

Case No.: S244148

JAN 17 2020

Jorge Navarrete Clerk

IN THE SUPREME COURT OF CALIFORNIA

Deputy

ARAM BONNI

Plaintiff and Appellant,

vs.

ST. JOSEPH HEALTH SYSTEM, et al.

Defendants and Respondents

OPENING BRIEF ON THE MERITS

After a Decision by the Court of Appeal,
Fourth Appellate District, Division Three
Case No. G052367

Appeal From The Superior Court Of Orange County
Case No. 30-2014-00758655
The Honorable Andrew P. Banks, Judge

Lowell C. Brown (SBN 108253), lowell.brown@arentfox.com
*Debra J. Albin-Riley (SBN 112602), debra.riley@arentfox.com
Karen Van Essen (SBN 278407), karen.vanessen@arentfox.com
Diane Roldán (SBN 288224), diane.roldan@arentfox.com

ARENT FOX LLP

555 WEST FIFTH STREET, 48TH FLOOR
LOS ANGELES, CALIFORNIA 90013-1065
TELEPHONE: (213) 629-7400 / FACSIMILE: (213) 629-7401

Attorneys for Defendants and Respondents

St. Joseph Health System; St. Joseph Hospital Of Orange; Mission Hospital
Regional Medical Center; The Medical Executive Committee of St. Joseph
Hospital Of Orange, erroneously sued as St. Joseph Hospital Of Orange Medical
Executive Committee and Medical Staff; Covenant Health Network, Inc.;
Covenant Health Network; Christopher Nolan, M.D.; Michael Ritter, M.D.;
Kenneth Rexinger, M.D.; Farzad Masoudi, M.D.; Tod Lempert, M.D.; Randy
Fiorentino, M.D.; Juan Velez, M.D.; and George Moro, M.D.

Table of Contents

	Page
RESPONDENTS' OPENING BRIEF	12
I. ISSUE PRESENTED	12
II. INTRODUCTION	12
III. STANDARD OF REVIEW	14
IV. OVERVIEW OF MEDICAL PEER REVIEW	14
A. The Statutory Scheme Governing Peer Review.	14
B. Peer Review Communications and Actions.	16
C. Reporting to the Medical Board.	18
D. Peer Review Exists to Protect Public Safety.	19
V. FACTUAL AND PROCEDURAL BACKGROUND	19
A. Plaintiff's Dangerous Surgeries at Mission and St. Joseph Hospitals Triggers Peer Review.	19
B. Plaintiff Files the First Amended Complaint and His Declaration.	22
C. The Trial Court Grants Defendants' Special Motion to Strike.	25
D. The Court of Appeal Reverses.	26
E. The Court Grants Defendants' Petition for Review.	26
ARGUMENT	27
I. ANTI-SLAPP LEGAL FRAMEWORK.....	27
A. The Anti-SLAPP Two-Step Analysis.	27
B. The Legal Elements of Plaintiff's Retaliation Claim.....	28

Table of Contents

	Page
II. PLAINTIFF'S CLAIM IS BASED ON STATEMENTS PROTECTED BY SECTION 425.16(E)(2).....	29
A. Subdivision (e)(2) Protects Statements in Connection with an Official Proceeding.	30
1. <i>Kibler</i> Held That Peer Review Is An "Official Proceeding."	30
2. <i>Park</i> Clarified That <i>Kibler</i> Addressed Protected Statements But Did Not Consider Decisions.....	31
B. Plaintiff's Claim Arises from Protected Statements in Connection with an Official Proceeding.	33
1. Peer Review Committee Discussions Are Protected Statements in Connection with an Official Proceeding.	34
2. MEC Recommendations Are Protected Statements in Connection with an Official Proceeding.	36
3. Medical Board and NPDB Reports Are Protected Statements in Connection with an Official Proceeding.	41
4. Written Notices Submitted During the Hearing and Appellate Process Are Protected Statements in Connection with an Official Proceeding.	45
III. PLAINTIFF'S CLAIM IS BASED ON CONDUCT IN FURTHERANCE OF SPEECH AND PETITIONING RIGHTS PROTECTED BY SECTION 425.16(E)(4).	49
A. Neither <i>Kibler</i> nor <i>Park</i> Addressed (e)(4) and This Case Presents the Full Scope of Peer Review Activity for the Court to Address.	49
B. Subdivision (e)(4) Protects Conduct in Furtherance of Speech and Petitioning Rights on Issues of Public Interest.	51

