

2011 IL App (2d) 100880-U  
No. 2-10-0880  
Order Filed September 29, 2011

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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JOHN DOE, M.D., and	)	Appeal from the Circuit Court
JOHN DOE, M.D., S.C.,	)	of Kane County.
	)	
Plaintiffs-Appellants,	)	
	)	
v.	)	No. 05-LK-508
	)	
DELNOR COMMUNITY HEALTH	)	
SYSTEMS, DELNOR COMMUNITY	)	
HOSPITAL, STEPHEN M. LEWIS, M.D.,	)	
GEORGE POWELL, M.D., CRAIG	)	
LIVERMORE, PRESTON REILLY, M.D.,	)	
CARLOS G. DUARTE, M.D., and NATALIE	)	
LAMBAJIAN-DRUMMOND, M.D.,	)	Honorable
	)	Robert B. Spence,
Defendants-Appellees.	)	Judge, Presiding.

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JUSTICE HUTCHINSON delivered the judgment of the court.  
Justices Bowman and Zenoff concurred in the judgment.

*Held:* The trial court did not abuse its discretion in granting defendants' motion for a protective order and to quash additional discovery requests because those requests were submitted after the trial court ordered written fact discovery closed; the trial court did not err in dismissing certain counts pursuant to section 2-615 of the Code because plaintiffs failed to state a claim for which relief could be granted; and the trial court did not err in granting summary judgment to defendants after concluding that there was no genuine issue of material fact regarding whether the hospital followed its bylaws in a peer review of Dr. Doe, whether the process contained actual unfairness, or whether the hospital or its agents acted with willful and wanton

conduct. We affirmed the judgment of the trial court.

¶ 1 In December 2003, following a peer review process, defendant Delnor Community Hospital (the hospital) terminated plaintiff's, John Doe, M.D., medical privileges. The termination resulted from an incident in January 2002 when Doe, an ear, nose, and throat (ENT) surgeon who was on-call to the emergency room, allegedly failed to properly respond to an emergency room call regarding a 20-month-old patient suffering from acute airway distress. Following the termination of his staff privileges, Doe, along with plaintiff John Doe, M.D., S.C. (collectively, plaintiffs) filed a 14-count amended complaint against the hospital, Delnor Community Health Systems, Stephen M. Lewis, M.D., George Powell, M.D., Craig Livermore, Preston Reilly, M.D., Carlos G. Duarte, M.D., and Natalie Lambajian-Drummond, M.D. (collectively, defendants). Plaintiffs alleged various causes of action against defendants relating to the peer-review process leading to Doe's termination and other tortious conduct allegedly committed by defendants. The trial court dismissed a number of plaintiffs' counts pursuant to section 2-619.1 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-619.1 (West 2006)), and the remaining counts were dismissed after the trial court granted the remaining defendants' motion for summary judgment and denied plaintiffs' partial motion for summary judgment pursuant to section 2-1005(c) of the Code (735 ILCS 5/2-1005(c) (West 2006)). Plaintiffs now appeal, raising four issues: (1) whether the trial court erred when it granted defendants' motion for protective order and to quash plaintiffs' written discovery order while denying plaintiffs' oral motion to reopen written discovery; (2) whether the trial court erred when it partially granted defendants' motion to dismiss the amended complaint pursuant to section 2-619.1 of the Code; (3) whether the trial court erred when it granted defendants' motions for summary judgment pursuant to section 2-1005(c); and (4) whether the trial court erred when it denied their partial motion for summary judgment pursuant to section 2-1005(c) of the Code. We affirm.

