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Los Angeles Superior Court

DEC 18 2002

John A. Clarke, Executive Officer/Clerk
By STEPHANIE SIANEZ Deputy

Lawrence Silver, Calif. State Bar No. 68604

Attorneys for Petitioner Assa Weinberg, MD

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ASSA WEINBERG, MD,)
)
Petitioner,)
)
v.)
)
CEDARS-SINAI MEDICAL CENTER,)
)
Respondent.)

CASE NO. BS080287
PETITION FOR WRIT OF MANDATE
(CCP §1094.5)

Petitioner Assa Weinberg, MD ("Dr. Weinberg") petitions this Court for a writ of mandate directed to respondent Cedars-Sinai Medical Center ("Cedars"), and by this verified Petition alleges:

1. Petitioner is presently, and at all times stated in this Petition was, licensed as a physician under a license issued by the Medical Board of California, License No. C41889. Dr. Weinberg has been engaged in the practice of medicine since 1980. Beginning in 1988, he was appointed to the medical staff at Cedars. He was continuously reappointed over the next 11 years.
2. Cedars is presently, and was at all times relevant, a private hospital located in Los Angeles County. Under its by-laws, and pursuant to California law, Cedars is and was obliged

1 to provide Dr. Weinberg with a fair hearing before altering his
2 staff privileges.

3 3. On November 5, 1999, Dr. Weinberg was summarily
4 suspended from the medical staff of Cedars. A true and correct
5 copy of the letter informing Dr. Weinberg of his suspension is
6 attached as Exhibit "1" (all exhibits may have attachments
7 omitted where not relevant to this Petition).

8 4. On November 20, 1999, Dr. Weinberg requested a medical
9 staff hearing regarding his staff privileges. A true and correct
10 copy of Dr. Weinberg's letter is attached as Exhibit "2".

11 5. By letter dated December 20, 1999, Cedars informed Dr.
12 Weinberg of the charges against him. There were approximately
13 120 charges involving at least 29 patients/incidents. A true and
14 correct copy of these charges is attached as Exhibit "3".

15 6. A Hearing Committee appointed by the medical staff
16 heard more than 100 hours of testimony stretching over the course
17 of 23 days regarding these charges. By the end of the
18 evidentiary hearing, the charges against Dr. Weinberg had been
19 pared down to nine. Transcripts of the proceedings before the
20 Hearing Committee have been lodged with the Court for purposes of
21 this proceeding, but Dr. Weinberg does not believe that it will
22 be necessary for the Court to review those transcripts in order
23 to resolve the issues raised by this Petition.

24 7. The Hearing Committee, by a decision dated April 1,
25 2000, reached the following conclusion:

26 "In summary, after having heard more than 100
27 hours of testimony and argument, the
28 preponderance of the evidence presented does

1 not support Dr. Weinberg's being summarily
2 suspended from the hospital staff. Instead,
3 we believe that he should be permitted to be
4 reinstated under the conditions that he
5 agrees to be referred to a designated body
6 such as the Impaired Physicians Committee for
7 evaluation, and that, furthermore, he agrees
8 to abide by whatever recommendations for
9 rehabilitation and supervision that the
10 entity designated for this purpose concludes
11 to be appropriate."

12 A true and correct copy of the entire written decision of
13 the Hearing Committee is attached as Exhibit "4".

14 8. On May 20, 2002, the Medical Executive Committee at
15 Cedars reviewed and affirmed the decision of the Hearing
16 Committee. A true and correct copy of the decision by the
17 Medical Executive Committee is attached as Exhibit "5".

18 9. On July 29, 2002, the Executive Committee of the Cedars
19 Board of Director affirmed certain aspects of the Medical
20 Executive Committee decision, but remanded the matter back to the
21 Medical Executive Committee to reconsider its May 20, 2002,
22 report and recommendations "and determine whether based on the
23 *cumulative* results of the nine case findings contained in the
24 Hearing Committee's April 1, 2002, report" (emphasis added), Dr.
25 Weinberg met certain specified criteria. A true and correct copy
26 of the July 29, 2002, report of the Executive Committee of the
27 Cedars Board of Directors is attached as Exhibit "6".
28

1 10. On September 9, 2002, the Medical Executive Committee
2 answered all of the Board's questions regarding Dr. Weinberg in
3 the affirmative (i.e., favorably to Dr. Weinberg), and
4 recommended, by a vote of 22-5, the following:

5 ". . . MEC recommends that the physician's
6 membership and privileges not be terminated
7 but that he be reinstated under two
8 conditions: The first condition is that he be
9 referred to the Well-Being of Physicians
10 Committee for evaluation. The second
11 condition is that as a condition of his
12 medical staff membership, the physician
13 agrees to abide by whatever recommendations
14 for rehabilitation and supervision . . . are
15 made by the Well-Being of Physicians
16 Committee."