Table of Contents

	Page
C. Public Health and Patient Safety Are “Issues of Public Interest.”	52
D. Summary Suspensions Are Acts in Furtherance of Speech and Petitioning Rights Because They Further Prompt Reporting to Law Enforcement and the Safe Exercise of Hearing Rights.....	53
1. Summary Suspensions Are Protected Acts in Furtherance of Speech and Petitioning Because Hospitals Must Report to the Medical Board and NPDB.	54
2. Summary Suspensions Are Protected Acts in Furtherance of Speech and Petitioning in Connection with Peer Review Hearings.	57
E. Hospital Board Disciplinary Decisions Are Acts in Furtherance of Speech and Petitioning Rights Because They Further Candid Reporting to Law Enforcement and the Exercise of Judicial Appellate Rights.....	61
1. Hospital Board Disciplinary Decisions Are Protected Acts in Furtherance of Speech and Petitioning Because Hospitals Must Report to the Medical Board and NPDB.....	62
2. Hospital Board Disciplinary Decisions Are Protected Acts in Furtherance of Speech and Petitioning in Connection with Judicial Appellate Rights.....	65
F. Hospital Board Settlement Offers Are Acts in Furtherance of Speech and Petitioning Rights.	66
IV. PLAINTIFF’S RETALIATION CAUSE OF ACTION IS, AT A MINIMUM, “MIXED” WITH PROTECTED ACTIVITY.....	67
V. PROTECTING PEER REVIEW UNDER PRONG ONE FULFILLS BOTH THE PEER REVIEW AND WHISTLEBLOWER STATUTORY MANDATES.....	69

Table of Contents

	Page
A. Legal Protections Are Critical to the Integrity of Peer Review.....	69
B. The Anti-SLAPP Statute and Section 1278.5 Both Protect Patient Safety Whistleblowers.....	70
VI. CONCLUSION.....	72
CERTIFICATE OF COMPLIANCE.....	74
SERVICE LIST.....	76

Table of Authorities

	Page(s)
Cases	
<i>Armin v. Riverside Community Hospital</i> (2016) 5 Cal.App.5th 810	70
<i>Arnett v. Dal Cielo</i> (1996) 14 Cal.4th 4.....	18, 55, 64
<i>Baral v. Schnitt</i> (2016) 1 Cal.5th 376, 384.....	61, 67, 68, 72
<i>Barri v. Workers' Comp. Appeals Bd.</i> (2018) 28 Cal.App.5th 428, 461	57
<i>Blue v. Office of Inspector General</i> (2018) 23 Cal.App.5th 138, 156	43, 55
<i>Bonni v. St. Joseph Health System</i> (2017) 13 Cal.App.5th 851	26, 50
<i>Borough of Duryea v. Guarnieri</i> (2011) 564 U.S. 379	46, 54, 57
<i>Briggs v. Eden Council for Hope & Opportunity</i> (1999) 19 Cal.4th 1106	<i>passim</i>
<i>Cabral v. Martins</i> (2009) 177 Cal.App.4th 471	40
<i>Chabak v. Monroy</i> (2007) 154 Cal.App.4th 1502	42, 54, 64
<i>Chavez v. Mendoza</i> (2001) 94 Cal.App.4th 1083	58
<i>Cipriotti v. Board of Directors</i> (1983) 147 Cal.App.3d 144.....	64
<i>Clarke v. Hoek</i> (1985) 174 Cal.App.3d 208.....	52

Table of Authorities

Page(s)

