NOS. B106278
B108394

COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

DREW FENTON, M.D., AND KLAUS WAGENER, M.D.,

Plaintiffs/Appellants,

vs.

CENTINELA HOSPITAL MEDICAL CENTER, a corporation, RUSSELL STROMBERG, ADMINISTRATOR and DOES 1 through 50, inclusive,

Defendants/Respondents.

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Appeal from Judgment of the Superior Court
County of Los Angeles
Case No. YC 022 791
Honorable Stephen O'Neill, Judge

AMICUS CURIAE BRIEF OF THE CALIFORNIA MEDICAL ASSOCIATION IN SUPPORT OF APPELLANTS

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I. INTRODUCTION

A. Interest of the Amicus Curiae

This case involves serious allegations that physicians were terminated by a hospital for protesting against hospital policies that adversely affected patient care. Because this case directly impacts the ability of physicians to speak freely when attempting to improve the quality of care and protect patients from harm, this case will directly affect the interests of all California physicians and their patients.

The California Medical Association ("CMA") is a non-profit, incorporated professional association of more than 30,000 physicians practicing in the State of California. CMA's membership includes California physicians who are engaged in the private practice of medicine, in all specialties. CMA's primary purposes are: "...to promote the science and art of medicine, the care and well-being of patients, the protection of the public health, and the betterment of the medical profession."

The CMA believes it is critical to the continuation of high quality health care that physicians and other health care professionals be permitted and in fact encouraged to raise objections if they reasonably believe treatment practices or facilities are substandard, without fear of retaliation. The quality of health care provided to patients today depends upon vigorous and informed physician advocacy. Unlike others involved in the health care arena, physicians are both legally and ethically obligated to ensure that they keep abreast of relevant medical technology and resources and that their patients receive competent medical care not delayed, jeopardized or thwarted by third persons. See Wickline v. State of California (1986) 192 Cal.App.3d 1630, 239 Cal.Rptr. 810 (recognizing that physicians have a legal duty to act as a buffer between the patient and third party payors and to challenge cost containment decisions which jeopardize the patient's health).

Both legal and ethical standards demand that physicians not sit back and watch conditions that could potentially be harmful to their patients. Quality of care depends upon physicians asserting their views and advocating quality health care. Indeed, as was recognized by the California Supreme Court in Rosner v. Eden Township Hospital District (1962) 58 Cal.2d 592, 25 Cal.Rptr. 551:

> The goal of providing high standards of medical care requires that physicians be permitted to assert their views when they feel that treatment of patients is improper or that negligent hospital practices are being followed. Considerations of harmony in the hospital must give way where the welfare of patients is involved, and the physician by making his objections known, whether or not tactfully done, should

not be required to risk his right to practice medicine. (Emphasis added.)

Termination of an exclusive contract or other retaliation against physicians for advocating compliance with appropriate medical standards is a matter of grave importance to the public health, welfare and safety and must not be condoned by this court. Especially in the current economic environment, which may not fully respect the promotion of patient health and welfare as a first priority, the law must protect physicians who, acting as patient advocates, express their concerns with the quality of care.

To allow a hospital to terminate physicians pursuant to a "without cause" termination clause, without any opportunity for judicial review of serious allegations that the termination was retaliation for physicians' advocacy of patient care issues, would undermine the integrity of the carefully crafted safeguards in California law for maintaining quality health care. The urgent public health implications of this case require that Centinela hospital's right to exercise a "without cause" termination clause in an exclusive contract be limited. Such termination must not be permitted for reasons which contravene the law or public policy. Physicians are entitled to judicial review of the allegations that the termination was in retaliation for the emergency department physicians' protest of hospital policies they believed were detrimental to patient care in the department. Because there is no justification for retaliating against physicians who choose not to condone or acquiesce in treating patients under substandard conditions but instead actively advocate changes to improve patient care, CMA urges that this

court protect patient welfare by ruling that "without cause" termination provisions in exclusive contracts between physicians and hospitals may not be exercised against physicians who exercise their lawful right and responsibility to protest unsafe conditions. In addition, medical staff involvement should be required in the hospital's decision to terminate such contracts.

B. Statement of the Case and the Facts

Drs. Fenton and Wagener appeal the order of the Los Angeles County Superior Court granting Centinela Hospital's motion for summary judgment. On this appeal from the summary judgment, this court must liberally construe the Appellant's evidence. "In reviewing the trial court's grant of summary judgment, we independently determine whether the evidence submitted by the parties raises a triable issue of material fact. We construe the moving party's papers strictly and those of the opposing party liberally." Stanton Road Associates v. Pacific Employers' Insurance Co. (1995) 36 Cal.App.4th 333, 344, 43 Cal.Rptr.2d 1 (citations omitted).

The facts, as alleged by the appellants[1], Drs. Fenton and Wagener, are as follows:

1. Appellants worked at the Centinela Hospital emergency room under an exclusive contract held by Dr. Artzner.

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[1] CMA takes no position on whether these allegations are true. CMA files this brief only to argue, consistent with the procedural posture of this case, that if these facts are true, then the physicians should have their day in court.

2. Centinela Hospital's lay administrator, Mr. Stromberg, unilaterally instituted emergency room policies which seriously compromised patient care.

3. Among the policies was a rule requiring that all emergency room patients were to be placed in a treatment room within fifteen minutes of their arrival at the emergency room.

4. Appellants and other physicians protested that the policies seriously undermined the physicians' ability to provide quality health care to emergency room patients.

5. Adverse consequences resulted from this policy. Medication was given to the wrong patient. An elderly patient was placed in a pediatric room without monitoring for his heart. The patient's heart stopped beating.

6. Centinela Hospital terminated the exclusive contract held by Dr. Artzner for emergency department services, under a "without cause" termination provision.

7. After terminating the exclusive contract, Centinela Hospital revoked the privileges and staff memberships of the physicians who worked under the contract with Dr. Artzner, including Drs. Fenton and Wagener.

8. The termination was retaliation for the emergency room physicians' protests against the detrimental policies put in place by Mr. Stromberg.

The hospital alleges that the exclusive contract for emergency room services was terminated as a result of the hospital's administrative determination, which the hospital was free to make for any reason, including the desire to silence good faith dispute with administrative policies which jeopardized patient welfare.

C. Question Presented

Have the Drs. Fenton and Wagener stated facts sufficient to state a cause of action for wrongful termination in violation of public policy?

