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17 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
18 COUNTY OF LOS ANGELES, EAST DISTRICT

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21 BEN SHWACHMAN, MD,

22 Plaintiff,

23 v.

24 INTER-COMMUNITY MEDICAL  
25 CENTER, INC., a corporation,  
26 MAUREEN O'CONNOR, EAST  
27 VALLEY ANESTHESIA MEDICAL  
28 GROUP, INC., a corporation,  
MERLYN C. DURKSEN, MD, and  
DOES 1 through 20, inclusive,

Defendants.

) Case No. KC 010540

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**INFORMATIONAL MEMORANDUM  
OF POINTS AND AUTHORITIES OF  
AMICI CURIAE CALIFORNIA  
MEDICAL ASSOCIATION and  
AMERICAN MEDICAL  
ASSOCIATION ON ISSUE OF  
MEDICAL STAFF BYLAWS AS  
CONTRACT**

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1 I. INTEREST OF AMICI

2 Amici, the California Medical Association (“CMA”) and the American Medical Association  
3 (“AMA”), collectively represent over 318,000 physicians throughout California and the nation. Both  
4 organizations have very active Hospital Medical Staff Sections, through which the interests and  
5 concerns of physicians as hospital medical staff members are addressed. An issue of profound  
6 importance over many years has been the development, interpretation, and implementation of medical  
7 staff bylaws, which are recognized by both hospitals and medical staffs to be an essential document,  
8 through which the organizational framework and functioning of the medical staff vis-a-vis its  
9 individual members and the hospital and its administration are established. Inevitably in any dispute  
10 between a hospital and its medical staff, the medical staff bylaws and their interpretation play a  
11 pivotal role. Clearly, hospitals and their medical staffs recognize the importance of this document and  
12 have relied heavily upon it in memorializing their concomitant expectations and responsibilities.  
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16 Amici have not reviewed the complete record in this case and are not in a position, at this  
17 time, to file a brief in support of either party in this particular dispute. Rather, Amici seek only to  
18 address the legal issue of whether the medical staff bylaws constitute a binding agreement between  
19 the medical staff (and its individual members) and the hospital, as is further discussed below.  
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21 II. MEDICAL STAFF BYLAWS AS CONTRACT

22 Once medical staff bylaws have been adopted by a medical staff and approved by the hospital  
23 governing body, the bylaws are a contract between the medical staff and the governing body, which is  
24 binding upon both. This conclusion is mandated by an analysis of the nature of the relationship  
25 between the medical staff and hospital, the essential role played by the medical staff bylaws in  
26 facilitating that relationship, and recognition of the fact that, to hold that medical staff bylaws are not  
27 binding would render them meaningless and would completely undermine the critically important  
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1 relationship between the hospital and medical staff. Indeed, the California Supreme Court has  
2 recognized the contractual nature of medical staff bylaws. See Westlake Comm. Hosp. v. Superior  
3 Court (1976) 17 Cal.3d 465, 479 discussed *supra*.  
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5 **A. Nature of the Relationship Between the Hospital and Medical Staff.**

6 In order to understand any dispute between a hospital and medical staff, it is necessary to  
7 understand the nature of the relationship between them. Hospitals are generally organized as  
8 corporations (whether non-profit or for-profit) and, as such, are subject to all state laws governing  
9 those entities. In contrast, the medical staff is typically an unincorporated association of  
10 independently practicing practitioners, the vast majority of whom are physicians who maintain full-  
11 time medical practices in private offices outside the hospital. The amount of time that individual  
12 physicians spend at a given hospital will vary greatly, depending partly upon a physician's specialty  
13 and his or her affiliations with other hospitals. The purpose of the medical staff as an organization is,  
14 in part, to structure the relationship of these independently practicing physicians with respect to care  
15 they provide to their patients in the hospital setting. Another purpose of the medical staff is to  
16 provide a vehicle through which individual medical staff members may collectively work with the  
17 hospital in order to provide optimal patient care.  
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21 The relationship between the hospital and medical staff is therefore a symbiosis of two  
22 independent entities who engage in activities of mutual support, in the interest of patient care. The  
23 hospital provides the facilities, equipment and other support (e.g. nursing and administrative staff)  
24 and the physicians supply the patients and professional expertise. Without physicians to admit  
25 patients and engage in quality assessment activities, the hospital would be out of business. Without a  
26 hospital organization, it would be difficult if not impossible, for physicians to provide the requisite  
27 level of acute care to their seriously ill patients.  
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1           As a corporation, a hospital has all rights pertaining to such entities, including the right to  
2 enter into contractual relationships and to sue and be sued. As an unincorporated association, the  
3 medical staff also has these legal rights. The California Supreme Court has expressly recognized this  
4 legal status of the medical staff. See Anton v. San Antonio Community Hospital (1977) 19 Cal.3d  
5 802, 809; 140 Cal.Rptr. 442 (defining a medical staff as “an unincorporated association organized  
6 under the auspices of the hospitals Board of Directors”). Under California law, an unincorporated  
7 association has enforceable legal rights pertaining to its business and other undertakings. See  
8 California Code of Civil Procedure, Section 388. See also St. John’s Hospital Medical Staff v. St.  
9 John’s Regional Medical Center (1976) 245 N. W. 2d 472 (holding that the medical staff was a proper  
10 party to bring an action for declaration of rights and duties under the medical staff bylaws).

