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Physicians Are Limited In Challenging Wrongful Termination

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With the recent New York State Court of Appeals decision in *Mason v. Central Suffolk Hosp.*, 3 NY3d 343 (2004), it is now apparent that, with few exceptions, a physician seeking to challenge the wrongful termination of medical staff privileges may only pursue a lawsuit in accordance with the statutory scheme set forth in New York's Public Health Law.

The revocation of a physician's hospital staff privileges can be a devastating, career-ending event. Not only will it result in the immediate loss of the ability to earn a living, but the termination of privileges is a "reportable event," which among other things must be recorded in the National Practitioner Data Bank.¹ The physician will have to disclose the termination to any other institution at which privileges are sought.

It is understandable that with issues of patient care and safety, deference is given to hospital administrators regarding staff privileging decisions. Unfortunately, those decisions are not always motivated by completely altruistic reasons, and other non-patient care related reasons can sometimes enter into the decision-making process.

At common law, a physician's privileges could be arbitrarily terminated by a hospital, and the physician was left with no remedy. To redress the perceived harshness of this rule, the New York Legislature devised a limited avenue of recourse by which a physician could challenge a hospital's denial or termination of staff privileges.

In 1970, Public Health Law § 2801-b was enacted which makes it an improper practice for a hospital to deny or terminate professional privileges for reasons unrelated to "patient care, patient welfare, the objectives of the institution or the character or competency of the applicant," Public Health Law § 2801-b(1).

In order to pursue one's rights under § 2801-b, a physician must follow a two-step process. First, the physician must file a complaint with the Public Health Council (the PHC).² After review by the PHC, the physician may then commence an action for injunctive relief pursuant to Public Health Law § 2801-c³ to enjoin the hospital from improperly denying or terminating staff privileges.⁴



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While intending to broaden the rights afforded to physicians, in reality the PHC is perceived by many physicians as offering an inadequate avenue for complaint. There is a plethora of case law in New York reflecting efforts by physicians to avoid PHC review and instead go directly to court to seek redress for an alleged wrongful termination of privileges.

One of the reasons physicians have tried to avoid PHC review is that any findings by the PHC constitute *prima facie* evidence in a subsequent court action, Public Health Law § 2801-c.

For years, the case law in this area was unclear, with the Appellate Divisions often reaching conflicting results as to whether a physician could challenge the termination of medical staff privileges without first exhausting his or her remedies before the PHC.⁵ Physicians attempted to avoid PHC review by not expressly asserting a violation of Public Health

Law § 2801-b, but instead alleging alternative causes of action against a hospital, such as breach of contract based upon violations of the medical staff bylaws.

Almost nine years ago, in *Gelbard v. Genesee Hosp.*, 87 NY2d 691 (1996), the Court of Appeals affirmed the Fourth Department and clarified one aspect of the law in this area. The Court of Appeals held that, regardless of the manner in which the claim is characterized, a physician seeking injunctive relief for the reinstatement of medical staff privileges must first file a complaint with the PHC prior to seeking judicial intervention.

However, in *Gelbard* the Court of Appeals specifically left open the issue of whether medical staff bylaws could constitute the basis for a breach of contract action.⁶

As a result, even after *Gelbard*, physicians seeking to avoid the perceived unfair PHC review consistently attempted to use substitute causes of action to avoid the administrative review process — including asserting claims of breach of contract based upon alleged violations of medical staff bylaws. This contractual claim was founded upon the Court of Appeals decision in *Tedeschi v. Wagner College*, 49 NY2d 652 (1980), which held that a student could pursue claims in court against a private university based upon the alleged failure to follow university guidelines in student disciplinary actions.

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As an offshoot of *Tedeschi*, a number of Appellate Division decisions recognized that medical staff bylaws may form the basis of a breach of contract action.⁷

Yet, particularly after the Court of Appeals decision in *Gelbard*, courts were reluctant to permit a physician to use artful pleading to avoid PHC review. In other words, even if phrased as a damages claim for breach of contract based upon the failure to follow medical staff bylaws, the courts held that the physician must first file a complaint with the PHC if the crux of the claim was based upon the wrongful termination of privileges.⁸

Presumably, though, once the physician exhausted relief before the PHC, a court action could be maintained alleging all sorts of claims based upon the wrongful expulsion from the medical staff — including a claim for breach of contract based upon alleged violations of the medical staff bylaws.

That is exactly what the physician tried to accomplish in *Mason v. Central Suffolk Hospital*, 3 NY3d 343. The physician only commenced his lawsuit after exhausting his claims before the PHC.⁹ In his lawsuit, the physician claimed the hospital failed to follow its bylaws when it suspended his staff privileges, and as a result, he sought damages for the purported breach of contract.

The Court of Appeals dismissed the physician's complaint. Answering the question left open by *Gelbard*, the Court of Appeals held that no action for damages may be based on a violation of medical staff bylaws, unless clear language in the bylaws creates a right to that relief.

In other words, unless there is some other basis for a claim (e.g. civil rights, antitrust, etc.), a physician seeking to pursue relief based upon the wrongful termination of privileges will be limited to the protections and relief afforded by Public Health Law §§ 2801-b and 2801-c.

