

## **Hospital Management vs. Medical Staff Bylaws**

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For business litigators whose clients include hospitals, a recent Alabama case stands as an important guidepost in the national debate over the extent to which a medical staff may impact business decisions by a hospital's board of directors. This decision, read in conjunction with an earlier South Dakota Supreme Court opinion, confirms the proposition that a hospital's corporate bylaws empower the hospital's board, not the medical staff, to manage and govern the affairs of the hospital, even in the face of potentially conflicting medical staff bylaws accepted by the hospital.

In *Radiation Therapy Oncology, P.C. v. Providence Hospital*, 906 So. 2d 904 (Ala. 2005), a private group of radiation oncologists brought claims against a nonprofit hospital for breach of the medical staff bylaws. The allegations stemmed from the hospital board's decision to transfer its entire oncology program from within the hospital's province to a third party medical provider, which would then establish an office-based practice dedicated to high-quality cancer care. The radiation oncologists were notified of the board's decision and given an opportunity to request a hearing at which they could present their position on the transfer.

A "fair hearing" panel, made up of the hospital's medical staff, conducted the hearing and concluded that the transfer of the radiation oncology department adversely affected the clinical privileges of the radiation oncologists. Thereafter, the panel's findings were presented to the

hospital's board of directors. The board disagreed with and denied the decision of the panel and reaffirmed the decision of the board that authorized the transfer of the hospital's cancer program.

The radiation oncologists brought suit against the hospital, claiming that the hospital had breached the medical staff bylaws, which, the radiation oncologists argued, created a contract between the hospital and its organized medical staff. Specifically, the doctors argued that language contained in the medical staff bylaws precluded the transfer without medical staff approval, and that the transfer harmed them by denying them access to radiation equipment necessary to maintain their practice. The circuit court entered summary judgment in favor of the hospital on the doctors' claim that the medical staff bylaws had been breached.

On appeal, the doctors argued that the trial court erred in entering summary judgment because a genuine issue of material fact existed as to whether the board violated the medical staff bylaws when it disregarded the decision of the fair hearing panel. The Supreme Court of Alabama considered the Alabama Code section governing nonprofit corporations, the hospital bylaws and the medical staff bylaws. The court determined that "the board did not violate the medical-staff bylaws in declining to follow the decision of the fair-hearing panel" and that "the medical staff does not have the power or right to overrule a valid business decision made by the board." *Id.* at 910-11. The court held that the hospital "acted in accordance with the medical-staff bylaws and with its corporate bylaws in providing the [doctors] with due process and in considering the fair-hearing panel's decision." *Id.*

The court cited to an Alabama Code section related to nonprofit corporations and determined that "the transfer was completely within the board's authority." *Id.* It went on to hold,

[a]lthough [the hospital's] decision to transfer the radiation-oncology services out of the hospital adversely affected the [doctors], the corporate and medical-staff

bylaws clearly establish that the [doctors] do not have the power to overrule a valid business decision by the board, and the due-process hearing afforded the [doctors] established that the board's decision was properly based on its consideration of patient quality of care.

*Id.* at 912-13. The court affirmed the trial court's entry of summary judgment in favor of the hospital.

The reasoning of the Supreme Court of Alabama is consistent with many courts throughout the country that have held that the real power to manage a hospital is in the hospital bylaws, and that power is not limited by the medical staff bylaws. This result may stem in part from the refusal of many states to recognize medical staff bylaws as contracts or contracts per se, thereby precluding breach of contract claims based upon those instruments. *See Robles v. Humana Hosp. Cartersville*, 785 F. Supp. 989, 1001-01 (N.D. Ga. 1992); *Sullivan v. Baptist Mem. Hosp.*, 722 So. 2d 675 (Miss. 1998); *Gianetti v. Norwalk Hosp.*, 557 A.2d 1249, 1253 (Conn. 1989); *Ivey v. Galen Hosps. of Texas, Inc.*, 2000 Tex. App. LEXIS 2051, \*31 (Tex. Ct. App. 2000); *Zipper v. Health Midwest*, 978 S.W.2d 398, 416 (Mo. Ct. App. 1998); *St. Mary's Hosp. v. Radiology Prof'l Corp.*, 421 S.E.2d 731, 736 (Ga. Ct. App. 1992); *Munoz v. Flower Hosp.*, 507 N.E.2d 360, 364 (Ohio Ct. App. 1985).

