



Lo v. Provena Covenant Hospital, 796 N.E.2d 607 (Ill. App. Ct. 2003)

Topics Covered: Medical Staff

Outcome: Unfavorable

Issue

The issue in this case was whether a hospital could summarily suspend a physician's medical staff privileges without a finding or recommendation by the medical staff, if the hospital had evidence that the physician's mortality rate was above the national average.

AMA Interest

The AMA supports the enforceability of medical staff bylaws by medical staff members.

Case Summary

For many years, Dr. Lo had been chairman of the cardiovascular surgery unit at Provena Covenant Hospital, in Champaign, Illinois. Following a review of patient statistics, however, the hospital became concerned about its cardiovascular surgery program. The mortality rate of Dr. Lo's patients for open heart surgery was approximately 5% during the period in question, and the mortality rate for the entire department was approximately 7%. The national mortality rate was approximately 2.5%. Because of the apparent disparity, the hospital hired a team of consultants to review the hospital's cardiovascular surgery program and report their findings. In its report, the consultants identified problems with Dr. Lo's cardiovascular surgeries. The hospital notified Dr. Lo that "the report raised grave concerns about quality, far more concerns than any of us had anticipated."

Dr. Lo disputed the validity and significance of the statistics and denied any problem with his cardiovascular surgeries. After several months of dispute, Dr. Lo consented to perform cardiovascular surgery under the supervision of a cardiac surgeon affiliated with Carle Clinic, a nearby facility. He thereafter performed some cardiovascular surgeries under supervision. Later, he withdrew his consent to supervision, because he thought the hospital was imposing "inappropriate and stringent requirements" on the supervising surgeon. Ultimately, Dr. Lo sued the hospital for restricting his staff privileges.

About two months later, Dr. Lo notified the hospital that he had scheduled an open heart surgery and would perform it without supervision. Alarmed by that announcement, the hospital's president and chief executive officer sought a recommendation from the medical staff leadership that Dr. Lo's clinical privileges summarily suspended. This was the first time the hospital administration had informed the medical staff that it questioned Dr. Lo's competence. The chief of staff, who was then in the process of leaving town, told the hospital

president that, because of this other commitment, he would be unable to investigate Dr. Lo's case. He advised the hospital president to contact the secretary-treasurer of the medical staff for assistance. When she did, the secretary-treasurer asked the hospital for the data pertaining to Dr. Lo and advised the hospital president that he would need legal advice to react appropriately. The hospital president, however, never gave the data to the secretary-treasurer.

After the hospital president failed to secure the desired results from the medical staff leadership, the executive committee of the hospital's board of directors held a special meeting. They found that the medical staff was not cooperating with them and that there would be an imminent danger to patients if Dr. Lo were to perform an unsupervised open heart surgery. The committee authorized the hospital president to summarily suspend Dr. Lo's clinical privileges to perform open heart surgery if he continued to reject supervision, and the hospital president did so.

Dr. Lo sought a temporary restraining order against the hospital, contending that the summary suspension violated the medical staff bylaws. The trial court agreed and entered an order temporarily restraining the hospital from suspending all or any portion of Dr. Lo's clinical privileges, until such time as the hospital complied with the medical staff bylaws. The hospital appealed.

The Illinois Appellate Court reversed the temporary restraining order, finding that the hospital had complied with the medical staff bylaws. It held that the hospital administration was responsible for the maintenance of standards of professional work in the hospital, and its responsibilities included oversight of the medical staff. Quoting from a Joint Commission on Accreditation of Healthcare Organizations standard, the court concluded that the hospital administration, and not the medical staff, has "the [ultimate] authority to render ... renewal or modification of clinical privileges decisions."

The court noted that summary suspensions must result from a "genuine and imminent" danger to patients. Otherwise, the summary suspension would be an arbitrary and capricious act by the hospital administration and thus contrary to the bylaws. This, however, was "an anomalous case in which the medical staff failed to act one way or the other."

Dr. Lo asked the Illinois Supreme Court to hear his case, but it declined to do so. The case was then remanded to the trial court. Based on the decision of the Court of Appeals, the hospital moved to dismiss Dr. Lo's case, and the trial court granted this motion.

Litigation Center Involvement

The Litigation Center, along with the Illinois State Medical Society, asked the Illinois Supreme Court for leave to file an amicus curiae brief supporting Dr. Lo's petition for leave to appeal. However, the Supreme Court denied this request.