No. 4-05-0586

IN THE APPELLATE COURT OF ILLINOIS
FOURTH DISTRICT

JOSEPH FABRIZIO, M.D.,
CHARANJIT S. RAKALLA, M.D.,
MUTIAH THANGAVELLU, M.D., and
BUMYONG LEE, M.D.,

Plaintiffs-Appellees,

v.

PROVENA UNITED SAMARITANS
MEDICAL CENTER,

Defendant-Appellant.

Appeal from the Circuit Court
for the Fifth Judicial Circuit,
Vermilion County, Danville

Hon. James K. Borbely,
Circuit Court Judge

No. 04-MR-0123

BRIEF *AMICI CURIAE* OF AMERICAN MEDICAL ASSOCIATION, ILLINOIS STATE MEDICAL SOCIETY, AND COUNTY MEDICAL SOCIETIES

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POINTS AND AUTHORITIES

STATEMENT OF INTERESTS

The American Medical Association ("AMA"), an Illinois non-profit corporation, headquartered in Chicago, is an association of approximately 245,000 physicians, residents, and medical students. Its members practice in every state. The AMA was founded in 1847 to promote the science and art of medicine and the betterment of public health, and these remain its core purposes. Its members practice in all fields of medical specialization, and it is the largest medical society in the United States.

Founded in 1840, the Illinois State Medical Society ("ISMS") is a professional organization of over 12,000 members that represents and unifies its physician members as they practice the science and art of medicine. The ISMS represents the interests of member physicians, advocates for patients and promotes the patient-physician relationship, the ethical practice of medicine, and the betterment of public health.[1]

The Macon County Medical Society, the McLean County Medical Society, the Sangamon County Medical Society, and the Vermilion County Medical Society (the "County Medical Societies") are non-profit professional organizations affiliated with the ISMS representing practicing physicians and physicians in training in central Illinois.

Amici Curiae, the AMA, the ISMS, and the County Medical Societies, recognize that hospital governing boards are to administer their hospitals. However, *Amici* also believe that hospitals do not have unchecked power over their medical staffs. Medical staffs are the only bodies with the necessary medical expertise and experience to provide and oversee medical care. They are not simply a department of the hospital, subject to the same administrative controls as

[1] The AMA and the ISMS appear on their own behalves and as representatives of the Litigation Center of the American Medical Association and the State Medical Societies. The Litigation Center was formed in 1995 as a coalition of the AMA and private, voluntary, non-profit state medical societies to represent the views of organized medicine in the courts.

other hospital personnel. Their primary obligation, ethical and legal, is to the patient.

Both the Illinois General Assembly and the Illinois Supreme Court have addressed the importance of hospital medical staffs in ensuring the quality of care for Illinois patients. *See* 210 ILCS 85/10.4, 10.6, and 10.8 (2005); *Berlin v. Sarah Bush Lincoln Health Ctr.*, 179 Ill. 2d 201, 688 N.E.2d 106 (1997); *Carter-Shields v. Alton Health Inst.*, 201 Ill. 2d 441, 777 N.E.2d 948 (2002). Physicians, as licensed professionals, should be free from the economic influence of non-physicians in making decisions affecting the care of their patients. Defendant's position that medical staff bylaws should not be contractually enforceable significantly threatens the self-governance rights of medical staff physicians throughout Illinois. It reduces the significance of medical staff bylaws to meaningless verbiage, thus compromising the duty of physicians to keep patient care first and foremost. Ultimately, the quality of care provided to hospitalized patients is at stake.

ARGUMENT

Introduction

Defendant, Provena United Samaritans Medical Center, seeks to circumvent its medical staff bylaws by unilaterally amending the applicable professional liability insurance limits for its medical staff. The medical staff bylaws state:

> Each physician or dentist granted clinical privileges in the hospital shall maintain in force professional liability insurance in not less that (sic) the minimum amounts as from time to time may be determined by the resolutions of the Medical Executive Committee and of the Board. Physicians shall have at least 180 days advance notice in the event of any change in required levels of professional liability insurance.

(Order of 5/6/05 at 2-3.) The Rules and Regulations of the Medical/Dental staff ("Rules and Regulations"), which were established by the Medical Executive Committee and the Hospital Board of Directors, require that members of the medical staff carry professional liability insurance with minimum limits of $200,000 per occurrence and $600,000 aggregate, for multiple occurrences.