11           The fact that a medical staff may be under the auspices of the hospital’s board of directors  
12 does not deprive it of its status as a separately recognizable entity. Organizations of all types are  
13 subject to varying degrees of control, ranging from requirements imposed by federal and state law to  
14 operational limitations imposed by parent corporations or associations. Nevertheless, both California  
15 and federal courts have recognized the separate legal status of unincorporated associations subject to  
16 at least the measure of control exercised by a hospital’s governing body over the medical staff. See,  
17 e.g., Killeen v. Hotel and Restaurant Employees, etc. League (1948) 84 Cal. App. 2d 87 (recognizing  
18 independent legal existence of local union even though it was bound by bylaws and constitution of  
19 parent association); Associated Students of University of California Riverside v. Kleindist (C.D. Cal.  
20 1973) 60 FRD 65 (student organization is not a mere sub-unit of the Regents of the University of  
21 California). Under California law, all that is required for a determination of separate legal status is  
22 “(1) a group whose members share a common purpose, and (2) who function under a common name  
23 under circumstances where fairness requires the group be recognized as a legal entity.” Barr v. Union

1 Methodist Church (1979) 90 Cal. App. 3d 259, 153 Cal.Rptr. 322; Corporations Code §§ 24000,  
2 20001, 21000.

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4 **B. The Critical Role of the Medical Staff Bylaws**

5 Because the medical care provided to patients is a matter of grave public concern, both  
6 hospitals and physicians are subject to a plenitude of state and federal requirements governing all  
7 aspects of patient care. With respect to acute care provided in hospitals, both hospitals and physicians  
8 who practice in them are subject to laws and regulations which require, among other things, a formal  
9 medical staff organization, charged with specific responsibilities. Notably, a “general acute care  
10 hospital” is defined under California law as a health facility having “an organized medical staff” (Cal.  
11 Health & Safety Code § 1250(a)). Hospital licensure regulations expand upon this requirement. For  
12 example, the governing body of a hospital must:  
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14

15 (1) Adopt written bylaws in accordance with legal requirements and its community  
16 responsibility which shall include but not be limited to provision for:

17 \* \* \*

18 (D) Formal organization of the medical staff with appropriate officers  
19 and bylaws.

20 \* \* \*

21 (F) Self-government by the medical staff with respect to the  
22 professional work performed in the hospital, periodic meetings of the  
23 medical staff to review and analyze at regular intervals their clinical  
24 experience and requirement that the medical records of the patient shall  
25 be the basis for such review and analysis.

26 \* \* \*

27 (7) Require that the medical staff establish controls that are designed to ensure the  
28 achievement and maintenance of high standards of professional ethical practices  
including provision that all members of the medical staff be required to demonstrate

1 their ability to perform surgical and/or other procedures competently and to the  
2 satisfaction of an appropriate committee or committees of the staff, at the time of  
3 original application for appointment to the staff and at least every two years thereafter.

4 [Emphasis added].

5 Similarly, California's Medical Practice Act states that physicians will be subject to discipline  
6 for unprofessional conduct if they practice medicine in a hospital that does not have rules providing  
7 for at least the following:  
8

9 1. [T]he organization of physicians and surgeons licensed to practice in this state who  
10 are permitted to practice in the hospital into a formal medical staff with appropriate  
11 officers and bylaws . . .