Even in those cases where courts find that medical staff bylaws can constitute a contract or part of a contract, a private hospital's decision to revoke, suspend, restrict, or refuse privileges is subject only to limited judicial review to ensure substantial compliance with the bylaws. *See, e.g., Garibaldi v. Applebaum*, 742 N.E.2d 279, 286 (Ill. 2000); *Owens v. New Britain Gen. Hosp.*, 643 A.2d 233, 240 (Conn. 1994); *Mahmoodian v. United Hosp. Ctr., Inc.*, 404 S.E.2d 750, 755 (W.Va. 1991); *Keskin v. Munster Med. Research Found.*, 580 N.E.2d 354, 359 (Ind. Ct. App. 1991).

One of the most prominent decisions on this issue is the South Dakota Supreme Court's opinion in *Mahan v. Avera St. Luke's*, 621 N.W.2d 150 (S.D. 2001), wherein the court upheld Avera St. Luke's Hospital's ("ASL") decision to close its staff to physicians requesting privileges to perform certain spinal procedures and rejected a breach of contract claim by an applicant and incumbent staff members. The court held that medical staff bylaws cannot trump the decision-making authority and responsibility of the board of directors conferred by state law and by the corporate bylaws. *Id.* at 154-55.

The *Mahan* court noted that the proper analysis begins with the recognition that the authority to manage a private, nonprofit hospital is conferred on the board of directors by state law and the hospital's corporate bylaws. *Id.* at 154. Citing several provisions of the ASL corporate bylaws and medical staff bylaws, wherein the medical staff was delegated only limited "recommendation" authority while the board had the ultimate authority to manage the hospital, the court concluded that the relationship between medical staff bylaws and hospital corporate bylaws is similar to the relationship between statutes and a constitution. *Id.* at 154-56. Medical staff bylaws cannot "somehow override the specific authority granted to the board by the Corporate Bylaws." *Id.* at 158. The *Mahan* court summarized as follows:

[w]ithin its broad powers of management, some of the business decisions made by the Board will undoubtedly impinge upon matters that relate to or affect the medical staff of the hospital. This fact is unavoidable. **However, merely because a decision of the Board affects the staff does not give the staff authority to overrule a valid business decision made by the Board.** Allowing the staff this amount of administrative authority would effectively cripple the governing Board of [the hospital. The hospital] would cease to function in its current corporate form if its staff were given such power.

*Id.* (emphasis added)

The *Mahan* decision is in line with other decisions from various jurisdictions which recognize that medical staff bylaws do not supersede the authority and power of a governing

board to manage the hospital. For example, in *Bartley v. Eastern Maine Med. Ctr.*, 617 A. 2d 1020, 1021 (Me. 1992), the Supreme Court of Maine rejected a claim by incumbent emergency room physicians that provisions of the medical staff bylaws prohibited the hospital from entering into a direct staffing relationship which required plaintiffs to negotiate employment contracts to work in the emergency room. The court found that medical staff bylaws did not restrict the board's authority to make this decision, but in fact, "[they] are subject to it." *Id.* at 1022; *Ivey*, 2000 Tex. App. LEXIS 2051 at \*31 (Tex. Ct. App. 2000) (internal procedures set forth in medical staff bylaws cannot contractually limit the power of the hospital's governing board which has final authority); *Lyons v. Saint Vincent Health Ctr.*, 731 A.2d 206, 212 (Pa. Commw. Ct. 1999) (refusing to place plaintiff's clinical privileges above the board's power to contract out the operation of its radiology department because corporate bylaws conferred the sole authority to manage hospital to the board of directors); *Anne Arundel Gen. Hosp. v. O'Brien*, 432 A.2d 483, 491 (Md. App. 1981).

In conclusion, where hospital bylaws and medical staff bylaws conflict, hospital bylaws will almost certainly take precedence. Support for this proposition is well summarized in the amicus brief filed by the Alabama Hospital Association and the American Hospital Association in support of the hospital's position:

The board of directors of a private, non-profit hospital has the ultimate authority and responsibility to make all of the decisions for governance of the hospital. The medical staff, through the medical staff bylaws, does not have the power to veto management decisions made by the hospital, even when those decision affect the ability of some members of the medical staff to practice at the hospital. The board of directors' authority is borne of its legal responsibility for the operation, management, and governance of the hospital, and this authority is derived from state and federal statutes and regulations, corporate articles and bylaws, the medical staff bylaws, and numerous court decisions. Giving the medical staff the power to veto management decisions made by the hospital board would create an untenable situation whereby the board would be unable to discharge its duties in keeping the hospital to its mission.

Brief of Amici Curiae Alabama Hospital Association and American Hospital Association at 4,  
*Radiation Therapy*, 906 So. 2d 904.