The court below found that Defendant sought to increase these limits to $1,000,000 per occurrence and $3,000,000 aggregate without: (1) a resolution of the Medical Executive Committee and of the Board and (2) at least 180 days advance notice to the physicians. In doing so, it flouted the requirements of the medical staff bylaws and thus undercut the medical staff's right to govern itself.

Defendant's brief raises several issues pertaining to the enforceability of this unilateral policy change. This brief addresses only the first of these: whether the medical staff bylaws created a binding contract that restrains the hospital's ability to increase the medical malpractice insurance requirements without the consent of the medical staff.

I. MEDICAL STAFF BYLAWS ARE CONTRACTUALLY BINDING.

It is well established at common law that medical staff bylaws are binding on the organized medical staff and the hospital or other health care entity that approves and signs them. *Gates v. Holy Cross Hosp.*, 175 Ill. App. 3d 439, 444, 529 N.E.2d 1014, 1017 (1st Dist. 1988); *Nagib v. St. Therese Hosp., Inc*., 41 Ill. App. 3d 970, 971, 355 N.E.2d 211, 213 (2nd Dist. 1976).

In *Gates*, a surgeon alleged that a hospital's action in summarily suspending his privileges violated its medical staff bylaws. The trial court dismissed the case, but the appellate court reversed, holding that the surgeon had "asserted sufficient bylaw violations to initiate the limited judicial review recognized by Illinois case law." *Gates*, 175 Ill. App. 3d at 446, 529 N.E.2d at 1018. Similarly, in *Nagib*, the court reversed the trial court's judgment in favor of the hospital on the physician's action seeking an invalidation of the hospital's decision to revoke his privileges, since he was not allowed an appeal to the full medical staff as required by the bylaws. *Nagib*, 41 Ill. App. 3d at 971, 355 N.E.2d at 213.

In addition to the common law, the Hospital Licensing Act (the "Act"), at 210 ILCS 85/10.4(b) (2005), presupposes that medical staff bylaws are fully enforceable. Section 10.4(b)(1)(c) requires a hospital to follow "written criteria" in the medical staff bylaws in evaluating membership qualifications. Nowhere does the Act grant authority for hospitals to disregard these statutorily prescribed criteria. In fact, it requires hospitals to have medical staff bylaws that specify minimum procedures for medical staff pre-applicants, applicants and existing medical staff members. 210 ILCS 85/10.4(b), 10.6, and 10.8. Significantly, when a hospital employs a physician, the Act protects the physician's professional judgment from hospital interference, even requiring the inclusion of a specific provision in physician employment contracts to protect physician autonomy. 210 ILCS 85/10.8(a)(3).

The enforceability of medical staff bylaws is also mandated by hospital accreditation standards promulgated by the Joint Commission on Accreditation of Healthcare Organizations ("JCAHO")[2], which state:

> MS 1.10 The hospital has an organized self-governing medical staff that provides oversight of care, treatment, and services provided by practitioners with privileges, provides for a uniform quality of patient care, treatment, and services, and reports to and is accountable to the governing body.
>
> MS 1.30 Neither the organized medical staff nor the governing body may unilaterally amend the medical staff bylaws or rules and regulations.
>
> MS 2.10 The organized medical staff oversees the quality of patient care, treatment, and services provided by practitioners privileged through the medical staff process.

JCAHO, Accreditation Manual for Hospitals, MS 1.10, MS 1.30, MS 2.10 (2005).

Defendant attempts to discredit the "theory" that medical staff bylaws are enforceable, implying that Illinois case law does not firmly establish the contractual basis for requiring hospitals to abide by them. (Def.'s Brief at 14.) However, Defendant fails to cite a single case which holds that medical staff bylaws are not contractually enforceable. Indeed, the very cases Defendant cites in recounting the "history of contractual rights under medical staff bylaws" (Def.'s Brief at 14-16) specifically recognize that medical staff bylaws are contractually binding on hospitals. *See Head v. Lutheran Gen. Hosp.*, 163 Ill. App. 3d 682, 692, 516 N.E.2d 921, 926 (1st Dist. 1987) (construction of bylaws poses questions of "contractual interpretation"); *Szcerbaniuk v. Mem'l Hosp. For McHenry County*, 180 Ill. App. 3d 706, 712-713, 536 N.E.2d 138, 142 (2nd Dist. 1989) ("bylaws form part of the contract between the hospital and its staff");

[2] JCAHO is an independent, not-for-profit organization that evaluates and accredits more than 17,000 health care organizations and programs in the United States. JCAHO accreditation standards are recognized by the Centers for Medicare and Medicaid Services, and institutions maintaining JCAHO accreditation may be eligible to forego government inspections. *See* JCAHO, Corporate Brochure, *available at* http://www.jcaho.org/about+us/index.htm.