As a result, it is now clear that even when a physician files a complaint with the PHC and thereafter commences a court action, the medical staff bylaws may not serve as the basis for a breach of contract action unless it is abundantly clear from the language in the bylaws that they were intended to create such a contract. Most bylaws are written in such a fashion as to make it clear that they do not create contractual rights — and if they are not written in that manner, they undoubtedly will be re-written to clarify that point now that the Court of Appeals has spoken on this issue.

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Among the lessons to be learned by those practicing in this area is that it is best to resolve these disputes early on when the hospital is still conducting its own investigation and review procedures, because the remedies available to physicians in the judicial arena are fairly limited.¹⁰

1. See United States Health Care Quality Improvement Act, 42 USC §§ 11101 et seq.

2. The PHC is an agency of the New York State Department of Health composed pursuant to Public Health Law § 220 of the Commissioner of the Department of Health and 14 members appointed by the governor with the advice and consent of the Senate. The PHC may consider any matter relating to the improvement and preservation of public health. Public Health Law § 225.

3. Prior to the enactment of Public Health Law § 2801-b, the provision that currently exists as Public Health Law § 2801-c was designated as § 2801-b. Public Health Law § 2801-c provides that a party or the Attorney General may seek an injunction for violations of Public Health Law § 2801-b and other provisions of Article 28 of the Public Health Law. Although now utilized by physicians seeking to enjoin alleged violations of Public Health Law § 2801-b, Public Health Law § 2801-c was primarily used prior to the enactment of § 2801-b by the Attorney General to enjoin the operation of abortion clinics. See *People v. Hatchamovitch*, 40 AD2d 556 (2d Dept. 1972); *People v. Dobbs Ferry Medical Pavilion, Inc.*, 69 Misc 2d 886 (Westchester Co 5 Ct 1972); *People v. Wickersham Women's Medical Ctr.*, 69 Misc 2d 196 (NY Co 5 Ct 1972); *State v. Mitchell*, 66 Misc 2d 514 (Niagara Co 5 Ct 1971).

4. See, e.g., *Guibor v. Manhattan Eye, Ear and Throat Hosp.*, 46 NY2d 736 (1978); *Shapiro v. Cent. Gen. Hosp.*, 181 AD2d 896 (2d Dept. 1992); *Farooq v. Millard Fillmore Hosp.*, 172 AD2d 1063 (4th Dept. 1991); *Capote v. Our Lady of Mercy Medical Ctr.*, 168 AD2d 238 (1st Dept. 1990); *In re Libby*, 163 AD2d 388 (2d Dept. 1990); *Mostafa v. Aurelia Osborne Fox Memorial Hosp.*, 159 AD2d 922 (3d Dept. 1990), appeal dismissed, 76 NY2d 888 (1990); *El Sawah v. Rochester Saint Mary's Hosp.*, 101 AD2d 694 (4th Dept. 1984), appeal dismissed, 64 NY2d 605 (1985); *Kolker v. St. Francis Hosp.*, 145 Misc 2d 966 (Nassau Co 5 Ct 1989).

5. Compare *Murphy v. St. Agnes Hosp.*, 107 AD2d 685 (2d Dept. 1985) to *Gelbard*, 211 AD2d 159 (4th Dept. 1995), aff'd, 87 NY2d 691 (1996).

6. 87 NY2d at 698.

7. See, e.g., *Falk v. Anesthesia Assoc.*, 228 AD2d 326, 330 (1st Dept. 1996), lv. to appeal dismissed, 89 NY2d 916 (1996), rearg. dismissed, 89 NY2d 1031, rearg. dismissed, 89 NY2d 1070, rearg. dismissed, 90 NY2d 889 (1997); *Chime v. Sicuranza*, 221 AD2d 401, 402 (2d Dept. 1995); *Giannelli v. St. Vincent's Hosp. and Medical Ctr.*, 160 AD2d 227, 232 (1st Dept. 1990); *Chalasan v. Neuman*, 97 AD2d 806, 806 (2d Dept. 1983), rev'd on grounds of mootness, 64 NY2d 879 (1985). See also *Shatkin v. Buffalo Gen. Hosp.*, 178 AD2d 934 (4th Dept. 1991) (stating that physician could challenge termination of his privileges in Article 78 proceeding on ground that hospital failed to comply with medical staff bylaws).

8. See, e.g., *Indemini v. Beth Israel Medical Ctr.*, 309 AD2d 651 (1st Dept. 2003), lv. granted, 2 NY2d 707 (2004); *Shatkin v. Kaleida Health*, 300 AD2d 1112 (4th Dept. 2002); *Giordano v. Victory Memorial Hosp.*, 273 AD2d 353 (2d Dept. 2000); *Gelbard v. The Genesee Hosp.*, 255 AD2d 882 (4th Dept. 1998), lv. dismissed in part, denied in part, 83 NY2d 916 (1999); *Falk*, 228 AD2d 326.

9. The PHC rejected Dr. Mason's complaint.

10. In addition, any judicial relief will be restricted by the federal and state law immunity provisions available to defendants in this context. See U.S. Health Care Quality Improvement Act, 42 USC §§ 11101 et seq.; Public Health Law §§ 2805-j(2) and 2805-m(3); Education Law §§ 6527(3) and 6527(5).

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