II. LEGAL ARGUMENT

A. California Courts Have Firmly Recognized that Physicians Have an Affirmative Obligation to Protest Inappropriate Medical Standards.

California courts have established that there is a fundamental societal interest in encouraging its health care professionals to voice their disapproval and opposition to substandard health care. Obviously, the consequences of substandard health care are serious. The repercussions are increased morbidity and mortality. Due to the specialization of health care, no one is more qualified to determine whether health care procedures and facilities are sufficient than the physicians themselves. This policy of societal concern is founded in part upon the physician-patient relationship, whose essential component is trust. The patient must not only trust that the physician's primary goal is to enhance the patient's well-being, but also that the physician is competent to make clinical decisions and to evaluate correctly the adequacy of the facility in which treatment is to be administered. As the California Supreme Court recognized in Cobbs v. Grant (1972) 8 Cal.3d 229, 104 Cal.Rptr. 505, "the patient, being unlearned in the medical sciences, has an abject dependence upon and trust in his physician for the information upon which he relies during the decisional process, thus raising an obligation in the physician which transcends arms-length transactions." Id. at 242.

Consequently, patients depend on their physicians to help them understand and make critical decisions such as what care and treatment they receive, where they receive treatment, what diagnostic tests are essential, and what therapy is appropriate.

In order to promote quality care and recognizing the unique nature of the physician-patient relationship, the courts and the Legislature have imposed numerous duties on physicians to protect patients from harm. For example, absent termination of a physician-patient relationship, a physician's relationship with his or her patient is a continuing one that imposes ongoing obligations. *See* Tresemer v. Barke (1988) 86 Cal.App.3d 656, 150 Cal.Rptr. 384 (holding that patient stated a cause of action against a physician who had inserted an intrauterine device on the grounds that the physician, who had seen the patient only once, failed to warn her of its dangerous side effects of which he learned after its insertion). Moreover, the **California Supreme Court has recognized that at the heart of the physician-patient relationship lies the physician's right and responsibility to advocate standards pertaining to quality medical care**. *See* Rosner v. Eden Township Hospital District (1962) 58 Cal.2d 592, 598, 25 Cal.Rptr. 551 (stating, among other things, "the goal of providing high standards of medical care requires that physicians be permitted to assert their views when they feel that treatment of patients is improper or that negligent hospital practices are being followed.")

More recently, the Rosner court's recognition that physicians must be free to advocate on their patient's behalf has been extended by the courts to encompass

an affirmative legal duty, on the part of physicians, to speak up and challenge cost containment decisions which jeopardize a patient's health. In the landmark case of Wickline v. State of California (1986) 192 Cal.App.3d 1630, 239 Cal.Rptr. 810, the court strongly suggested that an injured patient is entitled to recover compensation from **all** persons responsible for the deprivation of care, including physicians and third party payors, when medically inappropriate decisions result from defects in the design or implementation of cost containment programs.

In the Wickline case, a Medi-Cal patient sued the state of California for negligence. The patient alleged that Medi-Cal's utilization procedures led to her premature dismissal from the hospital, which in turn subjected her to medical complications that necessitated the amputation of her leg. The patient was hospitalized for an arterial transplant and authorized for a ten-day stay under Medi-Cal's utilization review program. As a result of complications, the attending physician sought an eight-day extension. However, only four days were authorized at the end of which the plaintiff was discharged despite her protest. Nine days later the plaintiff was readmitted with severe complications which resulted in the amputation of her leg. The jury awarded $500,000 in damages to the plaintiff.

The appellate court reversed, finding that Medi-Cal was not liable as a matter of law for Mrs. Wickline's injuries based on the facts presented. The court stated, however, that the treating physician who complies without protest with the

limitations imposed by a third-party payor when medical judgment dictates otherwise cannot avoid ultimate responsibility for the patient's care. Id. at 1645.

Thus, notwithstanding the fact that the Court expanded the possible realm of tortfeasors in medical malpractice cases to include third party payors, the Court emphasized that its ruling did not relieve physicians of their obligations to ensure that their patients receive proper medical care by protesting decisions made by lay persons. According to the Court, if it was medically appropriate, Mrs. Wickline's physician could have and indeed "should have" made some effort to protest the denial of extra hospital days by Medi-Cal. The court recognized that although her physician may have been intimidated by the Medi-Cal program, he was neither "paralyzed" nor "powerless to act". Thus, "when the consequences of his own determinative decisions go sour", a physician "cannot point to the health care payor as the liability scapegoat." Id.

The effect of the Wickline decision is clear: It reveals judicial hostility to the argument that decisions from third parties, such as hospitals or insurance companies, should get a physician off the hook for a patient injury. Indeed, while the Court expressly recognized that "cost consciousness has become a permanent feature of the health care system," it stressed that "it is essential that cost limitation programs not be permitted to corrupt medical judgment." Id. at 1647. See also Wilson v. Blue Cross of Southern California (1990) 222 Cal.App.3d 660, 271 Cal.Rptr. 876. (review denied Oct. 11, 1990.)

It is now absolutely clear that a physician has an obligation to fight, on behalf of his or her patients, the battle for safe conditions at treatment facilities, appropriate utilization review mechanisms, adequate training of staff and the like. As the patient's advocate, the physician has a duty to attempt to modify any protocol which the physician reasonably believes would be potentially harmful.[2] This is particularly true given the fact that, with respect to their hospitalized patients, physicians are dependent on hospitals for a host of facilities and services, including but not limited to diagnostic machinery, computer-assisted tests, drugs, and medical devices. If physicians do not speak up, lay people will have unbridled and potentially uninformed discretion to decide what equipment, drugs and devices will be bought and what controls are to be imposed. Indeed, as will be discussed in greater detail below, California's long-standing prohibition on the corporate practice of medicine, Business & Professions Code §2400, has been interpreted broadly, consistent with its protective purposes to encompass "business" and "administrative" decisions which have medical implications. In Marik v. Superior Court (1987) 191 Cal.App.3d 1136, 236 Cal.Rptr. 751, for example, the court recognized that it is difficult if not impossible in the health care area to isolate "purely business" decisions from those affecting the quality of care. Notably, in holding that a provisional director of a medical corporation was

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[2] Thus, according to Wickline, the physician must utilize all reasonable avenues of appeal to modify a harmful protocol. If he or she does not, then the physician may, along with the party imposing the harmful protocol, be held liable for any resultant injuries.

required either to be a physician or other qualified licensed person, the Marik court recognized the interrelated nature of these concerns and correctly observed:

> For example, the prospective purchase of a piece of radiological equipment could be implicated by business considerations (cost, gross billings to be generated, space and employee needs), medical considerations (type of equipment needed, scope of practice, skill levels required by operators of the equipment, medical ethics) or an amalgam of factors emanating from both business and medical areas. The interfacing of these variables may also require medical training, experience, and judgment. Id. at 1140, n. 4.

