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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

NITIN SHAH,

Plaintiff and Respondent,

v.

THE REGENTS OF THE UNIVERSITY  
OF CALIFORNIA,

Defendant and Appellant.

G049517

(Super. Ct. No. 30-2012-00612242)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Thierry Patrick Colaw, Judge. Reversed.

Charles F. Robinson, Karen J. Petrulakis and Margaret L. Wu for Defendant and Appellant.

John D. Harwell for Plaintiff and Respondent.

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Under a term appointment subject to annual renewals, plaintiff and respondent Nitin Shah worked as a part-time anesthesiologist and clinical professor at the University of California, Irvine Medical Center (Hospital). Defendant and appellant The Regents of the University of California (University) had discretion in deciding whether to reappoint Shah each year, and could decide not to reappoint him if, in the University's judgment, the needs of the department where he worked did not justify his retention. In this administrative mandamus proceeding, Shah seeks to overturn the University's decision not to reappoint him and the other part-time and per diem anesthesiologists who were not retained when their appointments expired in 2009.

In exercising its discretion not to reappoint Shah, the University was attempting to correct numerous problems federal regulators uncovered in monitoring the Hospital's anesthesiology department (Department), including discrepancies in the Department's recordkeeping. The Department risked losing its federal funding if it failed to promptly correct the problems. As part of its remedial efforts, the Department implemented a complicated, electronic recordkeeping system. To minimize or eliminate recordkeeping errors, the Department decided not to reappoint its part-time and per diem anesthesiologists because it determined part-time anesthesiologists, as a group, were more likely to make mistakes in using the new system and thereby jeopardize the Department's federal funding. The trial court granted Shah's writ petition because it found the administrative record lacked substantial evidence to support the University's premise that part-time anesthesiologists were more prone than full-time anesthesiologists to err in using the new system.

On this appeal, we review the University's final administrative decision—not the trial court's decision—to determine whether it was supported by substantial evidence. We may not weigh the evidence, judge the witnesses' credibility, or resolve conflicts in the evidence, and we must uphold the University's decision unless no reasonable person could reach the same determination based on the record before it. If

substantial evidence supports the University's decision, it is irrelevant whether the University could have exercised its discretion differently because we must defer to the University's judgment regarding the Department's needs and how best to serve those needs.

We reverse because substantial evidence supported the Department's decision that its programmatic needs would be served by not reappointing the part-time and per diem anesthesiologists. The Department's chair testified about its problems with the federal regulators and the need to promptly correct those problems to avoid losing federal funding. He explained the Department could improve its recordkeeping if it did not reappoint the part-time and per diem anesthesiologists because the complexity of the new recordkeeping system required physicians to spend considerable time learning its intricacies and keeping abreast of its constantly changing requirements. The chair explained he based his decision on his observations of physicians using the system, the feedback he received from the physicians, his numerous discussions with other administrators at the Hospital, and his extensive experience as an anesthesiologist and administrator at another hospital where he repeatedly observed part-time physicians encounter greater difficulty than full-time physicians in properly implementing new policies and procedures.

## I

### FACTS AND PROCEDURAL HISTORY

Shah worked as an anesthesiologist and a clinical professor at the Hospital between 1991 and 2009. He initially worked full-time, but in 1996 he began working part-time at the Hospital and part-time at the Veterans Administration Hospital in Long Beach (VA) as part of a time-sharing arrangement that allowed the University to expand its educational offerings to include a critical care rotation at the VA. Shah was not an employee of the University, but rather a contract physician who worked under a series of

one-year term appointments subject to yearly reappointment. During his time at the Hospital, Shah received several promotions and pay raises for his skillful work.

In 2008, a federal investigation uncovered numerous problems in the Department, including substandard equipment checks, inadequate staffing, and poor recordkeeping. The U.S. Centers for Medicare and Medicaid Services ordered the Department to correct the problems or risk losing its federal funding. Federal regulators repeatedly visited the Hospital to monitor its progress. To quickly remedy the situation, the University hired Zeev Kain, M.D., as the Department chair to supervise the corrections.

