

Michalski v. Scripps Mercy Hospital: A Win for Both Peer Reviewers and Hospital Boards

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of Dr. Michalski's applications for medical staff privileges after discovering his extensive history of sexual harassment and misconduct while on the medical staff at Sharp Grossmont Hospital (Sharp). Dr. Michalski challenged these recommendations in a consolidated peer review hearing. Despite finding that Dr. Michalski's behavior at Sharp had been "aggressive, predatory, and reprehensible," a divided JRC sided with Dr. Michalski and rejected the MECs' recommendations to deny his applications.

When peer review cases result in appellate court decisions, they often involve a colorful mix of legal principles and individual behavior. *Michalski v. Scripps Mercy Hospital* (2013) 221 Cal.App.4th 1033, decided on November 27, 2013, is no exception. *Michalski* was about sexual harassment, an errant hearing committee decision, and a governing body's ultimate authority to decide what physician behavior is acceptable in the hospital. In its decision the California Court of

Appeal confirmed that a hospital's governing body may, *where permitted by the hospital's medical staff bylaws*, broadly exercise its independent judgment and overturn a Judicial Review Committee (JRC) decision following a peer review hearing.

Background

The Medical Executive Committees (MECs) of three Scripps Health hospitals recommended denial

The MECs appealed the JRC decision to the Scripps Health Board of Directors. After a hearing that included the submission of written briefs and a personal appearance by Dr. Michalski, the Board reversed the JRC. The Board indicated that it was exercising its independent judgment – as allowed under the medical staff bylaws – and confirming the MECs' recommendations to deny Dr. Michalski's applications. Dr. Michalski's petition for writ of mandate was denied by the trial court, and Dr. Michalski then appealed.

The Court of Appeal's Decision

After reviewing the procedural history of the case and the evidence of Dr. Michalski's misconduct (largely drawn from the California Medical Board's formal reprimand of Dr. Michalski), the Court of Appeal turned to the question at hand: Whether the Scripps Health Board was authorized to exercise its independent judgment and overturn the JRC's decision. The court noted that the Legislature has charged hospital boards – not medical staffs or even the courts – with the ultimate responsibility “to insure the competence of its medical staff.” (*Michalski*, 221 Cal.App.4th at 1043.) The court thus held that “[w]here permitted by a hospital's bylaws, its governing body may, using its independent judgment, completely overturn the decision of a medical staff-selected hearing committee.” (*Id.*; emphasis added.) In reaching this conclusion, the court rejected Dr. Michalski's arguments that a governing body must be bound by a more deferential and restrictive standard when reviewing a JRC's decision.

Although prior Court of Appeal decisions fully supported this conclusion, *Michalski* is the first published opinion in which the medical staff bylaws expressly called for the hospital board to apply an independent judgment standard when hearing appeals of medical staff peer review decisions. The *Michalski* decision removes any doubt that such a standard is appropriate and permissible under California law and confirms that hospital boards may use their

independent judgment to ensure quality care and patient safety.

Dr. Michalski has asked the California Supreme Court to review the Court of Appeal's decision, so we may not know if the decision is final until early March 2014. Assuming the Supreme Court denies the request for review, however, *Michalski* is good news for hospital medical staffs. It enhances a medical staff's ability to ask the hospital governing body to protect patients by insisting that the members of their medical staffs meet both competence and behavioral standards. By specifying the “independent judgment” standard in its bylaws, a hospital can protect against peer review hearing panels that might act more out of sympathy for an accused physician than out of concern for patient care. Although the governing body in California must still give great weight to a hearing panel's factual findings, it can exercise its independent judgment to correct an erroneous decision and ensure that patient care and safety remain the ultimate and primary goal of peer review proceedings. In short, while physicians are still guaranteed a fair procedure, patient welfare will remain paramount.

Lessons Learned from Michalski

The *Michalski* decision demonstrates the wisdom of including in medical staff bylaws the right provisions regarding the standard of review the hospital board must apply when conducting an appellate review of a JRC decision. The board bears ultimate responsibility for the decision and in some rare cases

must correct a JRC decision that does not adequately protect patients. Some model bylaws require a very deferential review by the board. In those cases, the board's ability to correct the JRC decision is very limited. This is one reason why legal counsel should always be involved when any health system board considers proposed revisions to the medical staff bylaws.

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