In order to conform with existing law, a physician must be able to speak freely about any and all potentially unsafe conditions which exist that are under a hospital's ownership or possession. If not, the risk of harm runs not only to the physician in terms of his or her legal liability and potential professional censure, but also to the patient's physical well-being. Certainly the law does not countenance such a result.

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B. A Hospital May Not Exercise a "Without Cause" Termination Clause in an Exclusive Contract When the Termination Is in Retaliation for Physicians' Advocating for Patient Care.

Termination "without cause" clauses in exclusive contracts may not be used by a hospital to take actions that are illegal or contrary to public policy. Because contracting decisions by health care entities such as hospitals necessarily affect patient care, there are both statutory and common law restrictions on the exercise of "without cause" termination clauses by health care entities.

1. Business & Professions Code §2056 Specifically Prohibits Terminations in Retaliation for a Physician's Advocacy of Medically Appropriate Health Care for Patients.

The physicians involved in this case allege that Centinela Hospital terminated the exclusive contract for emergency services, under which the physicians worked at the hospital, in retaliation for protesting hospital policies which in the physicians' judgment had a detrimental effect on patient care. The hospital's actions, as alleged by physicians, are squarely within the prohibitions of Section 2056, which provides as follows:

> a) The purpose of this section is to provide protection against retaliation for physicians who advocate for medically appropriate health care for their patients pursuant to Wickline v. State of California 192 Cal.App.3d 1630.
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> b) It is the public policy of the State of California that a physician and surgeon be encouraged to advocate for medically appropriate health care for his or her patients. For purposes of this section, "to advocate for medically appropriate health care" means to appeal a payor's decision to deny payment for a service pursuant to the reasonable grievance or appeal procedure established by a medical group, independent practice association, preferred provider organization, foundation, hospital medical staff and governing body, or payer, or to protest a decision, policy or practice that the physician, consistent with that degree of learning and skill ordinarily possessed by reputable physicians practicing according to the applicable legal standard of care, reasonably believes impairs the physician's ability to provide medically appropriate health care to his or her patients.
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> c) The application and rendering by any person of a decision to terminate an employment or other contractual relationship with, or otherwise penalize, a physician and surgeon principally for advocating for medically appropriate health care consistent with that degree of learning and skill ordinarily possessed by reputable physicians practicing according to the applicable legal standard of care violates the public policy of this state. No person shall terminate, retaliate against, or otherwise penalize a physician and surgeon for that advocacy, nor shall any person prohibit, restrict, or in any way discourage a physician and surgeon from communicating to a patient information in furtherance of medically appropriate health care.

Section 2056 was sponsored by CMA, and enacted by the legislature to clarify existing law and to expressly state the public policy against retaliatory termination of physicians. As stated in Section 2056(a), Wickline requires that physicians advocate for medically appropriate health care for their patients. The law extends protection against retaliatory termination to physicians without regard to their status as employees. To limit the application of this law, and the public policy it declares, to employee-physicians would eviscerate the goal of protecting physicians who carry out their duty to advocate for appropriate patient care. As will be discussed in detail below, there are strict prohibitions on a hospital's ability to employ physicians, based on the very same policy enunciated in Section 2056, of preserving the physicians' right and duty to exercise professional judgment regarding patient care free from lay interference. Section 2056 expressly prohibits the type of retaliatory termination alleged by appellants in this case.

Section 2056 took effect January 1, 1994. The termination preceded this effective date by a few months. However, this court may rely on the Section 2056 prohibition because the policies and prohibition clarified existing law. When a law merely clarifies the law that was already in existence, then a question of retroactive application of law does not arise. American Psychometric Consultants, Inc. v. W.C.A.B. (1995) 36 Cal.App.4th 1626, 43 Cal.Rptr.2d 254.

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2. California Common Law Prohibits Termination "Without Cause" When Contrary to Public Policy.

Even if this court declines to apply Section 2056 directly, the public policy against retaliatory termination can be found in the common law and statutes which were in effect at the time of appellants' termination. An employment relationship having no specified term may generally be terminated at the will of either employer or employee on notice to the other. Labor Code §2922. However, there are several well-recognized exceptions to the terminable at-will doctrine embodied in Section 2922. The exception applicable to this case is the public policy exception as set forth in Tameny v. Atlantic Richfield Co. (1980) 27 Cal.3d 167, 164 Cal.Rptr. 839. In that case, the California Supreme Court ruled that an action for wrongful termination based upon public policy sounds in tort[3]. Courts have applied this exception, which limits the employer's right to dismiss an at-will employee if the termination violates a public policy, where necessary to safeguard the public interest. Tameny, *supra* (at-will employee allegedly fired because he refused to violate antitrust laws could maintain action for wrongful discharge against employer); Petermann v. International Brotherhood of Teamsters (1959) 174 Cal.App.2d 184, 344 P.2d 25 (employee alleging he had been dismissed because he refused to commit perjury, a criminal violation, supported claim that discharge was against public policy); Foley v. Interactive Data Corp. (1988) 47

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[3] *See* Levine, Judicial Backpedaling: Putting the Brakes on California's Law of Wrongful Termination, 20 Pac.L.J. 993 (1989). The California Supreme Court first adopted the public policy exception to the at-will doctrine in Tameny from the 1959 Court of Appeals decision of Petermann v. Teamsters 174 Cal.App.2d 184, 344 P.2d 25. Id. at 999-1000, which defined public policy as "that principle of law which holds that no citizen can lawfully do that which has a tendency to be injurious to the public or against the public good. . . ." Id. at 188 (quoting Safeway Stores v. Retail Clerks (1953) 41 Cal.2d 567, 575.).

Cal.3d 654, 254 Cal.Rptr. 211 (reaffirming viability of wrongful discharge action where discharge contravenes fundamental public policy); Jenkins v. Family Health Program (1989) 214 Cal.App.3d 440, 262 Cal.Rptr. 798 (upholding a nurse's ability to maintain an action for retaliatory discharge for protesting unsafe and unhealthy working conditions) and Rojo v. Kliger (1990) 52 Cal.3d 65, 276 Cal.Rptr. 130 (sex discrimination in employment may support claim of tortious discharge in contravention of public policy).

