, Bressman undertook his first laparoscopic hernia repair which lasted more than eight hours. The peer evaluation concluded Bressman's conduct was detrimental to patient safety or quality care and demonstrated an isolated lapse in judgment and failure of technical skill, warranting a "letter of warning, admonition, reprimand, or censure." Dr. Scott R. Karlan performed an outside review that was critical of Bressman's judgment and proposed suspending Bressman's laparoscopic privileges and monitoring his other procedures. An ad hoc review committee deferred further action or suspension.

4. The June 2000 Pancreatitis Case

In June 2000, Bressman performed a five-hour surgery on a patient in an acute phase of gallstone pancreatitis, which had a risk of a 30 to 40percent mortality rate. The peer evaluation concluded Bressman acted "[b]elow applicable professional standards"

with “[c]onsistently poor medical judgment” and recommended “a letter of warning, admonition, reprimand, or censure.” Dr. Karlan also concluded Bressman’s treatment was substandard.

5. The July 2000 “20 Attempts” Case

In July 2000, Bressman struggled with trying to start a central line in a patient’s right and left jugular veins. Bressman made 20 attempts, while reusing the same drape without considering sterility, before the procedure was aborted. The peer review evaluation concluded there was a “[f]ailure of technical skill” and recommended “[o]ther actions deemed appropriate under the circumstances.”

6. The Summary Suspension

In October 2000, the MEC approved Bressman for a six-month reappointment instead of two years, pending review of the past three years.

In December 2000 and March 2001, there were other treatment issues involving placing a catheter in a jugular vein and resuscitating a patient after a code blue.

In April 2001, the ad hoc committee recommended restrictions on Bressman’s privileges including placing him under proctorship again. The MEC rejected the recommendation and summarily suspended Bressman’s surgery privileges except for surgical assisting and reading neurovascular study interpretations.

In June 2001, the MEC sent Bressman a notice of final proposed action based on failure to demonstrate current professional competence, good judgment, and compliance with the medical staff bylaws, rules and regulations, and surgery department policies.

The notice described 40 cases between April 1997 and March 2001 in which Bressman's conduct was questionable.

7. The JHC Hearing

The JHC—two surgeons and an anesthesiologist—conducted a lengthy administrative hearing of 32 sessions for more than four years, between October 2001 and December 2005, and involving the 40 cases. Twenty-eight witnesses testified. Seven volumes of exhibits were submitted. The JHC's 60-page decision unanimously upheld the summary suspension, finding that “Bressman repeatedly exercised very poor judgment in his care and treatment of patients, was incompetent, and presents a substantial likelihood of imminent danger to patients” The JHC focused particularly on the five significant cases involving the hematoma, the old graft, the hernia, pancreatitis, and the “20 attempts” case. The JHC stated that “Bressman's poor judgment affected virtually every facet of his general and vascular surgical practice The breadth and seriousness of [his] poor judgment evidences that he presents a substantial likelihood of imminent danger to the health and safety of patients . . . it would have been too great a risk for the MEC to have not summarily suspended [his] clinical privileges . . . as and when it did.” Bressman also refused to acknowledge his errors.

8. The Appeal Board and Board of Trustees' Decision

The three-member appeal board conducted a hearing in which the parties submitted evidence and oral argument. The appeal board determined that the five significant cases supplied evidence of a “substantial likelihood of imminent danger to

patients” and upheld the summary suspension. The hospital’s board of trustees issued a final decision, adopting the findings and decision of the appeal board.

C. Petition for Writ of Mandate

The trial court held that the pancreatitis case was supported by substantial evidence sufficient to deny Bressman’s petition for writ of mandate. The trial court held the four other significant cases lacked substantial evidence. The trial court omitted any explanation for its rulings. The trial court declined Bressman’s request to remand the case to the JHC to determine whether the single pancreatitis case justified suspension.

IV

THE PANCREATITIS CASE

On appeal, in highly technical arguments, the parties debate whether substantial evidence supports the Board of Trustees’ final decision. In conducting a substantial evidence review, “[i]t is not necessary for us to reiterate the meticulous patient-by-patient review” of Bressman’s care and treatment of patients which the hospital’s expert witnesses presented before the hospital committees. (*Bonner v. Sisters of Providence Corp.*, *supra*, 194 Cal.App.3d at p. 447; *Gill v. Mercy Hospital* (1988) 199 Cal.App.3d 889, 898-901; *Gaenslen*, *supra*, 185 Cal.App.3d at p. 573.)