Kain, a specialist in pediatric anesthesiology, holds a masters degree in business administration from Columbia University. He spent 18 years at the Yale University Medical Center gaining extensive administrative experience, including assignments as the Executive Vice Chair of the Department of Anesthesiology, a member of the Board of Governors for the Yale Medical Group, and the Chair of the Finance Committee for the Yale Medical Group. When he arrived at the Hospital, Kain discovered the Department operated with few established policies and procedures, employing an ad hoc paper recordkeeping system that allowed physicians to improperly fill out surgical reports before the surgery.

Kain established extensive policies and regulations governing the Department's operations to ensure it fully complied with all federal and state regulations. As part of those efforts, the Department implemented an electronic medical records system that prevented prefilling by date and time stamping each entry. The system was complicated and customized to the Department's particular needs, changing on a daily or weekly basis depending on the Department's clinical flow and the federal regulators' demands. Implementation of similar systems typically takes one to two years, but the Department implemented its system in just three months. Proper use of the system

required not only that the anesthesiologists receive extensive training, but also that they continually use the system because of its evolving nature.

Based on the system's complex nature and the limited opportunity part-time anesthesiologists had in mastering the system, Kain was concerned those physicians as a group would have greater difficulty using the system properly and would make more mistakes that could jeopardize the Department's status with federal regulators. He therefore investigated whether the Department would be better served by using only full-time anesthesiologists. Over several months, Kain informally gathered information and sought input from other administrators on whether it would be in the Department's best interest not to reappoint part-time and per diem anesthesiologists when their current appointment expired.

Over several months, Kain observed the anesthesiologists adapt to the new recordkeeping system and sought feedback from them regarding their experiences. He repeatedly discussed the topic at the regular meetings of the Department chair's cabinet, which was an advisory group consisting of the chair, the vice chair for clinical affairs, the vice chair for education, an associate chair, and the chief administrative officer. Kain also discussed the topic with other leaders at the medical school, including the dean, the head of academic personnel, the associate vice chancellor for academic affairs, and the executive vice chancellor. These individuals unanimously agreed with Kain's concerns that part-time anesthesiologists were more likely to make recordkeeping mistakes with the new system, and they supported his plan not to reappoint those anesthesiologists when their terms expired. These discussions were informal and Kain did not document them or the information he gathered. Moreover, Kain did not conduct an individualized assessment of the part-time and per diem anesthesiologists to confirm either that any particular physician was having difficulty with the new recordkeeping systems or that those physicians as a group made more recordkeeping mistakes than full-time physicians.

In April 2009, Kain decided to implement his plan. He sent Shah and the Department's other part-time and per diem anesthesiologists a notice that, "due to a reorganization in the department[, t]he Department of Anesthesiology and Perioperative Care will not reappoint several part-time and per diem faculty because it has been determined that they are not as familiar with the new and ever-changing policies in the hospital environment, particularly in the new hospital and some recent, new department policies and procedures and thus may pose a risk to clinical care." Other than this written notice, Kain did not prepare any written documentation to support his actions. He had no information that Shah had experienced problems with the new recordkeeping system or failed to adequately perform his job. Nonetheless, Shah was not reappointed when his annual term ended in June 2009, although he continued to work at the VA. Shah offered to work full-time at the Hospital, but Kain denied that request because the VA reported it needed Shah's services.

Of the Department's 24 part-time and per diem anesthesiologists, Kain did not reappoint 21 of them based on the new policy eliminating part-time and per diem anesthesiologists. He reappointed three anesthesiologists based on the Department's needs because each of them had a specialty the Department otherwise lacked, such as cardiac or pediatric anesthesiology. Shah did not have a specialty the Department lacked.