In Foley v. Interactive Data Corp. (1988) 47 Cal.3d 654, 254 Cal.Rptr. 11, the California Supreme Court upheld the principal that employment termination or discipline of an individual which violates public policy gives rise to tort liability. In doing so, the court determined that, even where the plaintiff alleges a statutory basis for the action, the proper focus is on whether there is such a "substantial," "fundamental," and "basic" public policy being implicated that a court is justified in imposing tort damages upon the employer. Id. at 669. The asserted interests also must be "public" in nature. Id. Thus, a court must also determine whether the policy "inures to the benefit of the public at large rather than to a particular employer or employee." Id.

Daniel Foley, an at-will employee, was terminated after nearly seven years of service to his employer. The event that led to Foley's discharge was a conversation in which he told a vice-president of Interactive about a current F.B.I. investigation of Foley's immediate supervisor. Foley believed that the corporation had a legitimate interest in knowing about a high executive's alleged prior

criminal conduct. Within two weeks of the conversation Foley was given the option to resign or be fired. Mr. Foley alleged that the defendant discharged him in "sharp derogation" of a substantial public policy that imposes a legal duty on employees to report relevant business information to management. Id.

The court found that whether or not there was a statutory duty requiring an employee to report information relevant to his employer's interest, there was no substantial public policy prohibiting an employer from discharging an employee for performing that duty. Id. at 670. The underpinning of the court's holding was that the "public" prong of the public policy exception was not met. That is, Foley's disclosure was only of interest to the private employer, not the public at large. "When the duty of an employee to disclose information to his employer serves only the private interest of the employer, the rationale underlying the Tameny cause of action in not implicated." Id. at 670-671.

The Foley court's rationale for its refusal to extend the public policy exception to matters which concern the private interests of the employer is critical to an understanding of when the public policy exception is implicated. In a footnote, the court explained that if an employer and an employee could agree that the employee had **no duty** to do or refrain from doing something (such as not inform the employer about another employer's adverse background), then "nothing in the state's public policy would render such an agreement void" and that it could not be "said that an employer, in discharging an employee on this basis, violates a fundamental duty imposed on all employers for the protection of

the public interest." Fn. 12 at 670. In such cases, according to the court, there is an absence of a "distinctly 'public' interest." Conversely, the court recognized that where parties may not lawfully contract to circumvent the public interest at stake, the public policy exception is implicated. Thus, fundamental to the question of whether the discharge violates public policy is whether the discharge resulted from the exercise or non- exercise of a lawful "duty" to protect the public interest. Any attempt to retaliate against individuals for exercising such a duty necessarily is against public policy and therefore falls within the exception to the at-will doctrine.

The public policy exception was further expanded by the California Supreme Court in Rojo v. Kliger (1990) 52 Cal.3d 65, 276 Cal.Rptr. 130. In that case, the female plaintiffs alleged that their refusal to accept demands for sexual favors and tolerate sexual harassment resulted in their wrongful discharge. In support of their argument, they claimed that this discharge violated California's fundamental public policy against sex discrimination in the workplace as reflected in Article I, Section 8 of the California Constitution.[4] The court agreed, holding whether or not the constitutional provision applied to private parties, it "unquestionably reflects a fundamental **public policy** against discrimination in employment - public or private - on account of sex" and therefore held that the employees stated a claim for tortious discharge in violation of public policy. Id.

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[4] That provides: "A person may not be disqualified from entering or pursuing a business, profession, vocation, or employment because of sex, race, creed, color, or national or ethic origin."

(Emphasis supplied by the court.) As is evident by the holding of the Rojo case, neither the discharge itself nor the activity in question need affect the public; rather, even where only one or two parties are concerned, discharges implicating the public interest will be remedied. Consequently, courts can and should protect under the public policy exception **individual** rights, such as the individual right to be free from sexual harassment or the right to petition for safer conditions, so long as some **public** policy is at stake.

Finally, the Rojo court refused to limit the public policy exception to situations in which the employer coerces the employee to commit an act that violates public policy or restrains the individual from exercising a fundamental right, privilege or obligation. Id. at 46. Rather, the court emphasized that a wrongful discharge exists where "the basis for the discharge contravenes a fundamental public policy." Id.

The right of an employee to sue an employer for wrongful discharge when termination is alleged to be in violation of public policy was most recently discussed by the California Supreme Court in Gantt v. Sentry Insurance (1992) 1 Cal.4th 1105, 4 Cal.Rptr.2d 874. The court reiterated the established California law, stating ". . .while an at-will employee may be terminated for no reason, or for an arbitrary or irrational reason, there can be no right to terminate for an unlawful reason or a purpose that contravenes fundamental public policy." Id. at 1094. After reviewing cases from California and other jurisdictions, the court stated in dicta that "[a] public policy exception carefully tethered to fundamental policies

that are delineated in constitutional or statutory provisions strikes the proper balance among the interests of employers, employees and the public." Id. at 1095.[5] This statement was not necessary for the holding of Gantt, because the court found a statutory statement of public policy which was violated by the discharge at issue in the case. The California Fair Employment and Hearing Act specifically enjoins the obstruction of a Department of Fair Employment and Hearing investigation. Thus, an attempt to induce an employee to lie to a DFEH investigator is against public policy. Id. at 1097.

This court applied the requirements set out in Gantt to a claim for wrongful discharge in violation of public policy in Gould v. Maryland Sound Industries, Inc. (1995) 31 Cal.App.4th 1137, 37 Cal.Rptr.2d 718. Gould brought two causes of action. He alleged first, that his discharge was to avoid paying him commissions and vacation pay, and second, that his discharge was in retaliation for reporting to management that his employer failed to pay overtime wages to other employees. The court held that both claims stated a cause of action for wrongful discharge in violation of public policy.