12 2. [T]hat membership on the medical staff shall be restricted to physicians and  
13 surgeons and other licensed practitioners competent in their respective fields . . . and

14 3. [T]hat the medical staff shall be self-governing with respect to the professional work  
15 performed in the hospital . . . (Emphasis added) (Cal. Bus. & Profs. Code § 2282).

16 These laws and regulations stem from governmental recognition that only licensed physicians  
17 have the training and expertise necessary to assess the credentials of their peers, monitor the care  
18 provided by their peers, and act accordingly to ensure that patient health is protected. The Legislature  
19 also recognized that these essential activities could only be performed within a formal organization  
20 comprised of the individual physicians practicing in a hospital. The medical staff bylaws, therefore,  
21 serve as the fundamental organizational document. In essence, the bylaws serve a two-fold purpose.  
22 With respect to the medical staff and its members, the bylaws define the structure of the medical staff,  
23 and the rights and obligations (vis-a-vis the medical staff and hospital) of the individuals within it.  
24 With respect to the hospital, the medical staff bylaws in addition provide the hospital with evidence of  
25 an organized medical staff and a mechanism to ensure that the medical staff will function in a manner  
26 which will allow the hospital to fulfill its licensure requirements.  
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1           The California requirement for a self-governing organized medical staff in hospitals is greatly  
2 expanded upon in standards promulgated by the Joint Commission on Accreditation of Healthcare  
3 Organizations (“JCAHO”), a private entity which accredits hospitals nationwide. Although  
4 accreditation in California is voluntary, the vast majority of hospitals choose to be accredited for  
5 many reasons, including that the federal government treats any hospital which is accredited by  
6 JCAHO as being deemed to meet the conditions necessary for a hospital to participate in the Medicare  
7 program. As almost all hospitals are highly dependent on revenues gleaned from its treatment of  
8 Medicare patients, it is extremely desirable to hospitals to be accredited.  
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11           The JCAHO requirements for an organized medical staff and its quality assessment activities  
12 are numerous and detailed. *See* JCAHO’s 1992 Accreditation Manual for Hospitals, which has a 19  
13 page chapter, setting forth standards governing the medical staff, including six primary standards and  
14 more than 200 subsidiary standards. These standards address the medical staff’s overall responsibility  
15 for the quality of professional services provided, accounting to the governing body of the hospital,  
16 recommending appointment and reappointment of and the grant of clinical privileges to medical staff  
17 members, working toward continuous improvement of the quality of patient care, drug usage  
18 evaluation, medical record review, blood usage review, pharmacy and therapeutics review, risk  
19 management activity review, and continuing education, among other quality-assessment functions.  
20 JCAHO standards also expressly require the medical staff to develop and adopt bylaws and rules and  
21 regulations in order “to establish a framework for self-governance of medical staff activities and  
22 accountability to the governing body” (JCAHO Standard MS.5.3). The bylaws must “create a  
23 framework within which medical staff members can act with a reasonable degree of freedom and  
24 competence” (Standard MS.3.2), and must include: (1) provisions for an executive committee  
25 empowered to act for the medical staff, (2) fair hearing and appellate review mechanisms, (3)  
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1 mechanisms for corrective action, including suspension of medical staff membership and/or clinical  
2 privileges, (4) a description of the organization of the medical staff including categories of medical  
3 staff membership and officer selection and qualifications, (5) requirements for meeting attendance,  
4 and (6) a mechanism designed to assure effective communication among the medical staff, hospital  
5 administration, and governing body. (*See generally* MS.3 and substandards thereunder.) In addition,  
6 the standards require that the medical staff bylaws, rules and regulations, and policies and the bylaws  
7 of the governing body do not conflict with one another (*see* MS.3.6).  
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10 Thus, the medical staff bylaws clearly serve a key function in facilitating the relationship  
11 between the hospital as a corporate entity, and the medical staff, as an unincorporated association of  
12 independent practitioners, in order that both may work cooperatively to provide inpatient services in a  
13 manner which protects the public health.  
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15 **C. The Medical Staff Bylaws are an Agreement Which, to be Effective, Must be**  
16 **Binding.**