¶ 2

## I. BACKGROUND

¶ 3 Doe is an ENT surgeon who had privileges to practice medicine at the hospital until December 5, 2003. The hospital is a wholly owned subsidiary of defendant Delnor Community Health Systems. Defendant Lewis is a medical doctor and a member of the hospital's medical staff. Defendant Powell is a medical doctor specializing in anesthesiology and the chairman of the medical staff executive committee (the executive committee). Powell was the hearing officer during Doe's peer review. Defendant Livermore is the chief executive officer of the hospital. Defendant Reilly is a medical doctor specializing in general surgery. Reilly was medical staff president at the hospital, a member of the executive committee, and prosecuted the peer-review case against Doe during the peer-review process. Defendant Duarte is a medical doctor specializing in emergency medicine, and he participated in Doe's peer review as a member of the executive committee. Defendant Lambajian-Drummond is a medical doctor specializing in pediatrics and was a member of the hospital's medical staff.

¶ 4 The termination of Doe's medical privileges at the hospital stemmed from an incident on January 25, 2002, during which Doe was on-call to the emergency room at the hospital. Doe was contacted by an emergency room nurse regarding a 20-month-old patient suffering from a retropharyngeal abscess. Doe spoke with the patient's primary care physician and, according to him, advised an immediate transfer of the patient to a tertiary care facility. The patient's primary care physician responded that she did not have the authority to transfer the patient, so Doe recommended that the patient be placed on antibiotics. Doe called another doctor who, after consulting with the patient's primary care physician, saw the patient at the hospital and administered antibiotics.

¶ 5 The next day, Doe received a phone call from a floor nurse at the hospital regarding a consult visit. After consulting with Lambajian-Drummond, a doctor belonging to the same medical group

as the patient's primary care physician, Doe again recommend that the patient be transferred. However, according to Doe, Lambajian-Drummond informed him that another ENT would see the patient and that he was not to see the patient. Ten minutes later, a nurse contacted Doe telling him Lambajian-Drummond did want him to see the patient, but Doe did not have an order to do so. Shortly thereafter, Doe was again informed that he was not to see the patient because Lambajian-Drummond wanted a second opinion regarding whether transferring the patient was necessary. Lambajian-Drummond consulted with another ENT who visited the patient at the hospital. The patient was transferred later that evening, a surgical procedure was performed the next day, and the patient fully recovered.

¶ 6 On May 16, 2002, the chair of the department of surgery at the hospital sent a written request for corrective action to Powell as a result of Doe's failure to respond to the emergency room's request for consultation and for failing to render appropriate care for the patient. The request for corrective action was pursuant to the hospital's bylaws, which provide a framework to determine whether a medical staff member's medical privileges should be restricted, revoked, or not renewed. Article XII, section 2 of the bylaws provides that actions of the executive committee were considered adverse when such actions served to revoke the privileges of a member of the medical staff. Section 2 further provides that adverse actions must take the form of recommendations to the board of directors and the affected member is entitled to exercise the fair hearing procedures. Article XIII, section 4 of the bylaws provides that a medical staff review committee (the review committee) shall conduct the hearing and that committee has the authority to consider and receive evidence, deliberate, and reach a determination in the form of a recommendation to the board of directors. Article XIII, section 6 of the article also allows the review committee to examine any issues "reasonably related" to the statement of grounds initially given to the affected member, so

long as the committee advises the parties and provides sufficient time for them to submit evidence. Article XIII, section 6 further provides that the affected member has the right to be accompanied to the hearing by another medical professional unless the review committee, in its discretion, expands the proceedings, in which case the affected member has the right to be accompanied by an attorney to serve in an advisory capacity. The role of the attorney can be expanded at the sole discretion of the chair of the review committee. Article XIII, section 6 of the bylaws provides that the executive committee shall consider the report of the review committee within 60 days of receiving the report, and the executive committee can affirm, modify, or reverse the recommendation of the review committee. Pursuant to section 7 of this article, the executive committee's recommendation must be immediately forwarded to the board of directors, and if the board decides to take an adverse action, the affected member is entitled to invoke the fair hearing procedures. The fair hearing panel constitutes the affected member's appeal mechanism.