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[5] As the Gantt court noted in its review of decisions from California and other states, "courts which have addressed the issue appear to be divided over whether nonlegislative sources may ever provide the basis of a public policy claim." Id at 1091. Courts in other states which have considered the Gantt opinion have not always followed the conclusion of the California Supreme Court in Gantt. In New Mexico, the Court of Appeals held that the judiciary as well as the legislature is an appropriate source of public policy. Gutierrez v. Sundancer Indian Jewelry, Inc. (1993) 117 N.M. 41, 47, 868 P.2d 1266, cert. den. February 4, 1994. (employee's allegations that he was discharged in retaliation for requesting investigation of chemical usage and employee health problems at defendant's workplace stated common-law cause of action for wrongful discharge.) The Colorado Supreme Court also considered Gantt, and held that public policy for purposes of a wrongful discharge action may be found in sources beyond legislation or the constitution, such as professional ethical codes. Rocky Mountain Hospital and Medical Service v. Mariani (1996) 916 P.2d 519. (accountant's allegation that employer asked her to violate Colorado State Board of Accounting Rules of Professional Conduct stated a claim for wrongful discharge in violation of public policy.)

In determining the merits of Gould's first claim that prompt payment of wages is a fundamental public policy, this court looked to both statutory provisions and case law. The Labor Code requires employers to pay wages promptly after discharge of an employee. Case law states that full and prompt payment is a public policy, and essential to the public welfare.

Statute and case law also guided this court in determining that the alleged discharge in retaliation for reporting violations of overtime wage laws violated a fundamental public policy. The Labor Code requires payment of overtime wages. This court looked to case law to support the broader proposition that wage and hour laws concern the public health and general welfare.

Drs. Fenton and Wagener, like Mr. Gould, allege a retaliatory termination for reporting conditions that were detrimental to the public. The termination of these physicians meets the standard set in Gantt, in that it violates public policy, which is fundamental, and is delineated in statutory provisions. Case law also states that it is a fundamental public policy of the state that physicians be encouraged to advocate for quality patient care.

Business & Professions Code §2056 dispels any doubt a court may have had after Gantt that retaliatory termination of a physician for advocating for patients violates public policy delineated in constitutional or statutory provisions. Even without Section 2056, there is ample statutory and case law support for Drs. Fenton and Wageners' cause of action for wrongful termination in violation of public policy. As will be discussed in detail below, this public policy stated in

Section 2056 was not new in 1994. The public policy that physicians are responsible for promoting quality patient care is clearly stated in the statutory responsibility given to a hospital's medical staff, the corporate practice of medicine bar, and peer review laws.

3. California Statutory and Regulatory Law In Effect Prior to Business & Professions Code §2056 Establish the Public Policy That Physicians Must Advocate For Compliance With Medical Standards, Free From Lay Interference.

The public policy in favor of health care professionals actively encouraging qualified health care was widely accepted and firmly established by the California Legislature, prior to the enactment of Business & Professions Code §2056.

a. Statutes Mandating Medical Staff Control Over the Provision of Health Care.

California's laws govern the performance of all health care, including the performance of professional work within California's hospitals. In order to promote quality patient care, medical staffs and their physician members are required to perform both direct patient care activities and the ongoing review, evaluation, and monitoring functions of the care rendered. Thus, members of a hospital's staff are responsible for possessing, securing, and implementing the professional expertise necessary to assure the delivery of quality care.

First, each physician member of the medical staff is responsible for overseeing the general medical condition of every patient that the physician admits to the hospital. *See e.g.* 22 California Code of Regulations §70703(a) (physician responsible for adequacy and quality of medical care rendered to patients in

hospital). Indeed, the standards established by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), the private association which accredits hospitals nationwide, require that physicians perform "an appropriate physical examination" on all hospitalized patients and that physicians be responsible for "management of a patient's general medical condition." Joint Commission, Hospital Accreditation Standards Accreditation Manual for Hospitals, p. 112, Medical Staff Standards M.S.6.1, M.S.6.5 (1997).[6]

Aside from the responsibility of medical staff members to patients, both the medical staff and its members are responsible for credentialing, that is, assuring the initial and ongoing competence of every physician, dentist, podiatrist, and some in cases clinical psychologist who practices in the hospital. See generally Unterthiner v. Desert Hospital District (1983) 33 Cal.3d 285, 188 Cal.Rptr. 590. In light of the medical staff's expertise in the credentialing area, the Department of Health Services (DHS) specifically requires that the medical staff, and not the hospital, establish peer review in credentialing procedures. 22 C.C.R. §70701(a)(7). Thus, it is the medical staff which enforces those procedures and makes recommendations as appropriate. 22 C.C.R. §70703.

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[6] This Court may properly take judicial notice of the JCAHO Standards pursuant to Evidence Code Section 452(h). *See* Anton v. San Antonio Community Hospital (1977) 19 Cal.3d 802, 819, 140 Cal.Rptr. 442. Moreover, it should be noted that institutions accredited as hospitals by the JCAHO are generally deemed to meet all of the Medicare conditions of participation. *See* 42 U.S.C. §1395bb(a)(1); 42 C.F.R. §488.5. *See also* Health & Safety Code §1282 (authorizing quality of care inspections of hospitals by the JCAHO). Finally, there is no doubt that hospitals must, as a practical matter, obtain accreditation. *See, e.g.* Hall, Institutional Control of Physician Behavior: Legal Barriers to Health Care Cost Containment (1989) 137 U.Pa.L.Rev. 431, n. 366. The importance of JCAHO as a hospital accreditation organization was recognized in Medi-Cal regulations effective in 1970, Title 22, section 51207 (Register 70, No. 40-9-30-72).

To properly perform these vital quality of care functions, California law requires that medical staffs retain their separate identity and be self-governing. *See* Business and Professions Code §2282, Health & Safety Code §1250(a) and 22 C.C.R. §§70701 and 70703. Thus, California law prohibits the practice of medicine by physicians and the licensure of hospitals unless the medical staff is "self-governing with respect to the professional work performed." Id.[7] This carefully crafted scheme ensures that medical staffs and their members independently exercise their professional expertise and advocate quality patient standards with respect to the professional work performed in the hospital. This law plainly does not countenance unlawful intrusions, such as retaliatory efforts against physicians, into matters which are exclusively within the medical staff's (and its physician members') proper domain.

b. Statutes Prohibiting Lay Control Over the Practice of Medicine.

The mandate that medical staffs be self-governing and therefore independent with respect to the professional work performed in a hospital derives from California law generally prohibiting lay persons from exercising control or otherwise interfering with the professional judgment of physicians and other health care professionals. This prohibition, known as the "Corporate Practice of

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[7] Joint Commission Standards mirror California law as they clearly mandate that organized medical staffs be responsible for the control and provision of professional services provided at the hospital. *See* Medical Staff Standards 1, 2 and 3.

Medicine Bar" is designed to protect the public from possible abuses stemming from the commercial exploitation of the practice of medicine.