17 Under traditional contract analysis, the medical staff bylaws must be viewed as an  
18 indispensable and binding agreement between the hospital and the medical staff (and its individual  
19 members). In essence, the bylaws memorialize the hospital's agreement to allow practitioners who  
20 become part of the medical staff to admit patients and utilize the facilities, equipment, and other  
21 resources of the hospital in exchange for the medical staff members' agreement to work with each  
22 other and with the hospital to perform the extensive quality assessment activities requisite to health  
23 facility licensure.  
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25 With respect to individual staff members, typically the bylaws recite that all medical staff  
26 members, as a condition of membership, must agree to numerous responsibilities which assist the  
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1 hospital in fulfilling its licensure requirements. For example, CMA's Model Medical Staff Bylaws<sup>1</sup>  
2 contain the following provisions:

3           2.5    Except for the honorary and retired staff, the ongoing responsibilities of each  
4                    member of the medical staff include:

- 5                   (a)    providing patients with the quality of care meeting the professional  
6                           standards of the medical staff of this hospital;
- 7                   (b)    abiding by the medical staff bylaws and medical staff rules and  
8                           regulations;
- 9                   (c)    discharging in a responsible and cooperative manner such reasonable  
10                           responsibilities and assignments imposed upon the member by virtue of  
11                           medical staff membership, including committee assignments;
- 12                   (d)    preparing and completing in timely fashion medical records for all the  
13                           patients to whom the member provides care in the hospital;
- 14                           ...
- 15                   (g)    working cooperatively with members, nurses, hospital administration  
16                           and others so as not to adversely affect patient care;
- 17                   (h)    making appropriate arrangements for coverage for his or her patients as  
18                           determined by the medical staff;
- 19                           ...
- 20                   (k)    participating in such emergency service coverage or consultation panels  
21                           as may be determined by the medical staff;

22                   ...  
23                   With respect to the medical staff as an entity, it agrees, via the bylaws, to conduct  
24                   credentialing of medical staff applicants, peer review of existing medical staff members, and the  
25                   myriad of quality assessment and improvement related functions discussed above. The medical staff  
26                   is responsible for the ongoing development of the bylaws, which it adopts upon consensus of the staff

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27 <sup>1</sup> CMA's Model Medical Staff Bylaws were devised by CMA in response to requests from  
28 physicians and medical staffs for sample provisions which they might consider in developing their  
own bylaws. Many California medical staffs have adopted (and their hospitals have approved)  
bylaws similar to CMA's Model.

1 members and then offers to the hospital for its approval. Indeed, the bylaws are not effective in  
2 California unless and until the hospital agrees to them by granting its formal approval. (22 C.C.R. §  
3 70701) JCAHO, similarly, provides for adoption of bylaws by the medical staff and approval by the  
4 governing body. Moreover, the standards expressly state that “neither body may unilaterally amend  
5 the medical staff bylaws.” (1992 Accreditation Manual for Hospitals, Standard MS.3.1) By  
6 approving the bylaws, the hospital accepts the terms and conditions stated therein which include, for  
7 example, that anyone who is accepted by the medical staff and is ultimately appointed by the hospital  
8 to be a member of the medical staff may admit patients to the hospital and have access to hospital  
9 resources as necessary to exercise the privileges granted. In addition, in virtually every set of bylaws  
10 which Amici have reviewed (which have been hundreds), the medical staff members are guaranteed  
11 certain fair hearing procedure rights<sup>2</sup> and an appeal mechanism, whereby the board of directors will  
12 hear an appeal by any medical staff member whose privileges or membership have been  
13 recommended by the medical staff to be denied, restricted or revoked.

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17 The California Supreme Court has expressly recognized the contractual nature of the medical  
18 staff bylaws in disputes between individual medical staff members and the hospital based upon denial  
19 or revocation of privileges. In Westlake Community Hospital v. Superior Court (1976) 17 Cal.3d  
20 465, the Court addressed a claim by the hospital that the plaintiff physician was precluded from  
21 seeking monetary recovery (for losses sustained due to termination of her staff privileges) by a  
22 provision of the medical staff bylaws under which each member of the staff waived any right of  
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26 <sup>2</sup> The specifics of the fair procedures which must be provided to practitioners regarding  
27 membership and privileges disputes were recently codified in California’s Business & Professions  
28 Code §§ 809 *et seq.* Notably, the California Legislature has expressly stated that “It is the intent of  
the Legislature that written provisions implementing Sections 809 to 809.8, inclusive, in the acute  
care hospital setting shall be included in the medical staff bylaws which shall be adopted by a vote of  
the members of the organized medical staff and which shall be subject to governing body approval,  
which approval shall not be withheld unreasonably (§ 809(a)(i)).