Cases

Collier v. Harris
(2015) 240 Cal.App.4th 41 51, 59

ComputerXpress, Inc. v. Jackson
(2001) 93 Cal.App.4th 993 42

Comstock v. Aber
(2012) 212 Cal.App.4th 931 42

DeCambre v. Rady Children’s Hospital-San Diego
(2015) 235 Cal.App.4th 1 50

Dorn v. Mendelzon
(1987) 196 Cal.App.3d 933..... 42, 43

El-Attar v. Hollywood Presbyterian Medical Center
(2013) 56 Cal.4th 976..... 15

Elam v. College Park Hospital
(1982) 132 Cal.App.3d 332.....*passim*

Ellison v. Sequoia Health Services
(2010) 183 Cal.App.4th 1486 17, 38, 63

Equilon Enterprises v. Consumer Cause, Inc.
(2002) 29 Cal.4th 53..... 28

Fahlen v. Sutter Central Valley Hospitals
(2012) 208 Cal.App.4th 491 50

Fahlen v. Sutter Central Valley Hospitals
(2014) 58 Cal.4th 655..... 50, 65, 70

Flatley v. Mauro
(2006) 39 Cal.4th 299..... 42

G.R. v. Intelligator
(2010) 185 Cal.App.4th 606 46, 47

Table of Authorities

	Page(s)
Cases	
<i>Gallanis-Politis v. Medina</i> (2007) 152 Cal.App.4th 600	55
<i>GeneThera, Inc. v. Troy & Gould Professional Corp.</i> (2009) 171 Cal.App.4th 901	67
<i>Gill v. Mercy Hospital</i> (1988) 199 Cal.App.3d 889.....	52
<i>Hongsathavij v. Queen of Angels / Hollywood Presbyterian Medical Center</i> (1998) 62 Cal.App.4th 1123	37, 62
<i>Jarrow Formulas, Inc. v. LaMarche</i> (2003) 31 Cal.4th 728.....	58, 66, 72
<i>Joel v. Valley Surgical Center</i> (1998) 68 Cal.App.4th 360	42
<i>Laker v. Board of Trustees of California State University</i> (2019) 32 Cal.App.5th 745, 773	33
<i>Lemke v. Sutter Roseville Medical Center</i> (2017) 8 Cal.App.5th 1292, 1299	43
<i>Long v. Pinto</i> (1981) 126 Cal.App.3d 946.....	43
<i>Matchett v. Superior Court</i> (1974) 40 Cal.App.3d 623.....	52, 69
<i>Medical Staff of Sharp Memorial Hospital v. Superior Court</i> (2004) 121 Cal.App.4th 173	19, 60
<i>Mundy v. Lenc</i> (2012) 203 Cal.App.4th 1401	67

Table of Authorities

	Page(s)
Cases	
<i>Nagel v. Twin Laboratories, Inc.</i> (2003) 109 Cal.App.4th 39	52
<i>Nesson v. Northern Inyo County Local Hospital Dist.</i> (2012) 204 Cal.App.4th 65	50
<i>Neville v. Chudacoff</i> (2008) 160 Cal.App.4th 1255	40
<i>Okorie v. Los Angeles Unified Sch. Dist.</i> (2017) 14 Cal.App.5th 574, 590	passim
<i>RN Solution, Inc. v. Catholic Healthcare West</i> (2008) 165 Cal.App.4th 1511	50
<i>Sahlolbei v. Providence Healthcare, Inc.</i> (2003) 112 Cal.App.4th 1137	16, 38, 60
<i>Sheley v. Harrop</i> (2017) 9 Cal.App.5th 1147, 1167-1168	58, 68
<i>Simpson Strong-Tie Co., Inc. v. Gore</i> (2010) 49 Cal.4th 12	28
<i>Takhar v. People ex rel. Feather River Air Quality Management Dist.</i> (2018) 27 Cal.App.5th 15, 28	55, 67
<i>Tichinin v. City of Morgan Hill</i> (2009) 177 Cal.App.4th 1049	56
<i>Vergos v. McNeal</i> (2007) 146 Cal.App.4th 1387	60
<i>West Covina Hospital v. Superior Court</i> (1986) 41 Cal.3d 846	69
<i>Westlake Community Hospital v. Superior Court</i> (1976) 17 Cal.3d 465	65

Table of Authorities

Page(s)

Cases

<i>Wilson v. Cable News Network, Inc.</i> (2019) 7 Cal.5th 871, 884.....	<i>passim</i>
<i>Yanowitz v. L'Oreal USA, Inc.</i> (2005) 36 Cal.4th 1028.....	29