This general prohibition is codified in Business and Professions Code §2400 (initially enacted in 1937 as Business and Professions Code §2008), a provision which denies corporations and other artificial legal entities professional rights, privileges or powers pursuant to California's Medical Practice Act. (Business and Professions Code §2000 et seq.) The proscription provides a fundamental protection against the potential that the provision of medical care and treatment will be subject to commercial exploitation. The bar ensures that those who make decisions which affect, generally or indirectly, the provision of medical services (1) understand the quality of care implications of those decisions; (2) have a professional ethical obligation to place the patient's interests foremost; and (3) are subject to the full panoply of the enforcement powers of the Medical Board of California, the state agency which charged with the administration of the Medical Practice Act.[8]

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[8] The strength of California law against permitting lay persons to practice medicine or exercise any form of control over mec practice cannot be questioned. *See e.g.* Business and Professions Code §§2052, 2400, 2408, 2409; Corporations Code §§13400 et seq. Parker v. Board of Dental Examiners (1932) 216 Cal. 285, rehearing denied, Sept. 28, 1932 (lay persons may not serve as director professional corporations); Pacific Employers Ins. Co. v. Carpenter (1935) 10 Cal. App. 2d 592, 594-596 (holding that for-profit corpora may not engage in business of providing medical services and stating that"professions are not open to commercial exploitation as it is said t against public policy to permit a 'middle-man' to intervene for a profit in establishing a professional relationship between members of professions and the members of the public"); Benjamin Franklin Life Assurance Co. v. Mitchell (1936) 14 Cal. App. 2d 645, 657 (sa People v. Pacific Health Corp. (1938) 12 Cal. App. 2d 156, 158-159 (same); Complete Service Bureau v. San Diego Medical Society (1954 Cal. 2d 201, 211 (non-profit corporations may secure low cost medical services for their members only if they do not interfere with the mec practice of the associated physician); California Physician Service v. Garrison (1946) 28 Cal. 2d 790 (same); Blank v. Palo Alto-Stan Hospital Center (1965) 234 Cal. App. 2d 377, 390 (non-profit hospital may employ radiologist only if the hospital does not interfere with radiologists' practice of medicine); Letsch v. Northern San Diego County Hospital District (1966) 246 Cal. App. 2d 673, 677 (district hos may contract with radiologists under restriction imposed in Blank above); California Association of Dispensing Opticians v. Pearle Vi Center, Inc. (1983) 143 Cal. App. 3d 419, 427 (Pearle Vision Center Inc.'s franchise program violates California's prohibition against corporate practice of medicine); Marik v. Superior Court (1987) 191 Cal.App.3d 1136, 236 Cal.Rptr. 751 (a provisional director of a mec

Concerns which gave rise to the longstanding proscription against the corporate practice of medicine apply with even greater urgency at the present time. There have been profound changes in the financing of both governmental and private health care delivery systems in the last few years. Increasing competition, as well as cost consciousness on the part of both public and private payors, have created an environment rife with potential for jeopardy to quality patient care.

Managed care has had a profound effect on hospitals, with hospitals merging, closing or decreasing in size in response to financial pressures. Health care that was performed in hospitals over the past few decades is now being performed increasingly in outpatient settings. Robinson, Decline in Hospital Utilization and Cost Inflation Under Managed Care in California (1996) 276 J.A.M.A. 1060.

The financial pressures that are changing the role of hospitals are also creating pressures on physicians and their traditional role as advocates for patient care. Kassirer, Managed Care and the Morality of the Marketplace (1995) 333 N. Engl. J. Med. 50. "Market-driven care is likely to alienate physicians, undermine patients' trust of physicians' motives, cripple academic medical centers, handicap

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corporation must be either a physician or other qualified licensed person); Conrad v. M.B.C. (1996) 48 Cal.App.4th 1038, 55 Cal.Rptr.2d (local hospital district may not employee physicians, but may only contract with physicians as independent contractors); 65 Cal. Op. Atty. ((1982) (general business corporation may not lawfully engage licensed physicians to treat employees even though physicians ac independent contractors and not as employees); 63 Cal. Op. Atty. Gen. 729, 732 (1980) (for-profit corporation may not engage in the prac of medicine directly nor may it hire physicians to perform professional services); 57 Cal. Op. Atty. Gen. 213, 234 (1974) (only professi corporations are authorized to practice medicine); 55 Cal. Op. Atty. Gen. 103 (1972) (hospital may not control the practice of medicine).

the research establishment, and expand the population of patients without health care coverage." Id. at 50.

Under these circumstances, courts should be especially solicitous of patient welfare and especially leery of retaliatory actions against physicians based upon the latter's lawful right and duty to control a patient's medical treatment.

c. Statutory Protections Further Demonstrate the Importance of Speaking Out Against Substandard Conditions.

There are a number of statutory protections which limit a physician's liability for "whistle blowing," that is, reporting instances of substandard medical care. These statutes reflect California's public policy to promote the quality of health care afforded in this state by encouraging physicians and other individuals to report candidly and without fear of retaliation, what they perceive to be instances of substandard care. For example, Civil Code §43.8 provides an absolute immunity to any physician or other person

> ". . . on account of the communication of information in the possession of such person to any hospital, hospital medical staff, [etc., listing bodies charged with the responsibility for monitoring and improving the quality of health care] when such communication is intended to aid in the evaluation of the qualifications, fitness, character, or insurability of a practitioner of the healing or veterinary arts. . ."

California law also provides immunity for physicians and other individuals who are required to make reports under a number of reporting statutes. See e.g., Penal Code §11172(a) (child abuse reporting); Welfare & Institutions Code §15634 (elder abuse reporting); Penal Code §11161.9 (domestic and other

violence reporting); Health & Safety Code §100330 (cancer reporting); Penal Code §11161.8 (reporting of injuries resulting from neglect or abuse in health facility).

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4. Prohibition Against Termination in Violation of Public Policy Is Not Limited to the Employer-Employee Situation.

The statutes and common law which establish the physician's duty to advocate for patients do not limit this requirement to physicians who are employees. Section 2056 is not limited to cases involving employment status. California law imposes strict limitations on employment of physicians by non-physicians, inextricably related to the public policy of encouraging physicians to exercise their independent judgment in the best interests of their patients. Because of these limitations, limiting a cause of action for retaliatory termination to employees, and excluding independent contractors, would make no sense in the health care arena.