17 A true and correct copy of the Minutes of the Medical
18 Executive Committee meeting of September 9, 2002, are attached as
19 Exhibit "7".

20 11. Notwithstanding the findings of the Hearing Committee
21 and the recommendation of the Medical Executive Committee, and
22 without any further hearing whatsoever, on September 23, 2002,
23 the Cedars Board of Directors voted to terminate Dr. Weinberg's
24 medical staff membership and privileges at Cedars. A true and
25 correct copy of the letter of October 4, 2002, informing Dr.
26 Weirberg of this decision, is attached as Exhibit "8".

27 12. The decision of October 4, 2002, is subject to judicial
28 review as provided by California Code of Civil Procedure Section

1 1094 5(b). Pursuant to that section, Cedars prejudicially abused
2 its discretion by not proceeding in the manner required by law,
3 and/or failed to give Dr. Weinberg a fair trial, as follows:

4 a. California Business and Professions Code Section
5 809.05 states that "It is the policy of this state that peer
6 review be performed by licentiates." Although the code acknow-
7 ledges that the hospital board has a role to play, it expressly
8 requires that "in all peer review matters, the governing body
9 [i.e., the Cedars Board], shall give great weight to the actions
10 of peer review bodies and, in no event, shall act in an arbitrary
11 or capricious manner." Section 809.05(a). In violation of this
12 statutory requirement, the Cedars Board not only failed to give
13 "great weight" to the actions of the Hearing Committee and the
14 Medical Executive Committee, but arbitrarily and capriciously
15 disregarded the conclusions of the medical experts and subst-
16 ituted their own lay opinion to reach an entirely opposite
17 conclusion.

18 b. The Cedars Board received evidence outside of the
19 hearing. Exhibit 8 states (p. 2) "[T]he Chief of Staff and
20 General Counsel of the Medical Center were each asked to make a
21 report to the Board at its September 23, 2002 meeting and to
22 respond to the MEC's September 9, 2002 report. Based on the
23 entire record before it, the reports and the ensuing discussion
24" In addition, the Board received a written report from
25 the Chief of Staff that was outside the record. Exhibit 8, p. 4
26 (item No. 11). Dr. Weinberg never received a copy of the written
27 report and had no opportunity to hear or respond to the oral
28 reports.

1 c. The Cedars Board failed to provide a full hearing
2 before taking action as required by Business and Professions Code
3 §809 05(c).

4 d. The process by which the Cedars Board revoked Dr.
5 Weinberg's medical staff privileges against the advice of the
6 Hearing Committee and the Medical Executive Committee violated
7 Dr. Weinberg's right to a fair hearing, because the Cedars Board
8 had and has an inherent conflict of interest. Specifically,
9 California case authority (Westlake Community Hospital v.
10 Superior Court, 17 Cal.3d 465, 131 Cal.Rptr. 90 (1976)) gives a
11 hospital immunity from liability to a physician for actions
12 arising out of the suspension or revocation of his/her medical
13 staff privileges unless and until the physician succeeds in
14 setting aside a suspension or revocation. By ignoring the
15 conclusions of the Hearing Committee and of the Medical Executive
16 Committee, the Cedars Board not only failed to give "great
17 weight" to this expert opinion, but effectively granted itself
18 immunity against any action by Dr. Weinberg.

19 13. Dr. Weinberg has exhausted the administrative remedies
20 available to him, and the decision by the Cedars Board of October
21 4, 2002, is final.

22 14. Dr. Weinberg has no plain, speedy, and adequate remedy
23 at law.

24 WHEREFORE, petitioner requests judgment as follows:

25 1. For an alternative writ of mandate directing respondent
26 to set aside its decision of October 4, 2002, or to show cause
27 why a peremptory writ of mandate to set aside the decision of
28 October 4, 2002, should not be issued.

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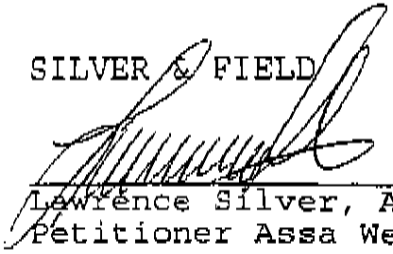
2. For a peremptory writ of mandate setting aside respondent's decision of October 4, 2002.

3. For such other and further relief as the Court may deem necessary, just, or proper.

DATED: December 18, 2002

SILVER & FIELD

By:



Lawrence Silver, Attorneys for
Petitioner Assa Weinberg, MD

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VERIFICATION

I, Assa Weinberg MD, say:

I have read the foregoing Petition for Writ of Mandate and know its contents.

I am a party to this action. The matters stated in it are true of my own knowledge except as to those matters which were stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Verification was executed on December 18, 2002, at Los Angeles, California.



ASSA WEINBERG, MD