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## Privileges

### Physician May Not Pursue Damages For Revocation of Staff Privileges

A California physician who lost his staff privileges when he failed to meet the hospital's new certification requirements is not entitled to pursue an action in court for damages relating to the termination of his privileges, a state appeals court March 9 said in an unpublished opinion (*Tran v. Mission Hospital Regional Medical Center*, Cal. Ct. App., No. G036549, unpublished 3/9/07).

Where a hospital enacts a rule that is of general application to the entire staff, it is considered a "quasi-legislative" action and will be upheld unless it is "arbitrary, capricious, or entirely lacking in evidentiary support," Associate Justice Eileen C. Moore said, writing for the Court of Appeal of California, Fourth Appellate District, Division Three. Moreover, "as a quasi-legislative act of general application, the Hospital [is] not required to provide an individual hearing" before applying the policy, Moore explained.

Mission Hospital Regional Medical Center's adoption of a bylaw amendment requiring all staff members, including Dr. Bryan Tran, to become board certified within five years of being admitted to the medical staff, is, on its face, a rule of general application "and is therefore quasi-legislative," Moore said.

Accordingly, Tran cannot maintain a legal action that is "essentially based" on Mission's failure to provide him a hearing prior to terminating his privileges, the justice said, affirming the ruling of the superior court below.

## Legislative Versus Judicial Action

"The California Supreme Court has held that a doctor's hospital privileges constitute a property right," which only can be revoked "after a showing of adequate cause ... in a proceeding consistent with minimal due process requirements," Moore said, quoting the California Supreme Court's 1977 ruling in *Anton v. San Antonio Community Hosp.*, 19 Cal. 3d 802.

*Anton*, however, was premised on the fact that the revocation of privileges "was adjudicatory rather than legislative," Moore said.

A legislative or quasi-legislative action is the formulation of a rule, such as the adoption of minimum qualifications for privileges, Moore said. An adjudicatory, or quasi-judicial, action, on the other hand, involves the application of a rule to a specific set of existing facts, such as deciding whether a particular physician is competent to hold privileges.

### **Mandate Relief Available**

Moore added that Tran is free to seek "a writ requiring the Hospital to hold a hearing pursuant [to] the Bylaws to argue the Committee should exercise its discretion to extend the time under which he has to become board certified, or to challenge the bylaw amendment itself."

But, Moore said, Tran initially was offered an opportunity to address the hospital committee in the letter the hospital sent denying his initial request for an extension of time. "Therefore, a court reviewing the mandate application may well decide that he has waived that opportunity," she said.

"In any event, the most relief the court can order is a new hearing, but the court cannot direct the Committee to exercise its discretion to any particular outcome."

Associate Justices Kathleen O'Leary and Richard D. Fybel joined in the opinion.

Henry R. Fenton and Dennis E. Lee, of Fenton & Nelson, in Los Angeles, represented Tran. Lowell C. Brown, Sarah G. Benator, and Nathaniel M. Lacktman, of Foley & Lardner, in Los Angeles, represented the hospital.

Full text of the decision is available at <http://op.bna.com/hl.nsf/r?Open=thyd-6z9prg> on the Web. 

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