Abrahamson v. NME Hospitals, Inc. (1987) 195 Cal.App.3d 1325, 241 Cal.Rptr. 396, does not compel a different result. In that case, a court of appeal summarily rejected a physician's claim that his termination pursuant to a "without cause" provision in an exclusive contract was in violation of an implied covenant of good faith and fair dealing. The physician argued in only general terms that the termination was because he would not agree to "the hospital's failure to provide patient care and to require staff physicians to practice good medicine." The court

refused to extend Tameny and subsequent cases to this independent contractor arrangement. The court stated that "unlike employment cases, Abrahamson is in the position of the lessee of an oil station under a three-year lease in Witt v. Union Oil Company (1979) 99 Cal.App.3d 435." With no discussion of how the public policy issues in a hospital arrangement might distinguish this case from the general commercial contract of an oil station lessee, or any discussion of the facts in Witt,[9] the court refused to attach any further conditions to the physician's contract with the hospital.

Harris v. Atlantic Richfield Co. (1993) 14 Cal.App.4th 70, 17 Cal.Rptr.2d 649 is also not controlling. Harris is discussed in detail in the Appellants' opening brief. We concur in that thorough analysis. Harris should not preclude this court from allowing Drs. Fenton and Wagener to bring a cause of action for wrongful discharge in violation of public policy. Physicians working in a hospital as independent contractors under an exclusive contract cannot be considered equivalent to the plaintiffs in Harris, who were holders of a franchise agreement for an ARCO service station. The public policy concerns in this case require the logical extension of Tameny that the Harris court recognized as possible.

Other courts have carefully considered the issue of termination "without cause" in the health care field, and have extended the employee's common law

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[9] Witt is also a completely different case from the case before this court. Witt, a pre-Tameny case, involved a service station lease which terminated automatically on its own terms. The lessee was unable to convince the court that there was any duty to *renew* the lease.

right to be free from arbitrary or unlawful expulsion to independent contractors in the managed care arena.

In Delta Dental Plan v. Banasky (1994) 27 Cal.App.4th 1598, 33 Cal.Rptr.2d 381, a health plan's agreement with participating dentists allowed the plan to make unilateral decisions regarding fees to be paid to the dentists for their services, without arbitration or judicial review. The court held that the plan's modification of the fee schedule implicated a right to fair procedure, because of the plan's control over substantial economic interests of the dentists.

Delta Dental is notable for the court's willingness to extend additional rights to health care providers, beyond those specifically granted in contracts with health care entities. The Delta Dental court properly did what the Abrahamson court failed to do, to apply further conditions of fairness

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to independent contractor agreements to provide medical services between physicians and lay entities.

The New Hampshire Supreme Court recently decided that public interests and basic fairness require that a health maintenance organization's (HMO) decision to terminate a physician must be made in good faith and not for reasons that are contrary to public policy. Harper v. Healthsource NH, Inc. (N.H. 1996) 674 A.2d 962. This case is exemplary not just for the issue decided, but for the court's careful analysis of public policy consideration.

The court recognized that Dr. Harper was not an employee of the HMO, and also that he was not really an independent contractor in the traditional employment law sense. The Harper court looked beyond the Abrahamson court's erroneous conclusion that the physician is just like an oil station lessee.

According to the Harper court, in the health care arena, public policy concerns must be considered. "'[T]he public has a substantial interest in the operation of private hospitals and . . . of necessity in the public interest some measure of control by the courts is called for.'" quoting Bricker v. Sceva Speare Hosp. 111 N.H. 276, 279, 281 A.2d 589, 592, cert. denied (1971) 404 U.S. 995. The termination of Dr. Harper affected more than just the physician's interests. The critical patient care ramifications of the HMO's decision to terminate Dr. Harper required judicial review of the allegations of retaliatory termination. If a physician believes that the HMO's decision was made in bad faith or based on a reason that was contrary to public policy, such as physician advocacy for quality patient care, then the physician is entitled to review of that decision. Dr. Harper was entitled to a court hearing on the question of whether or not his termination was in fact based on his efforts to correct patient records he believed were being manipulated by the HMO.

Recent cases have shown the willingness of courts to protect physicians and the public from terminations which are arbitrary or contrary to public policy. For example, in Watassek v. Michigan Department of Mental Health (Mich. 1985) 372 N.W.2d 617, a former employee filed suit against the Department of Mental

Health alleging that he was terminated from his nursing position at a mental health facility in retaliation for his reporting incidents of patient abuse to his superior. The court held that the former employee stated a cause of action upon which relief could be granted. Id. at 621.

In addition, the Kansas Supreme Court held in Palmer v. Brown (Kan. 1988) 752 P.2d 685, that the termination of a medical technician in retaliation for good faith reporting of infractions of rules, regulations, or laws pertaining to public health, safety and general welfare by the employer to either company management or law enforcement officials is an actionable tort. Id. at 689-690. The Court declared that it was the public policy of Kansas to encourage citizens to report an infraction of law pertaining to public health. Id. at 685. The court also noted that the "whistle-blowing" must have been done out of a good faith concern for the wrongful activity reported rather than from a corrupt motive such as malice, spite, or personal gain. Id. at 686. See also Boyle v. Vista Eyewear, Inc. (Mo. 1985) 700 S.W.2d 859 (holding that an employee of an optical manufacturing company who complained to superiors, OSHA, and FDA concerning inferior manufacturing practices which could result in eye injuries properly stated a cause of action for wrongful discharge based on public policy in light of the fact that the jury could find that her discharge was "in retaliation for her resistance to the defendant's illegal practices and directives for filing complaints with OSHA and the FDA".)

Federal law similarly ensures that physicians and other health care workers are provided redress to address their grievances concerning retaliatory efforts made by employers and/or health facilities as a result of legitimate protests. It is well settled that speech concerning the quality of care provided to patients is a matter of public concern and should be afforded heightened First Amendment protection. For example, the Ninth Circuit held in Roth v. Veterans Administration of the Government of the United States (9th Cir. 1988) 856 F.2d 1401 that physicians who work for the government may not be retaliated against as a result of their exercising their First Amendment rights as "whistle-blowers" by reporting problems affecting the delivery of health care. Moreover, federal courts routinely permit Bivens actions by physicians charging that they were victims of retaliatory acts for speaking out against what is perceived to be the patient abuse and other improper medical treatment. McAnaw v. Custis (1982 U.S.D.C. D. Kan.) 28 Fair Emp.Prac.Cas. 218; 29 Emp.Prac.D.C. (CCH) paragraph 32778 (granting physician's motion for a Temporary Restraining Order enjoining her transfer to another hospital, in retaliation for speaking out about improper medical treatment). *See also* Cohen v. County of Cook (N.D.Ill. 1988) 677 F.Supp. 547 (physician charging that he was injured in retaliation for his participation in protest against certain hospital policies granted preliminary injunction pursuant to 42 U.S.C. 1983 requiring hospital to process the physician's application to become the attending physician in the Division of Pulmonary Medicine).