Statutes

42 U.S.C. § 11101.....	18, 69
42 U.S.C. § 11133.....	18, 41, 63
42 U.S.C. § 11135.....	45
Bus. & Prof. Code, § 510.....	22, 29
Bus. & Prof. Code, § 805.....	<i>passim</i>
Bus. & Prof. Code, § 805.01.....	18, 41, 69
Bus. & Prof. Code, § 805.1.....	69
Bus. & Prof. Code, § 805.5.....	45
Bus. & Prof. Code, § 809.....	<i>passim</i>
Bus. & Prof. Code, § 809.05.....	61
Bus. & Prof. Code, § 809.08.....	69
Bus. & Prof. Code, § 809.1.....	37, 48, 57
Bus. & Prof. Code, § 809.2.....	17, 40, 47
Bus. & Prof. Code, § 809.3.....	17, 47
Bus. & Prof. Code, § 809.4.....	17
Bus. & Prof. Code, § 809.5.....	<i>passim</i>
Bus. & Prof. Code, § 2056.....	22, 29

Table of Authorities

	Page(s)
Statutes	
Bus. & Prof. Code, § 2220	56
Bus. & Prof. Code, § 2229	56
Civ. Code, § 43.7	69
Civ. Code, § 43.8	69
Civ. Code, § 47	43, 44, 69
Code Civ. Proc., § 425.16	<i>passim</i>
Code Civ. Proc., § 1094.5	17, 61, 65, 66
Evid. Code, § 1157	69
Gov. Code, § 11181	56
Health & Saf. Code, § 1278.5	<i>passim</i>
Regulations	
Cal. Code Regs., tit. 22, § 70703	15
42 C.F.R. § 482.12	62
45 C.F.R. § 60.6.	63
45 C.F.R. § 60.11.	63
45 C.F.R. § 60.12.	63
Other Authorities	
American Medical Association, Code of Medical Ethics Opinion 9.4.2	41
California Constitution	27
United States Constitution	27

RESPONDENTS' OPENING BRIEF

I. ISSUE PRESENTED

“In light of *Kibler* [*v. Northern Inyo County Local Hospital Dist.* (2006) 39 Cal.4th 192] and *Park* [*v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057], what stages of the official medical staff peer review process are within the protections of the anti-SLAPP statute?”

II. INTRODUCTION

This case presents an unprecedented opportunity to determine the full scope of the anti-SLAPP statute’s application in lawsuits arising from the medical staff peer review process. The Court may now clarify the statute’s breadth in a manner that will support hospitals and peer reviewers in meeting their statutory duty to protect the public from substandard medical care.

Plaintiff Aram Bonni, M.D., seriously injured multiple patients at two different hospitals. One of Dr. Bonni’s patients almost died from surgical injuries he inflicted that resembled “gunshot wounds to the abdomen.” Given his disastrous surgeries, Plaintiff underwent medical peer review, a statutorily mandated process by which hospital medical staffs evaluate a physician’s competence, determine whether the physician may continue to practice medicine at the hospital, and report the results to government authorities. (See *Kibler*, 39 Cal.4th at p. 200 [Peer review “plays a significant role in protecting the public against incompetent, impaired, or negligent physicians.”].) In response, Plaintiff filed a retaliation claim against the two

Defendant hospitals, a medical staff and its medical executive committee, and eight individual physicians who allegedly subjected him to a “lengthy and humiliating peer review process.”

This case concerns the extent to which the speech and petitioning activity in medical peer review is protected under prong one of the anti-SLAPP statute, Code of Civil Procedure section 425.16 (“Section 425.16”). In *Kibler*, the Court held that peer review is an official proceeding. (*Kibler*, 39 Cal.4th 192.) In *Park*, the Court clarified that *Kibler* addressed “only whether statements in connection with but outside the course of such a proceeding can qualify as ‘statement[s] ... in connection with an issue under consideration’ in an ‘official proceeding.’” (*Park*, 2 Cal.5th at p. 1070, quoting Code Civ. Proc., § 425.16, subd. (e)(2).) Neither *Kibler* nor *Park* addressed peer review conduct in furtherance of speech and petitioning activity under (e)(4) of the anti-SLAPP statute. This case squarely presents this issue and demonstrates that the entirety of medical peer review falls within the protections of the anti-SLAPP statute subdivisions (e)(2) and (e)(4).

As an initial matter, Section 425.16, subdivision (e)(2) protects most peer review activity, as statements made in connection with an official proceeding. Plaintiff targets a wide array of peer review speech and petitioning activity, including: (a) statements made during peer review committee meetings; (b) disciplinary recommendations; (c) statutorily mandated reporting to government authorities regarding unsafe care and proposed discipline; and (d) written notices submitted during the

peer review hearing process. All these communications are statements made before or in connection with an official proceeding under the anti-SLAPP statute's subdivision (e)(2).