Bryant v. Glen Oaks Med. Ctr., 272 Ill. App. 3d 640, 650, 650 N.E.2d 622, 629 (1st Dist. 1995) ("bylaws constitute a contract between defendant and the members of its medical staff"); *Lo v. Provena Covenant Med. Ctr.*, 342 Ill. App. 3d 975, 982, 796 N.E.2d 607, 613 (4th Dist. 2003) (courts review hospital decisions to determine if they "violate any bylaw"). The only other case in this section of Defendant's Brief, *Garibaldi v. Applebaum*, 194 Ill. 2d 438, 452, 742 N.E.2d 279, 286 (2000), was decided on other grounds ("[w]e need not consider in this case whether the hospital's bylaws are a contract").

Defendant states that the "distinction between medical staff bylaws and a hospital's corporate bylaws should be borne in mind," suggesting that hospital corporate bylaws are enforceable, while medical staff bylaws are not necessarily binding. (Def.'s Brief at n. 5.) The case law clearly establishes the contrary: medical staff bylaws are fully enforceable. *See Gates*, 175 Ill. App. 3d at 444, 529 N.E.2d at 1017; *see also*, *supra*, at 7. Defendant, itself, relies on numerous cases that deal solely with hospital bylaws rather than medical staff bylaws, and for that reason alone these are off-point. (Def.'s Brief *passim*, *citing Garibaldi*, 194 Ill. 2d at 452, 742 N.E.2d at 286, *Adkins v. Sarah Bush Lincoln Health Ctr.*, 129 Ill. 2d 497, 506-07, 544 N.E.2d 733, 737 (1989), *Barrows v. Northwestern Mem'l Hosp.*, 123 Ill. 2d 49, 50, 525 N.E.2d 50, 51 (1988), *Tabora v. Gottlieb Mem'l Hosp.*, 279 Ill. App. 3d 108 116, 664 N.E.2d 267, 273 (1st Dist. 1996), *Pulido v. St. Joseph Mem'l Hosp.*, 191 Ill. App. 3d 694, 705, 547 N.E.2d 1383, 1391 (5th Dist. 1989), *Carson v. N.W. Cmty. Hosp.*, 192 Ill. App. 3d 118, 121, 548 N.E.2d 579, 581 (1st Dist. 1989), *Szczerbaniuk*, Ill. App. 3d at 712-13, 536 N.E.2d at 142, *Lapidot v. Mem'l Med. Ctr.*, 144 Ill. App. 3d 141, 146-47, 494 N.E.2d 838, 842-43 (4th Dist. 1986).)

Defendant also suggests that medical staff bylaws are only relevant with respect to privileging disputes. (Def.'s Brief at 18-19.) Defendant, however, fails to cite a single case to

support this proposition, and it even admits that the present case "in a sense" deals with a privileging dispute. *Id.* More importantly, Defendant ignores clear precedents as well as the pronouncements of the Illinois General Assembly and established hospital accreditation standards.

II. THE RULE OF LIMITED JUDICIAL REVIEW PRESUPPOSES THAT MEDICAL STAFF BYLAWS ARE CONTRACTUALLY BINDING.

Defendant misconstrues the rule of limited judicial review. According to Defendant, this "doctrine" precludes courts from reviewing its decision to unilaterally amend the Rules and Regulations, because deference should be given to the "judgment" of hospital officials. (Def.'s Brief at 12-13.) By Defendant's rationale, the provision in the medical staff bylaws that the Medical Executive Committee must approve any changes in the professional liability requirements is unenforceable and thus legally meaningless. This radical proposition is not and should not be the law of Illinois.