To challenge Kain's decision not to reappoint him, Shah filed a grievance under the University's "General University Policy Regarding Academic Appointees, Non-Senate Academic Appointees/Term Appointment" (Policy or APM). The University denied Shah's grievance at the initial two levels of review and he sought a formal evidentiary hearing. After conducting a hearing at which Shah, Kain, and others testified, the agreed-upon hearing officer made nonbinding findings and recommendations for the University's chancellor to consider.

The hearing officer recommended the University reinstate Shah and pay him back pay based on the officer's findings that Kain lacked substantial evidence to

support a blanket policy against reappointing part-time or per diem anesthesiologists because they have a “propensity . . . to make mistakes with the Department’s new electronic recordkeeping system.” The officer concluded the policy was not supported by Kain’s unspecified observations, reports from other physicians, and feedback about the new recordkeeping system, or Kain’s “conclusion or assumption, based on 18 years of again unspecified experience at UCI and Yale, that there is a differential compliance between part-timers and full-timers with hospital policies and procedures, generally.” Finally, the hearing officer criticized Kain for failing to conduct a systematic study, and concluded the exceptions Kain made to the policy for certain anesthesiologists further demonstrated the lack of any supportable basis.

As the final administrative decision maker, the University’s chancellor rejected the hearing officer’s findings and recommendations and denied Shah’s grievance. The chancellor explained it was undisputed that Kain’s decision “was motivated by the need to assure regulatory compliance in the wake of well publicized regulatory problems. In the aftermath of [the Department] being placed under regulatory scrutiny, it is undisputed that the Department took immediate and proactive steps to minimize potential record-keeping and administrative errors. The Hearing officer acknowledged in his findings, and it is undisputed, that [] Kain’s decision was based on [] Kain’s own observations, reports from other doctors, feedback concerning UCI hospital electronic record keeping, and his 18 years of experience at Yale and UCI that part-time physicians were more at risk than full-time physicians to make record keeping errors.” The chancellor criticized the hearing officer for “essentially ignor[ing] the concept that Department personnel can make reasonable renewal decisions based on their education, training and experience, as was done here. Physicians are often called on to make decisions based on purely professional judgment. Given the total lack of any evidence of improper motive or pretext, deference is due . . . Kain’s rationale for exercising the judgment he made, based on his education, training and experience.”

Shah filed this action seeking a writ of administrative mandamus to overturn the chancellor's decision and compel the University to adopt the hearing officer's findings and recommendation. Echoing the hearing officer's findings, the trial court granted Shah's writ petition because the court found the administrative record lacked substantial evidence to support Kain's conclusion part-time anesthesiologists were not as familiar with the Department's new recordkeeping system and policies, and therefore were more likely to make mistakes. The court further explained Kain's testimony to support his conclusion was too generalized and conclusory to constitute substantial evidence because he conducted no individualized assessments and did not provide any other factual basis for his conclusion. The court entered judgment in Shah's favor and the University timely appealed.

## II

### DISCUSSION

#### A. *Governing Legal Principles*

##### 1. The University's Relevant Personnel Policies

The parties agree the Department's decision not to reappoint Shah was governed by the Policy, which states, "A term appointment is an appointment for a specific period which ends on a specified date. [¶] . . . [¶] The University has the discretion to appoint and reappoint non-Senate academic appointees with term appointments; reappointment is not automatic." (APM-137-4.) For Shah and other appointees with eight or more consecutive years of service, "The University may decide not to renew a term appointment . . . , when, in its judgment, the programmatic needs of the department or unit, lack of work, the availability of suitable funding for the position,

or the appointee's conduct or performance do not justify renewal of the appointment."<sup>1</sup> (APM-137-30c.) The University must provide the appointee 60 days written notice of its intent not to reappoint and that notice must state "(1) the intended action is not to reappoint the appointee and the proposed effective date; (2) the basis for non-reappointment, including a copy of any materials supporting the decision not to reappoint; (3) the appointee's right to respond either orally or in writing within fourteen (14) calendar days of the date of issuance of the written Notice of Intent; and (4) the name of the person to whom the appointee should respond." (APM-137-32a.)