1 personal redress against the medical staff and governing board of the hospital for disciplinary action  
2 taken. While recognizing the contractual nature of the medical staff bylaws, the Supreme Court  
3 nevertheless rejected the hospital's argument, based upon Civil Code Section 1668, which provides  
4 that contractual provisions which attempt to exempt a person from responsibility for his or her own  
5 fraud or willful injury to another person or property are against the policy of the law. *Id.* at 479. The  
6 courts of numerous other jurisdiction have also held that the medical staff bylaws are contractually  
7 enforceable, either as an integral part of the contractual relationship between a hospital and its  
8 medical staff or as a stand-alone contract. See Lawler v. Eugene Wuesthoff Memorial Hosp. Ass'n,  
9 497 So. 2d 1261, 1264 (Fla. 5th DCA 1986) ("majority view is that a Hospital's By-laws, when  
10 approved and adopted by the governing board, become a binding and enforceable contract"); Palm  
11 Beach-Martin City Medical Center, Inc. v. Panaro, 431 So. 2d 1023, 1024 (Fla. 4th DCA 1983)  
12 (bylaws are enforceable contract between physician and hospital); see also Pariser v. Christian Health  
13 Care Sys., Inc., 816 F.2d 1248, 1251 (8th Cir. 1987) (under Illinois law, hospital's bylaws are an  
14 enforceable part of contract between hospital and physician with privileges, and court will annul  
15 revocation of privileges not accomplished in accordance with bylaws); Posner v. The Lankenau  
16 Hosp., 645 F. Supp. 1102, 1106 (E.D. Pa. 1986) (under Pennsylvania law, hospital bylaws constitute  
17 contract between physician and hospital); Gianetti v. Norwalk Hosp., 557 A.2d 1249, 1255 (Conn.  
18 1989) (hospital bylaws are enforceable part of contract between physician and hospital); Gashgai v.  
19 Maine Medical Ass'n, 350 A.2d 571, 575 (Me. 1976) (bylaws constitute enforceable contract); St.  
20 John's Hosp. Medical Staff v. St. John Regional Medical Center, Inc., 245 N.W.2d 472, 474-75 (S.D.  
21 1976) (bylaws constitute a contract); Lewisburg Community Hosp., Inc. v. Alfredson, 805 S.W.2d  
22 756, 759 (Tenn. 1991) (bylaws constitute an integral part of contract between physician and hospital).  
23 Even in cases which, in our view, incorrectly hold that the bylaws do not constitute a contract *per se*,  
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1 the courts generally hold that the bylaws are judicially enforceable. *See e.g. Robles v. Humana*  
2 Hospital Cartersville, 785 F. Supp. 989, (N.D. Ga. 1992), 1991-2 Trade Cases ¶69,775, p. 67, 581  
3 (“the Georgia legislature would not have mandated that the hospital create these procedures, if the  
4 legislature had not intended that the hospital follow the procedures once they were implemented.”)

5  
6 As these courts have recognized, the medical staff bylaws are integral to the operations of a  
7 hospital and medical staff. In specifying the rights and obligations of the medical staff members to  
8 the hospital and the hospital to them, the bylaws provide a structure and set of expectations upon  
9 which the parties may rely and which ensure that the welfare of patients is protected. The bylaws  
10 maintain what is often described as a “delicate balance” between the duties, needs, and expectations  
11 of the physicians on the one hand and the hospital on the other. Maintenance of this balance by  
12 requiring adherence to the bylaws accrues to the benefit of the hospital, the medical staff, and their  
13 patients. However, if the bylaws are viewed as non-binding, then this delicate balance will collapse to  
14 the jeopardy of all involved.  
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17 III. CONCLUSION

18 For all of the above-noted reasons, Amici the California Medical Association and the  
19 American Medical Association urge this Court to recognize and affirm the contractual nature of the  
20 relationship between the medical staff (and its individual members) and the hospital and that the  
21 medical staff bylaws, once adopted by the medical staff and approved by the hospital board, are a  
22 binding contract between them.  
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25 DATE: October 1, 1992

Respectfully submitted,

26 CALIFORNIA MEDICAL ASSOCIATION  
27 AMERICAN MEDICAL ASSOCIATION

28 By: \_\_\_\_\_

Kimberly Davenport  
Attorneys for Amici Curiae

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