A. The rule of "limited judicial review" requires hospitals to adhere to their medical staff bylaws.

The rule of "limited judicial review" states, "absent some violation of hospital bylaws, it is clear that no court may disturb the administrative decisions of a private hospital concerning suspension or revocation of staff privileges so long as such actions were fair and reasonable. Even then, judicial review is limited." *Lapidot*, 144 Ill. App. 3d at 146-47, 494 N.E.2d at 842-43. In other words, hospital action is subject to "limited judicial review to determine whether the decision made was in compliance with the hospital's bylaws." *Garibaldi*, 194 Ill. 2d at 452, 742 N.E.2d at 286. When a physician sues over a hospital decision, the court should first determine whether the decision violates any bylaw. If the decision violated no bylaw, only then should the court defer to the hospital officials who made the decision. *Provena*, 342 Ill. App. 3d at 981, 796

N.E.2d at 612 ("Courts are ill-qualified to run a hospital, but they can read and interpret bylaws").

The limited judicial review "doctrine" does not allow hospitals to freely disregard the requirements of medical staff bylaws. Rather, it *requires* courts to determine whether a hospital has conformed with the bylaws. The purpose of the rule is "to determine whether such decisions were rendered in compliance with the bylaws of the institution." *Knapp v. Palos Cmty. Hosp.*, 176 Ill. App. 3d 1012, 1018-19, 531 N.E.2d 989, 993 (1st Dist. 1988). Thus, the rule presupposes that medical staff bylaws are contractually binding. Only *after* it has been found that the bylaws were adhered to should a court defer to the hospital's decision. The rule was not meant to allow hospitals to violate the requirements of their medical staff bylaws, which establish the framework for medical staff self-governance.

In the present case, the lower court decision was based solely on an *issue of law* of whether Defendant violated the medical staff bylaws. (Order of 5/6/05 at 4-5.) Since the lower court held that Defendant's decision violated the medical staff bylaws, there was no need to determine the secondary issue of whether Defendant's decision was "fair and reasonable."

B. "Limited judicial review" does not mean that courts must defer to hospitals' legal interpretations of medical staff bylaws.

Defendant's brief suggests that deference should be afforded to its interpretation of the medical staff bylaws, since judicial review is meant to be "limited." In the present case, however, the construction of the medical staff bylaws presents "questions of law" which should be reviewed *de novo*. *Provena*, 342 Ill. App. 3d at 981, 796 N.E.2d at 612; *Head*, 163 Ill. App. 3d at 692; 516 N.E.2d at 927. Judicial review is only "limited" to the extent that a court may not replace the discretionary judgment of a hospital, made in conformance with its contractual obligations, with its own.

C. The supposed dichotomy between "procedural" and "substantive" rights has no bearing on this case.

Defendant argues that its decision to amend the Rules and Regulations was a "substantive" matter and therefore not entitled to judicial review, since courts are only charged with the responsibility of ensuring that "procedural" protections, such as notice and an opportunity to be heard, are afforded. (Def.'s Brief at 13-14, *citing Ladenheim v. Union County Hosp.*, 76 Ill. App. 3d 90, 394 N.E.2d 770 (5th Dist. 1979).) The supposed distinction between "procedural" and "substantive" rights, however, is irrelevant to the present case. The terms of the medical staff bylaws control the Defendant's obligations to its physicians, not simply the physicians' right to due process protection. Thus, Defendant's argument that it is "only supposed to ensure that the physician has notice and an opportunity to be heard" has no basis in logic or in law. *Id.* Notice and an opportunity to be heard are minimum due process elements in an adjudication of individual rights, but a hospital can bind itself to give greater or different protections in appropriate circumstances. Similarly, a hospital can bind itself to wholly substantive obligations such as an obligation to admit or retain members on its medical staff who meet all applicable requisites, if those members carry malpractice insurance with $200,000/$600,000 policy limits.

The principal case upon which Defendant relies for its proposition that hospitals are only required to provide procedural due process, *Ladenheim*, is distinguishable, because it involved an administrative proceeding by a county hospital. Nothing in the case suggests that provisions in the medical staff bylaws that concern topics other than procedural rights should not be binding.

Moreover, even if Defendant were correct in arguing that only procedural rights in medical staff bylaws merit legal enforceability, the lower court decision should still be affirmed, since the decision was no more "substantive" than it was "procedural." The lower court's ruling

was based on Defendant's failure to obtain proper authorization for amending the Rules and Regulations and to provide 180 days notice to its medical staff. These requirements are as much procedural as they are substantive, and thus the supposed dichotomy between substance and procedure is meaningless.