The Policy authorizes appointees to file a grievance, which "is defined as a complaint by an eligible non-Senate academic appointee that alleges that: [¶] . . . [¶] a violation of applicable University rules, regulations, or Academic Personnel policies occurred which adversely affected the appointee's then-existing terms or conditions of appointment." (APM-140-4a(2).) The Policy authorizes an appointee to seek both an informal and formal grievance review and also a formal grievance appeal before an agreed-upon hearing officer. (APM-140-31, 140-32, 140-33.) Following an evidentiary hearing, the hearing officer must make written findings of fact and "determine whether the University has established by a preponderance of the evidence that it met the standard set forth in APM-137-30-c [regarding the decision not to reappoint an appointee with eight or more consecutive years of service]." (APM-140-80c(1).)

"The Chancellor shall review the hearing officer's findings and recommendations and issue a final written decision within thirty (30) calendar days of receipt of the hearing officer's findings and recommendation(s). The Chancellor shall provide to the grievant a statement of the reasons if the hearing officer's

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<sup>1</sup> In contrast, for appointees with fewer than eight consecutive years of service, "It is within the University's sole discretion not to reappoint an appointee . . . , so long as the reasons for non-reappointment are not unlawful or in violation of University policy." (APM-137-30b.)

recommendation(s) is rejected or modified. If a decision is based on facts different from those found by the hearing officer, those findings must be based on materials in the record.” (APM-140-80c(4).)

## 2. Administrative Mandamus Review

Review of the University’s administrative decisions is sought by a petition for administrative mandamus under Code of Civil Procedure section 1094.5.<sup>2</sup> (*Do v. Regents of the University of California* (2013) 216 Cal.App.4th 1474, 1483 (*Do*).) That section authorizes judicial review to determine “whether the respondent has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.” (§ 1094.5, subd. (b).) Here, Shah contends no substantial evidence supports the University’s decision not to reappoint him.

Under section 1094.5, the standard of review the trial court employs depends on the nature of the right affected by the administrative decision. (*MHC Operating Limited Partnership v. City of San Jose* (2003) 106 Cal.App.4th 204, 217 (*MHC Operating*).) If the decision substantially affects a fundamental vested right, the trial court exercises its independent judgment to determine whether the weight of the evidence supports the administrative decision. (§ 1094.5, subd. (c); *MHC Operating*, at p. 217.) In all other cases, the trial court reviews the entire administrative record to determine whether substantial evidence supports the administrative decision. (*Ibid.*)

“[C]ertain types of administrative agencies are ‘of constitutional origin’ and ‘have been granted limited judicial power by the Constitution itself.’” (*Do, supra*,

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<sup>2</sup> All statutory references are to the Code of Civil Procedure.

216 Cal.App.4th at p. 1483.) The factual findings of these constitutional agencies are not subject to independent judicial review regardless whether a fundamental vested right is involved. (*Id.* at pp. 1483-1484.) The University is such an agency, and therefore judicial review of its factual findings is limited to whether they are supported by substantial evidence. (*Id.* at pp. 1485-1488.)

In the appellate court, the substantial evidence standard governs regardless of the nature of the right involved or the standard the trial court employed. (*MHC Operating, supra*, 106 Cal.App.4th at p. 218.) The decision the appellate court reviews, however, changes depending on the standard that governed the trial court's review. If the trial court independently reviewed the administrative agency's factual findings, then the appellate court reviews the *trial court's* decision to determine whether it is supported by substantial evidence. If the trial court reviewed the administrative agency's decision under the substantial evidence standard, then the appellate court reviews the entire administrative record to determine whether substantial evidence supports the *agency's* decision. (*Ibid.*; *Mohilef v. Janovici* (1996) 51 Cal.App.4th 267, 305-306 (*Mohilef*); see *Hongsathavij v. Queen of Angels etc. Medical Center* (1998) 62 Cal.App.4th 1123, 1137 (*Hongsathavij*) ["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"]; CEB, Cal. Administrative Mandamus (April 2015) § 16.56, p. 16-39.)

