



# Brown v. Gaalla, 460 Fed. Appx. 469 (5th Cir. 2012)

Topics Covered: Civil Rights, Hospitals and Medical Staff

**Outcome: Very Favorable**

## Issue

The issue in this case was whether the individual defendants were entitled to governmental immunity against a claim that a county-owned hospital abridged the medical staff privileges of the plaintiff cardiologists on account of their race and national origin.

## AMA Interest

The AMA opposes race and national origin discrimination against physicians, and it opposes the consideration of factors other than the best interests of patients in the granting of medical staff privileges.

## Case Summary

Three cardiologists, all of whom were of Asiatic Indian origin, held medical staff privileges at Citizens Medical Center (CMC), a county-owned hospital located in Victoria, Texas. Until 2007, the Indian cardiologists regularly admitted patients and exercised their privileges at CMC without problem. At that time, however, CMC hired a cardiovascular surgeon as an employed physician. The Indian cardiologists refused to refer their patients to the cardiovascular surgeon, contending that he had a high mortality rate and performed unnecessary surgeries.

At about the same time, CMC brought several new cardiologists of non-Indian origin onto its medical staff. The new cardiologists were CMC employees, while the Indian employees were not. The new cardiologists referred all of their cardiology surgery patients to the CMC cardiovascular surgeon.

Friction between the Indian cardiologists and CMC continued to escalate. In February 2010, the CMC Board of Directors, acting pursuant to the advice of an independent consultant, "closed" the cardiology department to the Indian cardiologists. The cardiology department was open only to employed physicians on the CMC staff.

On February 24, 2010, the Indian cardiologists sued CMC, its Board of Directors, its CEO, and one of the non-Indian cardiologists. On August 6, 2010, the Indian cardiologists filed a second amended complaint, which alleged that the reduction of their medical staff privileges had been motivated by ethnic discrimination, as well as economic reasons. They claimed constitutional violations of substantive and procedural due process, equal protection of the laws, and various common law rights.

The defendants moved for summary judgment on the basis of governmental immunity. They alleged that the decision to reduce the Indian cardiologists' privileges had been based on the best interests of the county and CMC, rather than ethnic discrimination. However, the trial court denied the motion, in part, finding evidence of ethnic discrimination. That evidence included a 2007 memo from the CMC CEO which stated, "I feel a sense of disgust but am more concerned with what this means to the future of the hospital as more of our Middle Eastern born physicians demand leadership roles and demand influence over situations that are hospital issues.....[This] will change the entire complexion of the hospital and create a level of fear among our employees."

The defendants other than CMC brought an interlocutory appeal of the denial of their motion for summary judgment. They contended that there had been no reduction of the Indian cardiologists' property interests or violation of their constitutionally protected rights.

On January 13, 2012, the Fifth Circuit partially affirmed and partially reversed the trial court's denial of summary judgment. The court ruled that the plaintiffs do not have a valid claim for denial of due process, but they could sue for violation of their equal protection rights. The case was remanded to the trial court.

Ultimately the parties settled, with the defendants paying the plaintiff physicians approximately \$8 million.

### **Litigation Center Involvement**

The Litigation Center, along with the Texas Medical Association and the American Association of Physicians of Indian Origin, filed an *amicus* brief supporting the plaintiff cardiologists in the appeal. The brief argued that medical staff privileges are valuable rights, protectable under federal law against ethnic origin discrimination.

United States Court of Appeals for the Fifth Circuit brief