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FILED
ALAMEDA COUNTY

NOV 26 2007

CLERK OF THE SUPERIOR COURT

By Vicki Daybell

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA**

Evelyn E. Li, M.D.,

Petitioner,

vs.

Washington Hospital, et al.,

Respondents.

No. RG07-338970

ORDER GRANTING WRIT OF
MANDATE

DATE: November 14, 2007

TIME: 9:00 a.m.

DEPARTMENT: 31

The motion by Petitioner Evelyn E. Li, M.D. ("Petitioner") for issuance of a peremptory writ of mandamus to compel Respondents Washington Hospital and Board of Directors of Washington Hospital to consider the "appeal" filed by Petitioner came before the Court on November 14, 2007 at 9:00 a.m. in Department 31, Judge Frank Roesch presiding. Petitioner was represented by John L. Flee, Esq., of counsel for Rankin, Sproat, Mires, Beaty & Reynolds. Respondents Washington Hospital and Board of Directors of Washington Hospital (collectively "Respondents") were represented by Philip Borowsky, Esq., of Borowsky & Hayes LLP. The matter was argued by counsel and was taken under submission by the Court.

~~Upon review and consideration of all the papers, pleadings on file, and the arguments and representations of counsel, the Court orders as follows:~~

The Petition for Writ of Mandate is GRANTED and Respondents are directed to consider all of the issues raised by Petitioner as part of their consideration of the appeal ~~by the Medical Executive Committee to the Washington Hospital Board of the decision of~~ the Judicial Review Committee.

The Court finds that there is substantial evidence to believe that the decision of the Judicial Review Committee was "received" by Petitioner on March 8, 2007. But that finding is not dispositive of the Petition.

Petitioner sought appellate review from the Washington Hospital Board of the entire decision of the Judicial Review Committee. (See Exhibit "M" to the memorandum of points and authorities in opposition to the motion.) That "appeal" is fashioned, on its face, as being with regard to the "Judicial Review Committee Hearing re Evelyn Li, M.D. Medical Executive Committee's Request for Appeal."

While the body of the document might be construed as an "appeal" in the first instance, there are two aspects to it that cause such an interpretation to be rejected. First, it is clearly responsive to the appeal filed by the Medical Executive Committee, and second, it is not timely as an appeal in the first instance.

Petitioner's request for appellate review, considering the circumstances of its presentation to the Board, can be interpreted only as an indicator of the issues that Petitioner wishes to raise before the Board in the Board's consideration of the appeal filed by the medical Executive Committee of the decision of the Judicial Review Committee.

It does not appear to be controverted that 1) Respondents have refused to consider Petitioner's arguments in the appellate process relating to any issue other than those identified in the body of the notice of appeal of the Medical Executive Committee, and 2) the basis for that decision was that the request by Petitioner to raise those issues was untimely.

That decision to limit the scope of the appellate process is contrary to the Washington Hospital Medical Staff Bylaws, Policies & Procedures; those Bylaws do not provide for an appeal of issues, they provide for an appeal from the committee's decision.

It should be noted that any decision by the Judicial Review Committee may be approved, rejected, or modified unilaterally by the Board irrespective of any appeal pursuant to Bylaws section 7.5-1.

The same section 7.5-1 allows either the "member or the MEC" to request appellate review, and upon receipt of a request for appellate review, the Boards sets a time and place of the appellate proceeding.

Bylaws section 7.5-2 requires the written request for an appeal to include the grounds for an appeal and a listing of the facts in support of the appeal. It limits the grounds for appeal to two: 1) noncompliance with bylaws, or 2) lack of substantial evidence.

The Bylaws also provide that "[e]ach party has the right ... to present a written statement in support of such party's position and to ... appear ... for oral argument." (See Advisement of Appeal Rights section of the Decision and Report of the Judicial Review Committee, pp. 23-24, Respondents' Exhibit H.)

Further, the breadth of the Board's appellate decision is as broad as is possible; it "has the discretion to affirm, modify, or reverse the decision of the JRC on appeal or to remand the matter to the JRC for further proceedings." (Ibid at p. 24.)

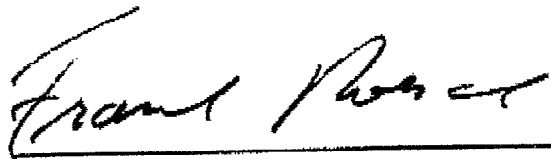
The Bylaws make no provision for an appeal being limited to any discrete issue found in the underlying decision, and make no provision for appeal of issues. Rather the

Bylaws provide that "after receipt of the decision of the JRC, either the member or the MEC may request a judicial review." (Bylaws section 7.5-1)

It was error for the Board to refuse to consider the arguments and issues raised by the Petitioner in the appellate process and instead to limit the issues on appeal to those identified by the MEC in its appeal notice. Such error is demonstrably prejudicial to Petitioner.

Petitioner shall prepare a form order and judgment for the Court's signature and submit it to Department 31 within 15 days of receipt of the Court's order. Petitioner is directed to prepare a writ for signature by the Clerk of the Court. Based on the nature of the relief granted, the Court does not find that it is necessary to order a return of writ.

11/26/07
Date


Frank Roesch
Judge of the Superior Court