To the extent any peer review actions Plaintiff alleges do not fit within subdivision (e)(2)'s scope, those actions are conducted in furtherance of speech and petitioning in connection with an issue of public interest, and protected by subdivision (e)(4). In particular, Plaintiff alleges that summary suspensions at both hospitals harmed him, as did one hospital board's final approval of recommended discipline. Summary suspensions and hospital board approval of recommended discipline are acts that further petitioning to government authorities regarding patient safety, which subdivision (e)(4) protects.

III. STANDARD OF REVIEW

The Court considers *de novo* whether a plaintiff's claims arise from activity protected under the anti-SLAPP statute. (*Wilson v. Cable News Network, Inc.* (2019) 7 Cal.5th 871, 884.) In making this determination, the Court considers the pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based. (Code Civ. Proc., § 425.16, subd. (b)(2).)

IV. OVERVIEW OF MEDICAL PEER REVIEW

A. The Statutory Scheme Governing Peer Review.

A comprehensive statutory scheme governs peer review. A hospital's medical staff—acting under the hospital governing body's ultimate authority—is statutorily responsible for ensuring

patient safety. (See Cal. Code Regs., tit. 22, § 70703, subd. (a).) Hospitals that inadequately monitor and discipline their physicians are liable to patients for resulting injuries. (*Elam v. College Park Hospital* (1982) 132 Cal.App.3d 332, 341.) Hospitals and medical staffs protect patient safety through peer review, statutorily defined as the “process in which a peer review body¹ reviews the basic qualifications, staff privileges, employment, medical outcomes, or professional conduct of licentiates to make recommendations for quality improvement and education” (Bus. & Prof. Code, § 805, subd. (a)(1)(A).)

The key statutes governing peer review are Business and Professions Code sections 805 et seq. (“Section 805”) and 809 et seq. (“Section 809”). Section 805 describes peer review bodies’ extensive reporting requirements to the California Medical Board. Section 809 codifies the fair procedure and administrative hearing aspects of peer review. (See *El-Attar v. Hollywood Presbyterian Medical Center* (2013) 56 Cal.4th 976, 986.)

In addition, medical staff bylaws guide peer review. (See generally, 2 AA 477 et seq. [Mission Bylaws]; 2 AA 327 et seq. [St. Joseph Bylaws].) By design, medical staff bylaws differ depending on the needs of each hospital and community. All bylaws, however, reflect the same statutory structure. (See Bus. & Prof. Code, § 809, subd. (a)(8) [requiring medical staff bylaws to implement Section 809].)

¹ A “peer review body” includes a hospital’s medical staff and its quality review committees. (Bus. & Prof. Code, § 805, subd. (a)(1)(B).)

B. Peer Review Communications and Actions.

Committee Discussions:² Peer review often begins when a person communicates concerns about a physician’s patient care to medical staff leaders, peer review committees, or the hospital. (See, e.g., 2 AA 519, art. IX, § 2 [Mission Bylaws].) Peer review committees investigate the concerns and discuss their findings. (2 AA 542, art. XII, § 5.A.) The Medical Executive Committee (“MEC”), composed of elected or appointed leaders of the medical staff, may then investigate and debate the proper response to protect patients. (2 AA 544, art. XIII, § 2.B(8).)

MEC Disciplinary Recommendations: If warranted to protect patients, the MEC may recommend physician discipline. (2 AA 520, art. IX, § 5.) As relevant here, the MEC may recommend terminating a physician’s privileges or denying a physician’s reappointment application. (2 AA 520, art. IX, § 5.E; 2 AA 506, art. VI, § 4.B.) These recommendations trigger hearing rights, and do not take effect until after the physician waives or exhausts all hearing and appellate rights. (*Ibid*; 2 AA 527, art. X, § 3; *Sahlolbei v. Providence Healthcare, Inc.* (2003) 112 Cal.App.4th 1137, 1142.)

