


TOPICAL REPORTS

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Physician Not Entitled to Pre-Suspension Hearing to Challenge His Temporary Suspension from Medi-Cal Program.

The Department of Health Care Services ("DHCS") claimed that Eduardo Guzman, M.D. imported from Mexico large quantities of intrauterine devices not approved by the FDA, inserted the devices into his patients (Medi-Cal beneficiaries), and then billed the Medi-Cal program. The DHCS temporarily suspended Dr. Guzman's Medi-Cal participation based on his alleged fraudulent abuse and Dr. Guzman sought a preliminary injunction to halt the Medi-Cal suspension. The District Court denied Dr. Guzman's request for an injunction. The Court of Appeals affirmed the District Court's ruling, finding that Dr. Guzman was not entitled to a pre-suspension hearing and had no basis to obtain injunctive relief. The decision validates the ability of Medi-Cal to temporarily suspend a provider before giving the provider a hearing.

Guzman v. Shewry, 2008 WL 4307186 (C.A.9 (Cal.), Case No. 08-55326) (September 23, 2008). 

Application Of Hospital Rule Requiring Board Certification Was Unreasonable And Arbitrary Because Short Deadline Made It Impossible For Physician To Comply.


The California Court of Appeal affirmed a trial court's writ of mandate overturning a decision by Los Robles Regional Medical Center (the "Hospital") to terminate the medical staff privileges of Dr. Sohail Nasim for his failure to comply with a rule requiring board certification. The Court did not invalidate the Hospital's rule, but held the retroactive application of the rule to Dr. Nasim was unreasonable and arbitrary because it was impossible for Dr. Nasim to become board certified in the short timeframe set by the Hospital.

In 2001, Dr. Nasim joined the Hospital's medical staff as a provisional member with privileges in internal medicine and nephrology. In March, 2003, the Hospital notified Dr. Nasim it had revised its membership requirements so that applicants for internal medicine and corresponding subspecialties had to be board certified within the two year provisional period. The rule did not apply to members on the active staff (*i.e.*, non-provisional members) and the rule applied retroactively. Thus, the Hospital informed Dr. Nasim that, unless he became board certified in internal medicine and nephrology by December, 2003 (the end of his two-year provisional period), he would risk losing his medical staff membership and privileges. Dr. Nasim became board certified in internal medicine in August, 2003 but the earliest available nephrology exam was November, 2004; beyond the Hospital's deadline.

After the December deadline passed, the Hospital instituted proceedings to terminate Dr. Nasim's medical staff membership and privileges. Dr. Nasim

challenged the proceedings, contending that physicians in the nephrology department sought to remove him because he had opened a private nephrology practice. The Hospital revoked his privileges and Dr. Nasim sought a writ of mandate. The trial court granted the writ, finding that Dr. Nasim had a vested property interest in his privileges and the retroactive rule, as applied to him, impermissibly divested him of that right without due process. In the writ proceedings, the Hospital admitted "Dr. Nasim was the impetus for the new rule." According to the trial court, "the heart of this case ... is the unfairness of changing the rule midstream, telling a person a new rule and then as a calendar matter it's impossible to complete it." The Hospital appealed.

The Court of Appeal concurred with the trial court's decision. The Court of Appeal emphasized that the problem lay in the application of the rule to Dr. Nasim. The Court of Appeal did not find that the Hospital was barred from implementing minimum standards of medical staff membership, requiring board certification, or even enacting rules of retroactive applicability. The Court of Appeal stated that the trial court's judgment did not limit or control in any way the Hospital's discretion and authority to remove physicians whose performance is below reasonable medical standard or who provide inadequate care. But because the retroactive application of the instant rule made it impossible for Dr. Nasim to comply, the Court of Appeal found it was unreasonable and arbitrary as applied to Dr. Nasim. The Court of Appeal affirmed the trial court's decision.

Nasim v. Los Robles Regional Medical Center, 2008 WL 3823977 (Cal.App.2nd Dist.), No. B202144) (August 18, 2008). 

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