"On substantial evidence review, we do not 'weigh the evidence, consider the credibility of witnesses, or resolve conflicts in the evidence or in the reasonable inferences that may be drawn from it.'" (*Do, supra*, 216 Cal.App.4th at p. 1492.) "[The administrative agency's] findings come before us 'with a strong presumption as to their correctness and regularity.'" [Citation.] We do not substitute our own judgment if the [agency's] decision "is one which could have been made by reasonable people. . . ." [Citation.]'" ( *California Youth Authority v. State Personnel Bd.* (2002)

104 Cal.App.4th 575, 584 (*California Youth Authority*.) “Only if no reasonable person could reach the conclusion reached by the administrative agency, based on the entire record before it, will a court conclude that the agency’s findings are not supported by substantial evidence.” (*Do*, at p. 1490; *Hongsathavij*, *supra*, 62 Cal.App.4th at p. 1137 [“an appellate court must uphold administrative findings unless the findings are so lacking in evidentiary support as to render them unreasonable”].) A reviewing court must “presume[] that the findings and actions of the administrative agency were supported by substantial evidence.” (*Desmond v. County of Contra Costa* (1993) 21 Cal.App.4th 330, 335; see *MHC Operating*, *supra*, 106 Cal.App.4th at p. 219.)

“Under the substantial evidence test, . . . ‘[t]he focus is on the quality, not the quantity of the evidence. Very little solid evidence may be “substantial,” while a lot of extremely weak evidence might be “insubstantial.”’ . . . Substantial evidence is not [literally] any evidence—it must be reasonable in nature, credible, and of solid value.” (*Mohilef*, *supra*, 51 Cal.App.4th at pp. 305-306, fn. 28; see *Duncan v. Department of Personnel Administration* (2000) 77 Cal.App.4th 1166, 1174, fn. 6.) “The testimony of a single witness may be sufficient.” (*Duncan*, at p. 1174, fn. 6.) “‘Substantial evidence’ is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.” (*California Youth Authority*, *supra*, 104 Cal.App.4th at pp. 584-585.)

Here, the trial court properly reviewed the University’s final administrative decision under the substantial evidence standard of review, and we therefore review the University’s decision to determine whether it is supported by substantial evidence in the entire administrative record. (*Do*, *supra*, 216 Cal.App.4th at p. 1485.) Although Shah agrees the trial court’s review was governed by the substantial evidence standard and that we apply the same standard, he urges us to review the trial court’s decision, not the University’s. Shah, however, fails to recognize that we review the trial court’s decision—as opposed to the University’s decision—only when the trial court exercised its independent judgment in reviewing the University’s decision. (*MHC Operating*,

*supra*, 106 Cal.App.4th at p. 218; *Mohilef, supra*, 51 Cal.App.4th at pp. 305-306; CEB, Cal. Administrative Mandamus (April 2015) § 16.56, p. 16-39.)

A majority of the cases Shah cites are consistent with our conclusion and do not support his contention because the trial courts in those cases independently reviewed the administrative decision, which therefore required the appellate court to review the evidentiary support for the trial court's decision, not the agency's. (See *Hansen Brothers Enterprises, Inc. v. Board of Supervisors* (1996) 12 Cal.4th 533, 559-560; *Moran v. Board of Medical Examiners* (1948) 32 Cal.2d 301, 308-309; *Sarka v. Regents of University of California* (2006) 146 Cal.App.4th 261, 270-271.) The other two cases Shah cites similarly do not support his position because they also fail to recognize the impact the trial court's standard of review has on which decision the appellate court reviews. Indeed, in both cases, the only authority cited for reviewing the trial court's decision instead of the administrative agency's decision are cases in which the trial court exercised its independent judgment in reviewing the agency's decision. (See *Ishimatsu v. Regents of University of California* (1968) 266 Cal.App.2d 854, 865; *Corcoran v. S. F. etc. Retirement System* (1952) 114 Cal.App.2d 738, 741.) Accordingly, we review the University's decision to determine whether it is supported by substantial evidence.