In addition to the express language of Business & Professions Code §2056, there is ample statutory, regulatory, and common law basis to allow appellants in this case to pursue their claim against Centinela Hospital for termination in violation of the public policy. Physicians who are independent contractors have the same duty to advocate for quality patient care as physicians who are employees. It would be a grave injustice to both physicians and patients to limit a cause of action for retaliatory termination to employee-physicians.

C. A Hospital May Not Terminate an Exclusive Contract Without Involvement of the Medical Staff in the Termination Decision.

Centinela Hospital's decision to terminate the exclusive contract for emergency services at the hospital involved quality of patient care issues. Because patient care decisions must be made by physicians, not corporations, the medical staff of the hospital must be consulted before a hospital makes a decision to terminate an exclusive contract.

1. California Law Requires That Physicians Be Responsible for Quality of Patient Care.

As discussed in detail above, California's statutory scheme governing health care provides that lay individuals, organizations and corporations are prohibited from practicing medicine. Business & Professions Code §2400. Hospitals must have self-governing medical staffs. Health & Safety Code §1250(a); Business & Professions Code §2282. Quality of patient care is the responsibility of the physicians who make up the hospital's medical staff. A

decision to terminate an exclusive contract involves patient care concerns and must include medical staff involvement.[10]

2. CMA Policy, Set Out in the CMA Model Medical Staff Bylaws, Requires That the Medical Staff Be Involved in the Hospital's Decision to Terminate an Exclusive Contract for Medical Services.

CMA has carefully considered the question of exclusive contracting for hospital-based services. This policy is incorporated into the CMA Model Medical Staff Bylaws, which are, in pertinent part, attached. The philosophy supporting these Bylaws is as follows. The medical staff must be involved in evaluating the propriety of granting, transferring or terminating an exclusive contract. As these decisions raise quality of care issues, the medical staff must be involved to ensure a proper assessment is made. This conclusion is compelled by both the law and public policy. California law has long prohibited lay individuals, organizations and corporations from practicing medicine. See Business & Professions Code §§2052, 2400. As discussed in detail above, the proscription against the corporate

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[10] The importance of medical staff involvement is amply demonstrated by the facts of prior California cases which found exclusive contracts to be justified. *See, e.g.,* Mateo-Woodburn v. Fresno Comm. Ctr. (1990) 221 Cal.App.3d 1169, 270 Cal.Rptr. 894 (initial recommendation for closed staff made by medical staff, investigatory task force established, notice-and-comment hearing held at which 15 medical staff members provided comment); Lewin v. St. Joseph Hospital of Orange (1978) 82 Cal.App.3d 368, 146 Cal.Rptr. 892 (medical staff recommended continued closure of department at time of physician application for privileges, medical staff conducted two notice-and-comment hearings to determine need for continued closure, and recommended continued closure); Redding v. St. Francis Med. Ctr. (1989) 208 Cal.App.3d 98, 255 Cal.Rptr. 806 (proposal to close department was openly discussed for two years in light of quality concerns and physicians to be directly affected were offered the contract); Centano v. Roseville Comm. Hosp. (1979) 107 Cal.App.3d 62, 167 Cal.Rptr. 183 (terms of the exclusive contract previously held by plaintiff's group required that hospital consult with medical staff executive committee prior to terminating agreement, decision to enter into exclusive contract made only after a number of meetings with interested persons, including affected medical staff members).

practice of medicine protects against the potential that the provision of medical care and treatment will be subject to commercial exploitation. Thus, pursuant to the corporate practice bar, only medical staffs can make the determination as to whether or not granting, transferring or terminating an exclusive contract effects the quality of care.

Moreover, California hospitals are required to have "self-governing medical staffs as a condition of licensure." Business & Professions Code §2282, Health & Safety Code §1250(a), 22 C.C.R. §§70701 and 70703. The mission of the organized self-governing medical staff is to improve quality care. An organized, self-governing medical staff has the right and responsibility by law to establish and enforce professional standards in the hospital. While the hospital administration must be concerned with the quality of care and has certain oversight responsibilities, maintaining and improving the quality of care are medical staff responsibilities, which only the medical staff may perform.

Applying CMA policy to this case, Centinela's right to terminate an exclusive contract "without cause" must be tempered by the requirements that the decision be fair and reasonable, and in the best interest of patients. Medical staff involvement is essential to ensure that quality of care concerns are properly considered. The emergency department physicians have raised serious complaints about the quality of patient care provided under the Centinela Hospital policies. To allow Centinela Hospital to terminate the exclusive contract for emergency services without any review by the medical staff or by a court of the affect of

termination on patient care flies in the face of the carefully considered policy of the California Medical Association, as well as the law of California.[11]

The emergency department physicians' patient care concerns should have been addressed by the hospital consulting with the medical staff in the decision to terminate the exclusive contract. Because this critical step was not taken, it is now necessary for this court to require a review of the patient care issues raised by the physicians. Far from bringing a frivolous claim, the physicians in this case raise important issues regarding the safeguarding of quality health care for patients in California.

III. CONCLUSION

Neither law nor public policy tolerates retaliation against physicians who advocate for appropriate medical care for their patients and protest policies which undermine quality health care. The physician-patient relationship, and the advocacy role of physicians are critically important to the provision of high quality medical care, and to the health and safety of the public. Hospitals must not be permitted to retaliate against physicians who exercise their duty to advocate for their patients. If such retaliation occurs, physicians must be given the right to judicial redress. Any contrary conclusion jeopardizes public health and safety.

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[11] See also the California Medical Association and California Association of Hospitals and Health Systems (now California Healthcare Association) "Joint Statement on Economic Credentialing and Exclusive Contracting" (January 1992) which recognizes the importance of medical staff involvement in decisions concerning exclusive contracts.

For the foregoing reasons, we urge this court to reverse the judgment granting summary judgment in favor of Respondent Centinela Hospital, and to reverse this case for trial.

DATE: June 27, 2007

Respectfully submitted,

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