D. "Substantial" compliance with medical staff bylaws is not tantamount to "no" compliance.

Defendant's argument that Illinois law merely requires "substantial" compliance rather than compliance "to the letter" is also unavailing. *Id.* at 13. The use of the term "substantial" neither alleviates a hospital's duty to comply with medical staff bylaws nor grants a license to freely ignore contractual obligations. In those cases cited by Defendant where "substantial compliance" was found, the hospitals provided some semblance of procedural protection to the physicians involved. *See Ladenheim*, 76 Ill. App. 3d at 96, 394 N.E.2d at 774; *Lapidot*, 144 Ill. App. 3d at 147, 494 N.E.2d at 843; *Adkins*, 129 Ill. 2d at 507, 544 N.E.2d at 738; *Barrows*, 123 Ill. 2d at 50, 525 N.E.2d at 51; *Pulido*, 191 Ill. App. 3d at 705, 547 N.E.2d at 1391; *Carson*, 192 Ill. App. 3d at 121, 548 N.E.2d at 581.

As explained, *supra*, the issue in the present case concerns compliance with substantive promises in the medical staff bylaws. Defendant failed utterly to obtain the needed resolution of the Medical Executive Committee. It completely flouted the requirements and tried unilaterally to amend the Rules and Regulations.

E. The cases dealing with the rule of "limited judicial review" actually require that hospitals follow their medical staff bylaws.

Defendant's interpretation of the rule of limited judicial review conflicts with established precedents. In fact, the cases cited in its brief actually support the contractual enforceability of medical staff bylaws. For instance, in *Adkins*, a doctor sued a hospital for suspending his

surgical privileges and for denying his annual reapplication for staff privileges, based on his failure to meet professional standards of care. *Adkins*, 129 Ill. 2d at 506-10, 544 N.E.2d at 737-39. The court found that with respect to his suspension, all of the protections provided under the bylaws had been properly followed. Thus, the court deferred to the ultimate decision of the hospital, determining that its decision met the standards of "fairness and integrity." However, with respect to his reapplication, the hospital had failed to abide by the medical staff bylaw requirement entitling the doctor to an *ad hoc* hearing, so his privileges were reinstated, subject to the terms of his suspension. *Id.*

The court's "unwillingness" to substitute its judgment for the "professional judgment" of the hospital had *no* bearing on its determination of whether the bylaws were properly followed. Rather, its "deference" to the hospital only came after it found that there was no violation of the procedures contained in the bylaws. *Id.* The present case is distinguishable, because, as the lower court found, Defendant violated the terms of the medical staff bylaws when it unilaterally attempted to amend the Rules and Regulations and failed to provide 180 days advance notice.

Garibaldi is also distinguishable, because the court in that case found that the bylaws in question were not violated. *Garibaldi*, 194 Ill. 2d at 452, 742 N.E.2d at 286. In *Garibaldi*, a hospital entered into an exclusive contract with a group of cardiovascular surgeons. A surgeon who had previously been admitted to perform open heart surgery at the hospital had his privileges revoked, because he belonged to a competing group of surgeons. *Id*. The surgeon claimed that under two provisions of the hospital's bylaws, he was entitled to notice and hearing procedures following the revocation. The two provisions, however, explicitly stated that the procedures were only available to doctors facing "corrective action." The action of the hospital was not a "corrective action," since it was not made in response to any misconduct or

wrongdoing on the part of the surgeon. Rather, the revocation of privileges applied to any surgeon who was not employed by the exclusive contractor. Thus, under the terms of the bylaws themselves, the hospital did nothing wrong in terminating the doctor's employment. *Id.*

The medical staff bylaws in the present case, by contrast, do not contain any limiting clause that narrows the availability of procedural protections to just decisions involving "corrective action." Rather, the terms of the bylaws clearly state that the minimum insurance coverage levels must be set by both the Hospital Board and the Medical Executive Committee and that 180 days notice be given prior to any changes to these requirements.

Defendant also relies on *Tabora*, 279 Ill. App. 3d at 116, 664 N.E.2d at 273. *Tabora*, however, considered whether a hospital was statutorily immune from tort liability for its decision to revoke a doctor's privileges based on the Hospital Licensing Act and the Medical Practice Act. The court cited the rule of limited judicial review solely in the context of applying statutory immunity. Although it dismissed the physician's tort claims, it allowed his action alleging violation of bylaws to proceed.

Moreover, the courts in *Adkins*, *Garibaldi*, and *Tabora* never questioned the binding effect of the medical staff bylaws. The only question facing those courts was whether the hospitals were faithful to the requirements of their bylaws. It was assumed that they were enforceable by physicians who had lost their privileges. Thus, Defendant's own cases support the enforceability of the medical staff bylaws.