**B. *Substantial Evidence Supports the University's Final Administrative Decision***

Shah contends the chancellor abused his discretion in rejecting the hearing officer's findings and recommendations and upholding Kain's decision not to reappoint Shah because the administrative record lacks substantial evidence to support the chancellor's decision. We disagree because our review of the entire administrative record reveals substantial evidence supports the chancellor's decision.

Before reviewing the substantial evidence in the record, it is important to identify what is in dispute and why Shah contends the record lacks substantial evidence

to support the chancellor's decision. Shah agrees Kain did not reappoint him and all but three of the Department's other part-time or per diem anesthesiologists because Kain concluded part-time anesthesiologists were more likely to make mistakes in using the new electronic recordkeeping system and thereby jeopardize the Department's standing with the federal regulators. Shah also agrees he was not automatically entitled to be reappointed and the University had the authority not to reappoint him if, "in its judgment," the Department's programmatic needs did not justify the reappointment. (APM 137-4, 137-30c.) The decision not to reappoint Shah therefore did not require any evidence or findings that Shah failed to adequately perform his job if the University determined that not reappointing him otherwise would serve the Department's programmatic needs.

In challenging the University's decision, Shah does not contend the likelihood of part-time anesthesiologists making more mistakes with the electronic recordkeeping system was an insufficient reason to justify the decision not to reappoint those anesthesiologists as a group. Instead, Shah's sole complaint is that the University offered no specific evidence showing Shah and the other part-time or per diem anesthesiologists were more likely to make mistakes than full-time anesthesiologists.<sup>3</sup>

According to Shah, the University could not base its decision on the purported likelihood part-time anesthesiologists would make more recordkeeping mistakes unless the University conducted a statistical analysis or individualized assessment of these physicians to confirm Kain's assessment. Shah, however, cites no authority that required the University to conduct an empirical study or analysis before reaching this conclusion and Shah fails to recognize how the substantial evidence standard applies to the University's decision. As explained above, the decision whether

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<sup>3</sup> Shah does not contend the University unlawfully discriminated or retaliated against him in deciding not to reappointment him.

programmatic needs justified reappointing Shah and the other part-time or per diem anesthesiologists was vested in the University's judgment, and both the trial court and this court may review the University's exercise of that judgment solely to determine whether it is supported by substantial evidence. (*Do, supra*, 216 Cal.App.4th at pp. 1489-1490.) Under that standard, the question is not whether the evidence in the record indisputably establishes that part-time physicians are more likely to make recordkeeping mistakes. Rather, the issue is whether the administrative record contains sufficient evidence to justify a reasonable person in concluding part-time physicians are more likely to make recordkeeping mistakes, even if a reasonable person also could reach the opposite conclusion based on the evidence. As long as substantial evidence supports the University's decision, we must defer to that decision even if we would have reached a different conclusion. (*Ibid.*; *California Youth Authority, supra*, 104 Cal.App.4th at pp. 584-585; *Ryan v. California Interscholastic Federation-San Diego Section* (2001) 94 Cal.App.4th 1048, 1077.)

We emphasize the critical question is not whether Shah or any other part-time or per diem anesthesiologist actually made more mistakes, or was more prone to making mistakes. The challenged decision was based on the Department's overall need to reduce recordkeeping mistakes and comply with all other regulations to satisfy federal regulators. If substantial evidence in the record would allow a reasonable person to conclude eliminating part-time and per diem anesthesiologists would serve that need, the University's decision must be upheld regardless how well Shah performed his job.

Kain testified he determined part-time physicians were more likely to make recordkeeping mistakes after observing the physicians using the new electronic recordkeeping system, obtaining feedback from the physicians regarding their experiences with the system, and repeatedly speaking with various administrators and decision makers at the Hospital, who unanimously agreed with Kain's evaluation that using full-time physicians would serve the Department's need to improve recordkeeping.