MEC Summary Suspensions: The MEC may also summarily suspend the physician’s privileges—on an interim

² The processes described here are simplified and focus on those parts relevant to Plaintiff’s claims. (See Bus. & Prof. Code, § 805, subd. (a)(1)(A) [“peer review” includes “[a]ny other activities of a peer review body”]; see also 2 AA 545, art. XIII, § 2.B [listing 16 different MEC duties].)

basis while the physician exercises hearing rights—where “the failure to take that action may result in an imminent danger to the health of any individual.” (2 AA 521, art IX, § 9.A; Bus. & Prof. Code, § 809.5, subd. (a).)

Peer Review Hearings: If the physician petitions for a hearing, he or she is entitled to written notice of the charges, limited discovery, and the right to call and cross-examine witnesses. (2 AA 528–529, art. X, §§ 6–8; Bus. & Prof. Code, § 809.3.) Hearings are usually held before a Judicial Review Committee (“JRC”), a jury-like body composed of a physician’s peers. (2 AA 528, art. X, § 4; Bus. & Prof. Code, § 809.2, subd. (a).) Either the physician or the MEC may appeal the JRC’s decision to the hospital’s governing body. (2 AA 533, art. X, § 9.C; Bus. & Prof. Code, § 809.4, subd. (b).)

Governing Body Action: Ultimately—after the physician waives or exercises hearing and appellate rights—all disciplinary recommendations and summary suspensions are subject to final approval by the hospital’s governing body, typically the hospital board. (2 AA 520, art. IX, § 6; 2 AA 522, art. IX, § 9.C(2); 2 AA 535, art. X, §§ 10.G, 11.) The hospital board is usually permitted “to exercise its independent judgment” in evaluating whether to accept, modify, or reject the recommended discipline. (See 2 AA 535, art. X, § 10.G; *Ellison v. Sequoia Health Services* (2010) 183 Cal.App.4th 1486, 1497.)

Court Review: After the governing body imposes discipline, the physician may seek court review by petitioning for a writ of administrative mandamus. (Code Civ. Proc., § 1094.5.)

C. Reporting to the Medical Board.

Peer review bodies must report most summary suspensions, denials of reappointment applications, and terminations, among many other triggering events, to the California Medical Board and the National Practitioner Data Bank (“NPDB”). (See Bus. & Prof. Code, §§ 805, 805.01; 42 U.S.C. § 11133; see also *Arnett v. Dal Cielo* (1996) 14 Cal.4th 4, 7 [Medical Board regulates the practice of medicine as an exercise of the state’s “police power”].)

At the state level, peer review bodies report physician discipline to the California Medical Board through “805 Reports” and “805.01 Reports.” (Bus. & Prof. Code, §§ 805, 805.01.) Failing to submit these reports carries serious consequences—a \$100,000 fine per violation and, for medical staff leaders, potential separate actions against their own medical license for “unprofessional conduct.” (Bus. & Prof. Code, §§ 805, subd. (k), 805.01, subd. (g), (h).)

Peer review bodies must also report disciplinary recommendations and other events to federal authorities through the NPDB. (See 42 U.S.C. § 11133; see also 42 U.S.C. § 11101 [“There is a national need to restrict the ability of incompetent physicians to move from State to State without disclosure or discovery of the physician’s previous damaging or incompetent performance.”].) Peer review reporting is thus incorporated “into the overall process for the licensure of California physicians.” (See *Kibler*, 39 Cal.4th at pp. 199-200.)

D. Peer Review Exists to Protect Public Safety.

“[T]he overriding goal of the state-mandated peer review process is protection of the public” (*Medical Staff of Sharp Memorial Hospital v. Superior Court* (2004) 121 Cal.App.4th 173, 181-182.) When physicians volunteer to participate in peer review, they perform a vital public service. The Legislature found: “Peer review, fairly conducted, is *essential* to preserving the highest standards of medical practice.” (Bus. & Prof. Code, § 809, subd. (a)(3), emphasis added.) Thus, “while important, physicians’ due process rights are subordinate to the needs of public safety.” (*Sharp*, 121 Cal.App.4th at p. 182.)

V. FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiff’s Dangerous Surgeries at Mission and St. Joseph Hospitals Triggers Peer Review.

Plaintiff, a urogynecologist, held medical staff privileges at Mission Hospital (from 2002 to November 2010) and St. Joseph Hospital (from July to September 2010). (1 AA 35; 3 AA 741.) After he seriously injured multiple patients, the medical staffs at both hospitals conducted peer review activities under their medical staff bylaws.