III. LEGALLY ENFORCEABLE MEDICAL STAFF BYLAWS ARE NEEDED TO PRESERVE PHYSICIANS' RIGHT OF SELF-GOVERNANCE.

Physician autonomy over medical decision-making has long been considered one of the foundations of the patient-physician relationship. This "autonomy" is necessary to ensure the quality of patient care and to protect against the influence of economic interests and other

countervailing forces on the integrity of medical care. *See* AMA HOD Policies H-235.974, H-235.976, H-235.980, and H-235.990 (attached as Appendix A).[3] ISMS Policy further states that:

> "The medical staff is a viable professionally autonomous organization essential to the maintenance of quality of care for patients and proper clinical functioning for physicians and that the bylaws of the medical staff, upon acceptance and approval by the hospital organization, becomes a binding contract between the hospital and its physicians which can only be changed by the mutual consent of the parties to the contract."

ISMS HOD 1999, reviewed 2004.[4] These principles are threatened, however, when hospitals and other health care facilities impinge on physician decision-making, leaving more authority in the hands of lay administrators. This trend undermines the authority of physicians to treat their patients independently without outside interference. *See id.*

Medical staff bylaws allow physicians to maintain the integrity of the medical decision-making process. They serve as a framework for self-governance and for the physician independence needed to deliver proper medical care. They also establish the rights, duties, and responsibilities of the medical staff and each of its members and define the medical staff's relationship with the hospital's governing body. *See* JCAHO, Accreditation Manual for Hospitals, MS 1.20; *see also* 210 ILCS 85/10.4.

Moreover, medical staff bylaws provide an important check on the actions of hospital governing bodies, whose actions may inadvertently jeopardize the professional work performed

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[3] AMA policies are established by the AMA House of Delegates ("AMA HOD"), the principal policy-making body of the AMA. The AMA HOD consists of elected representatives from state and specialty medical societies throughout the nation, as well as representatives of physicians employed by the United States Armed Forces. AMA HOD policies are based on the professional principles, scientific standards, and experience of practicing physicians. The AMA HOD policies cited in this brief are referenced as "AMA HOD Policy H-___," and can be found at http://www.ama-assn.org/ama/noindex/category/11760.html.

[4] ISMS policies are established by the ISMS House of Delegates ("ISMS HOD"), the principal policy-making body of the ISMS. The ISMS HOD consists of elected representatives from medical societies throughout the state. ISMS HOD policies are based on the professional principles, scientific standards, and experience of Illinois physicians.

in the hospital. *See Berlin v. Sarah Bush Lincoln Health Ctr.*, 179 Ill. 2d 1, 16-17, 688 N.E.2d 106, 113 (1997) and *Carter-Shields v. Alton Health Inst.*, 201 Ill. 2d 441, 457, 777 N.E.2d 948, 957 (2002). Medical staff leaders must have the initiative, vision and respect necessary to lead and motivate the medical staff, and the temerity to advocate for quality patient care with the hospital administration. Medical staff members cannot work with the necessary freedom to exercise professional judgment and interdisciplinary teamwork to carry out the complex duties required to assure quality and patient safety if medical staff self-governance is infringed or eliminated. *See id.*

In *Berlin*, the Illinois Supreme Court recognized that the existence of a separate organized medical staff, comprised of physicians, protects the public from the ills of the "corporate practice of medicine" and hospital decisions based on "financial" matters. The court stated:

> "The concern for lay control over professional judgment is alleviated in a licensed hospital, where generally a separate professional medical staff is responsible for the quality of medical services rendered in the facility."

Berlin, 179 Ill. 2d at 18, 688 N.E.2d at 113-14.

The Illinois Supreme Court again underscored the importance of independent physician oversight in *Carter-Shields*, stating that the existence of a separate professional medical staff protects the public from "lay control over professional judgment and the division of a physician's loyalties." *Carter-Shields*, 201 Ill. 2d at 457-60, 777 N.E.2d at 957-59. The court also noted that in enacting the Hospital Licensing Act, the Illinois General Assembly sought to protect "the public's interest in quality health care" by requiring hospitals that employ licensed physicians to meet "specific, enumerated requirements designed to safeguard the public health and maintain quality patient care," such as utilizing contract provisions ensuring the protection of physician

autonomy. *Id.* The court stated:

> "[T]he General Assembly has taken steps to eliminate the concept of law control from the practice of medicine, to require licensed providers to meet certain qualifications, and to assure the monitoring of the quality of health care provided to the public." *Id.*

In the present case, Defendant has blatantly disregarded the medical staff bylaws and unilaterally amended the Rules and Regulations. Allowing such action would undermine the authority and effectiveness of the medical staff to oversee the quality of care provided to its patients. Therefore, this Court should reject the untenable position that hospital administrators can simply ignore medical staff bylaws. Not only does that position violate numerous well-established precedents, it compromises the independent self-governance needed to provide quality patient care. Should this Court reverse the holding of the lower court, medical staff bylaws would be reduced to meaningless verbiage.

CONCLUSION

For the above stated reasons, *Amici Curiae*, the AMA, the ISMS, and the County Medical Societies ask this Court to affirm the decision of the lower court granting summary judgment in favor of Plaintiff physicians.

Respectfully submitted,

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H-235.974 Autonomy of the Hospital Medical Staff

Our AMA (1) believes strongly in the autonomy of the hospital medical staff and does not support automatic inclusion of the medical staff in hospital personnel policies and programs; (2) believes hospital medical staffs should develop personnel policies and programs for members of the hospital medical staff and incorporate these policies in the medical staff bylaws or rules and regulations; and (3) understands that there are physicians who are not members of the medical staff but who are employees of the hospital and their participation in hospital programs should be dictated by their employment agreements.

Appendix A

H-235.976 Medical Staff Bylaws and Medical Staff Autonomy

Our AMA reaffirms that (1) medical staff bylaws are a contract between the organized medical staff and the hospital; and (2) application for medical staff appointment and clinical privileges should provide that each member of the medical staff, as well as the hospital, is bound by the terms of the medical staff bylaws, and the terms of the medical staff bylaws should be incorporated by reference into the application.

Appendix A

H-235.980 Hospital Medical Staff Self-Governance

(1) Our AMA: supports essentials of self-governance for hospital medical staffs which, at a minimum include the right to: (a) initiation, development and adoption of medical staff bylaws, rules and regulations; (b) approval or disapproval of amendments to the medical staff bylaws, rules and regulations; (c) selection and removal of medical staff officers; (d) establishment and enforcement of criteria and standards for medical staff membership; (e) establishment and maintenance of patient care standards; (f) accessibility to and use of independent legal counsel; (g) credentialing and delineation of clinical privileges; (h) medical staff control of its funds; and (i) successor-in-interest rights.

(2) Our AMA opposes any attempts to reengineer or otherwise amend medical staff bylaws or split the bylaws into a variety of separate and unincorporated manuals or policies, thereby eliminating the control and approval rights of the medical staff as required by the principles of medical staff self-governance.

(3) Our AMA will ask its Commissioners to the Joint Commission on Accreditation of Healthcare Organizations to require that JCAHO medical staff standards require the following components to be an integral part of the medical staff bylaws, and not separate "governance documents," requiring approval by the entire medical staff. The medical staff is responsible for the following: (a) Application, reapplication, credentialing and privileging standards; (b) Fair hearing and appeal process; (c) Selection, election and removal of medical staff officers; (d) Clinical criteria and standards which manage quality assurance, utilization review; (e) Structure of the medical staff organization; (f) Rules and regulations that affect the entire medical staff.

(4) Our AMA recognizes that hospital non-compliance with JCAHO Standard MS 1.20 will be treated in the same way as hospital non-compliance with any other standard.

H-235.990 Organized Self-Governing Medical Staff

With respect to the responsibilities and functions of the hospital, its governing board and the medical staff, the AMA believes that: (1) the hospital has corporate responsibility for maintaining the necessary facilities, a safe environment, and a mechanism for the prudent selection of those who treat patients within the institution; (2) the governing board is responsible for the operation and management of the hospital and fulfilling its corporate responsibilities; (3) the organized medical staff and its members have a contractual obligation, entered into with the hospital, to carry out their professional medical responsibilities through the efficient operation of medical staff committees; the objective selection of professionally qualified members of the organized medical staff and disciplinary functions relating to their competent performance; and functioning as a self-governing body in promoting quality patient care within the hospital; and (4) members of the organized medical staff may likewise deal collectively, as an entity, with the hospital and its governing board with respect to professional matters involving their own interests, as distinguished from the functions the organized medical staff performs on behalf of the hospital.

Appendix A