Kain also testified he based his decision on the complicated and constantly evolving nature of the new recordkeeping system and his 18 years of experience at the Yale Medical Center where he repeatedly observed part-time physicians have greater difficulty complying with new hospital policies and procedures because they were unable to spend as much time as full-time physicians learning and applying the new standards. We conclude Kain's testimony constitutes substantial evidence supporting the chancellor's decision to uphold the nonreappointment of Shah and the other part-time and per diem anesthesiologists.

The testimony of a single witness may constitute substantial evidence. (*Duncan, supra*, 77 Cal.App.4th at p. 1174, fn. 6.) Although not formally designated, Kain essentially testified as an expert witness. As the Department's chair, Kain was responsible for evaluating and determining the Department's programmatic needs when faced with the impending risk the Department would lose its federal funding if the numerous problems identified by the federal regulators were not promptly corrected. Over several months, he collected the information he believed was necessary to make that determination and he made the decision not to reappoint the part-time and per diem anesthesiologists based on his many years of experience as an anesthesiologist and a hospital administrator. It is well-settled a physician's expert opinion on the applicable standard of care based on training, professional experience, and judgment constitutes substantial evidence. Similarly, based on his training, experience, and judgment, and the input of other doctors, Kain properly provided his expert opinion on whether part-time physicians were more likely to make mistakes, and that testimony as described above constitutes substantial evidence to support the chancellor's decision. (See *Sanchez v. Brooke* (2012) 204 Cal.App.4th 126, 138 [expert testimony required to establish standard of care in professional negligence cases because that standard is "a matter peculiarly within the knowledge of experts"].)

Shah contends Kain's testimony was too general and conclusory because Kain did not specify what reports he received from other physicians regarding their use of the new electronic recordkeeping system, what observations he made regarding the physicians' use of the system, or what experiences led him to conclude part-time physicians would make more errors. In other words, Shah claims Kain's opinion and judgment lacked foundation. But Shah did not object to Kain's testimony nor did he cross-examine Kain to test the basis for his decision. The onus was on Shah to question Kain about the observations, reports, and experiences on which he relied and show they did not support Kain's decision. (See *Sinaiko v. Superior Court* (2004) 122 Cal.App.4th 1133, 1142 [contention medical expert failed to review records in sufficient detail and offer expert opinion specific to allegations against defendant went to weight rather than admissibility of expert testimony because "medical expert opinion should be liberally admitted and then subjected to the rigors of a vigorous cross-examination"].)

Moreover, if Shah thought Kain's premise was incorrect, Shah should have presented evidence to show part-time physicians did not make more mistakes, but again Shah failed to do so. He testified he had no problems with the new electronic recordkeeping systems, but this testimony about Shah's personal experience does not overcome Kain's testimony and require the conclusion a reasonable person could not have reached the same decision as Kain based on the record before us. As explained above, we may not weigh the evidence, consider the credibility of witnesses, or resolve any conflicts in the evidence when conducting a substantial evidence review. (*Do, supra*, 216 Cal.App.4th at p. 1492.)

Finally, we note the decisions of the hearing officer and the trial court are irrelevant to our analysis. As explained above, we review the University's final administrative decision and must uphold that decision if it is supported by substantial evidence in the administrative record. The hearing officer's decision is part of the administrative record, but it is not the final decision that we review nor is it the decision

to which we must give deference. Similarly, the trial court's decision is not the final administrative decision we review and therefore is not entitled to deference. At most, these decision show that reasonable minds could have reached a different conclusion, but, on the record before us, they do not show that a reasonable person must reach a different conclusion.

III  
DISPOSITION

The judgment is reversed. The University shall recover its costs on appeal.

ARONSON, J.

WE CONCUR:

O'LEARY, P. J.

MOORE, J.