

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION TWO

GEORGE KIBLER,

Plaintiff and Appellant,

v.

NORTHERN INYO COUNTY LOCAL
HOSPITAL DISTRICT et al.,

Defendants and Respondents.

E035085

(Super.Ct.No. CVCV02-32216)

ORDER MODIFYING OPINION
[NO CHANGE IN JUDGMENT]

On the court's own motion, the opinion filed in this matter on January 11, 2005, is modified as follows:

1. On pages 1 and 13 of the opinion, the words "NOT TO BE PUBLISHED IN OFFICIAL REPORTS" are replaced with the words "CERTIFIED FOR PUBLICATION."
2. On page 10, after the first full paragraph, insert the following: "We note that Division One of our Fourth Appellate District has recently rendered an opinion in which it reaches a result contrary to our opinion in this case.¹ The facts in that case are similar to those in this case insofar as the plaintiff

sued a medical peer review committee, alleging that the committee improperly investigated some of his actions and placed him on probation. Division One denied a medical committee's SLAPP motion, finding that the proceedings by the hospital peer review committee did not constitute an "official proceeding" under Code of Civil Procedure section 425.16, subdivision (e)(1) and that the medical review committee action was not conduct in furtherance of the constitutional right of free speech in connection with an issue of public interest under Code of Civil Procedure section 425.16, subdivision (e)(4).

"We disagree with those conclusions. Business and Professions Code section 809, subdivision (a)(3) observes that "Peer review, fairly conducted, is essential to preserv[e] the highest standards of medical practice." Subdivision (a)(6) observes that it is the policy of the State of California to protect the health and welfare of the people of California, through the peer review mechanism. Business and Professions Code section 805, subdivision (1)(A) defines a peer review body to include the medical or professional staff of any properly licensed health care facility.

"We conclude, contrary to the *O'Meara* court, that the defendant peer review committee in this case is protected under the anti-SLAPP statute both because its action was an official proceeding clearly authorized

[footnote continued from previous page]

¹ *O'Meara v. Palomar-Pomerado Health System* (2005) 2005 DJDAR 829.

by the California Business and Professions Code and because its decision involved a public issue, namely the protection of the health and welfare of the people of California. A contrary conclusion would ignore California’s stated purpose to create a mechanism to insure the health of its residents and would dissuade medical and professional staffs of health care facilities or clinics from participating in the peer review process.”

Except for these modifications, the opinion remains unchanged. This modification does not effect a change in the judgment.

CERTIFIED FOR PUBLICATION

s/Gaut
J.

We concur:

s/Hollenhorst
Acting P.J.

s/Ward
J.