Mission Hospital Peer Review: In 2009, Plaintiff perforated a patient’s bowel five times during a surgery at Mission Hospital. (3 AA 742.³) This case—and many others—triggered in-

³ Each of the citations in Section V.A are to Plaintiff’s declaration opposing Defendants’ anti-SLAPP motion, or exhibits thereto.

depth peer review committee investigations. (*Ibid.*) Mission’s Medical Executive Committee (“MEC”) ultimately voted to summarily suspend Plaintiff’s privileges and to recommend to the governing board that his application for reappointment be denied. (2 AA 457; 3 AA 744–745.)

Plaintiff requested and received an evidentiary hearing, which took over 30 sessions. (3 AA 747.) On April 22, 2014, the Judicial Review Committee (“JRC”) issued a decision in the MEC’s favor on the termination recommendation and partially in Plaintiff’s favor on the summary suspension.⁴ (3 AA 630.) Plaintiff and the MEC both appealed. (3 AA 738.) The Mission Appellate Committee, a subcommittee of the hospital’s governing board, recommended confirming the summary suspension and denying Plaintiff’s application for reappointment. (3 AA 740–741.) On December 18, 2014, the Mission Hospital Board of Trustees adopted the Appellate Committee’s recommendations. (3 AA 792–794.) Plaintiff declined to challenge the Board’s decision by filing a mandamus petition in superior court. As required by law, Mission reported its activities to the California Medical Board and NPDB. (See, e.g., 1 AA 237–238; 2 AA 459–472.)

St. Joseph Hospital Peer Review: In July 2010, while under investigation at Mission, Plaintiff joined St. Joseph’s Medical Staff. (2 AA 434.) Three of Plaintiff’s first six robotic surgeries at St. Joseph Hospital resulted in devastating patient

⁴ The JRC found that the summary suspension was reasonable and warranted to protect patients at the time it was imposed, but that its continuation was no longer necessary. (1 AA 95.)

injuries. (*Ibid.*) One of Plaintiff's patients nearly died. (*Ibid.*) A St. Joseph physician who responded emergently to the scene described Plaintiff's disastrous surgery attempt as resembling "gunshot wounds to the abdomen." (2 AA 440.)

St. Joseph's MEC recommended terminating Plaintiff's privileges, and summarily suspended his privileges in the interim to protect patients. (2 AA 312.) Plaintiff requested a hearing, which lasted for ten evidentiary sessions. (2 AA 434.) St. Joseph's JRC issued its decision on August 3, 2012,⁵ and the MEC appealed. (2 AA 434.) Prior to the appellate hearing, however, the parties settled the matter on May 16, 2013. (2 AA 451–455.) In the settlement agreement, Plaintiff generally released St. Joseph from any and all claims. (*Ibid.*) Like Mission, St. Joseph reported its peer review activities to the California Medical Board and NPDB. (See 1 AA 235–236; 2 AA 315–322.) Due to the settlement, neither the St. Joseph MEC's termination recommendation nor its summary suspension was ultimately adopted by the hospital's governing board.

⁵ The JRC found that Dr. Bonni's poor surgical technique caused avoidable patient injuries in all three of the cases it reviewed. (See 2 AA 437, Charge 3; 2 AA 439, Charge 5; 2 AA 440, Charge 2.) It nevertheless recommended lifting the summary suspension on Dr. Bonni's non-robotics privileges, reasoning that "Dr. Bonni's poor surgical technique in the performance of robotic surgeries is [not] indicative of deficiencies in non-robotic surgeries." (2 AA 445.)

B. Plaintiff Files the First Amended Complaint and His Declaration.

On November 25, 2014, Plaintiff filed this lawsuit, accusing eight individual physicians, two hospitals, and a medical staff of a vast and elaborate conspiracy to retaliate against him through peer review. (See 1 AA 6.) Defendants St. Joseph Hospital of Orange and Mission Hospital Regional Medical Center are independent, 501(c)(3) nonprofit hospitals within St. Joseph Health System.⁶ Defendants Christopher Nolan, Michael Ritter, Kenneth Rexinger, Farzad Masoudi, and Tod Lempert are physician Medical Staff members at Mission Hospital. Defendants Randy Fiorentino, Juan Velez, and George Moro are physician Medical Staff members at St. Joseph Hospital. All individual physicians Plaintiff sued were participants in the peer review hearing process at each hospital, as either medical staff leaders, hearing witnesses, or both.