The substance of the findings by the JHC on the pancreatitis case was that Bressman conducted surgery prematurely on the patient when other measures could potentially have avoided surgery and the high mortality risk. Bressman contends that his treatment was reasonable under the circumstances because the patient was actually suffering from acute toxic cholangitis, not gallstone pancreatitis, and surgery offered the

best course of action. Bressman maintains the JHC disregarded the evidence of cholangitis and ignored the testimony of several doctors—Kevin Jenkins, Jeffrey Ballard, and Vinod Garg—supporting the reasonableness of Bressman’s treatment. Bressman disputes that the testimony of Doctors Karlan and Nabil Koulsi constituted substantial evidence because he contends Karlan’s opinions were inadmissible and contradictory and Koulsi’s opinions were speculative. (*Rodenberry v. Rodenberry, supra*, 44 Cal.App.4th at p. 561.) Bressman offers additional objections about JHC’s reliance on the patient’s medical chart and Bressman’s own testimony about the possible causes for the patient’s condition. In opposition, the hospital argues that it was below the standard of care to operate on a patient in the acute phase of gallstone pancreatitis rather than keeping the patient under observation for 24 to 48 hours.

With regard to these opposing contentions, we conclude that, even if the record contains facts favorable to Bressman’s position, it is the appellate court’s “legal obligation to resolve conflicts in support of the judgment.” (*Gill v. Mercy Hospital, supra*, 199 Cal.App.3d at pp. 900-901.) As such, substantial evidence in the record supports the findings of the JHC, adopted by the appeal board and the board of trustees, and the findings of the superior court that Bressman’s treatment in the pancreatitis case was substandard and warranted suspension of his clinical privileges.

The opinions of Doctors Karlan and Koulsi supported the suspension. Dr. Karlan’s report was admissible under the hospital’s bylaws. The written peer review by a surgeon from Cedar-Sinai Medical Center was highly relevant and persuasive even if he did not testify in person at the JHC hearing. Additionally, Bressman’s criticism of the

consistency of Dr. Karlan’s report again improperly proposes that this court judge the credibility of the evidence and resolve conflicts. Bressman’s attack on the “speculative” nature of Dr. Koulsi’s testimony is also wrong because Dr. Koulsi testified about the general morbidity risk for a patient with acute pancreatitis, not expressly about Bressman’s patient. Because JHC rejected the alternative of cholangitis, Bressman is proposing this court improperly reweigh the evidence. (*Huang, supra*, 220 Cal.App.3d at p. 294.)

The substantial evidence presented through Doctors Karlan and Koulsi was not inadmissible, contradictory, or speculative. The patient’s medical records and Bressman’s own opinions about the possible reasons for the patient’s condition offered additional evidence supporting the administrative decision and the trial court’s judgment.

V

THE HOSPITAL’S CROSS-APPEAL

Under the medical bylaws, a true finding on the single pancreatitis charge justifies the disciplinary action by the MEC. (Medical Staff Bylaw § 7.3.17.) Nevertheless, the hospital filed a cross-appeal arguing that substantial evidence also supported the administrative rulings on the four other significant cases, which the superior court found were not supported by substantial evidence. Although we could affirm the judgment based on the pancreatitis case alone, we will also address the substantial evidence in the other four significant cases.

Administrative “findings are sufficient if they apprise the interested parties and the courts of the basis for administrative action.” (*Gaenslen, supra*, 185 Cal.App.3d at p.

573.) Substantial evidence demonstrated the hematoma case and the hernia case each involved conduct detrimental to patient safety or quality care. The “20 attempts” case and the hernia case also involved a failure of technical skill. All of the four additional significant cases displayed poor medical judgment. The five significant cases, individually and collectively, supplied substantial evidence warranting suspension of clinical privileges. (*Unterthiner, supra*, 33 Cal.3d at p. 298; *Cipriotti v. Board of Directors, supra*, 147 Cal.App.3d at p. 155; *Gill v. Mercy Hospital, supra*, 199 Cal.App.3d at p. 900.)

VI

DISPOSITION

Based on the pancreatitis case, we affirm the judgment. Although it is not essential to our affirmance, we also reverse the trial court’s findings that no substantial evidence supported the four other significant cases. As the prevailing party, the hospital shall recover its costs on appeal.

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CODRINGTON

J.

We concur:

HOLLENHORST

Acting P. J.

RICHLI

J.