In his First Amended Complaint (“FAC”), Plaintiff alleges retaliation in violation of California whistleblower statutes, specifically Health and Safety Code section 1278.5 and Business and Professions Code sections 510 and 2056.⁷ (1 AA 6.) Plaintiff’s FAC alleges that all Defendants conspired to engage in “a continuous course of conduct ... designed to retaliate against

⁶ In July 2016, St. Joseph Health System combined with Providence Health & Services to create Providence St. Joseph.

⁷ Plaintiff also alleged breach of contract and rescission of contract. (1 AA 6.) These contract-based causes of action are not at issue on appeal.

Plaintiff, and cause damage to his reputation” through peer review. (1 AA 12.)

On April 8, 2015, Defendants moved to strike the retaliation cause of action from the FAC pursuant to the anti-SLAPP statute. (1 AA 28-50.) In opposition, Plaintiff filed a declaration expanding on his allegations of retaliation. (1 AA 226 et seq.) According to Plaintiff’s FAC and declaration, Defendants’ alleged retaliatory acts included, inter alia:

Peer Review Committee Discussions:

- “Engaging in a campaign of character assassination which caused irreparable damage to Plaintiff’s reputation.” (1 AA 14.)
- “Making defamatory statements about Plaintiff.” (*Ibid.*)
- At Mission, “communicat[ing] to the [peer review] committee that [Plaintiff] had a high complication rate with [his] surgeries” (1 AA 236.)

Peer Review Disciplinary Actions and Recommendations:

- At St. Joseph and Mission, the MECs summarily suspending Plaintiff’s medical staff membership and clinical privileges. (1 AA 13.)
- At Mission, the MEC recommending denying Plaintiff’s medical staff reappointment application. (1 AA 238–239.)

- At Mission, “having an Appellate Committee recommend to the Board that it reverse the findings of the JRC”⁸ (1 AA 13.)
- At Mission, “the Board of Trustees adopting the recommendations of the Appellate Committee” (1 AA 13.)
- At St. Joseph, the MEC recommending “terminat[ing] Plaintiff’s hospital membership and clinical privileges.” (1 AA 14.)
- At St. Joseph, “coercing Plaintiff to enter into a [Settlement] Agreement dated May 15, 2013,” before the termination recommendation could be finalized. (1 AA 14; see also 2 AA 451–455.)

Peer Review Hearing Statements and Appeals:

- At Mission and St. Joseph, providing Plaintiff with several “Notice[s] of Charges,” which Plaintiff contends “were false” and “brought against [him] in retaliation.” (1 AA 233–234.)
- At Mission, amending the “Notice of Charges,” which Plaintiff contends “was a further act of retaliation.” (1 AA 239–240.)
- “Mission took further retaliatory action against [Plaintiff] by appealing [the JRC] decision” (1 AA 241.)

⁸ See, supra, footnote 4.

- “St. Joseph further retaliated against [Plaintiff] by threatening to appeal [the JRC] decision” (1 AA 235.)

Peer Review Medical Board and NPDB Reporting:

- At Mission and St. Joseph, “[r]eporting Plaintiff’s summary suspensions to the Medical Board of California and National Practitioner Data Bank ...” (1 AA 13.)
- At St. Joseph, “failing to use the specific language as agreed upon by the parties in reporting to the Medical Board of California and National Practitioner Data Bank.” (1 AA 14.)

Plaintiff’s FAC and declaration summarize these alleged retaliatory actions by Defendants as: “Abusing the powers of the peer review process and subjecting Plaintiff to a lengthy and humiliating peer review process for over two years” (1 AA 13; 1 AA 242.)

C. The Trial Court Grants Defendants’ Special Motion to Strike.

On June 12, 2015, the trial court granted Defendants’ anti-SLAPP motion. (4 AA 891–892.) The court found that the gravamen of Plaintiff’s retaliation cause of action “is based on defendants’ protected peer review activities (*Kibler*, 39 Cal.4th at p. 199)” and thus “the anti-SLAPP statute applies.” (4 AA 892.) On prong two of the analysis, the trial court found that Plaintiff failed to provide admissible evidence that he made *any* patient safety complaints at St. Joseph Hospital. (*Ibid.*) Regarding Mission Hospital, the trial court found that “Plaintiff has not