¶ 7 Article XIII, section 12 of the hospital's bylaws provides for the conduct of a hearing before the fair hearing panel. Written evidence must be presented to the other side at least seven days prior to the hearing. In "extraordinary circumstances," as determined by the fair hearing panel, written evidence may be proffered at the hearing provided, however, that the other side is given seven days from the close of the hearing to submit a written statement rebutting the evidence. During a hearing, the affected member is entitled to have an attorney present in an advisory capacity, and the fair hearing panel may also be assisted by counsel. After the hearing, the fair hearing panel shall submit its recommendation in writing to the board of directors, setting forth the nature of its recommendation and the reason on which it is based.

¶ 8 On June 4, 2002, Doe appeared before the executive committee in an informal manner and explained his version of the events in question. After that meeting, the executive committee acted

on the request for corrective action by issuing a recommendation to terminate Doe from the hospital's medical staff. On June 17, 2002, Doe received a written copy of the recommendation, along with a statement of grounds describing the reason for the recommendation.

¶ 9 Thereafter, the review committee was appointed and, on November 5, 2002, held a hearing. During the hearing, Doe was assisted by counsel and afforded the opportunity to present evidence, to cross-examine witnesses, and to respond to the evidence presented against him. On December 3, 2002, the executive committee met to consider the review committee's report and reaffirmed its recommendation to terminate Doe's privileges.

¶ 10 On December 12, 2002, the hospital's board of directors considered the recommendation of the executive committee to terminate Doe's medical privileges at the hospital. The board set up a three-member subcommittee to review the record and report its recommendation to the full board at the next meeting. The subcommittee subsequently recommended that the board accept the executive committee's recommendation to terminate Doe's medical privileges. On February 13, 2003, the board of directors voted to accept the recommendation of the subcommittee, with one member abstaining.

¶ 11 After the board of directors voted to terminate Doe's hospital privileges, Doe filed a written request for a hearing before the fair hearing panel. The fair hearing panel is an *ad hoc* committee appointed by the chairman of the board and president of the medical staff consisting of five members. On September 10, 2003, the fair hearing panel held its hearing, and Doe was again represented by counsel and given the opportunity to present evidence, cross-examine witnesses, and respond to the evidence presented against him.

¶ 12 During the September 10, 2003, hearing, Doe was asked whether he ever had any prior issues related to patient care on his record. Doe responded that he reviewed the hospital file and that there

was no record of him having issues with patient care. Doe was asked to confirm that he did not have any prior issues relating to child care, regardless of what the record showed. Doe responded:

“I remember a—there was a question about the amount of anesthesia that was used on a local patient. The patient did well. There was no problem, but some nurse’s chart that came in, and I testified that sometimes there is spillage of anesthesia, and there was no—there wasn’t any action taken.”

Doe was asked, “And there’s never been any problem with patient care?” Doe responded, “Not to my knowledge.” Subsequently, the executive committee referenced Doe’s prior patient-care issues in its closing brief and also submitted documentation which showed that Doe was previously ordered to receive random proctoring at the hospital as a result of having 18 cases referred to risk management between July 1995 and August 1996. On October 7, 2003, Doe submitted a motion to dismiss and objected to the use of any prior patient-care issues as evidence, claiming that the executive committee’s reference to his prior case review violated his due process rights because he was not given notice such evidence would be part of the review process, and therefore, could not respond to that evidence. On October 14, 2003, the fair hearing panel requested an agreement from the parties to an extension of time to account for planned vacations and to provide the parties additional time to address the issue raised by Doe’s testimony. Specifically, the fair hearing panel desired that both parties revisit Doe’s testimony regarding prior patient-care issues “and address whether (a) [Doe] wishes to change his testimony, (b) whether there is more written evidence that either party would want to file with the [fair hearing panel] on the issue of [Doe’s] statement that, to his knowledge, his standard of care has never been questioned at [the hospital], and (c) whether or not such statements or such evidence is reasonably related to the corrective action complaint brought against [Doe] leading to these proceedings.”

¶ 13 On November 13, 2003, the fair hearing panel recommended a suspension of plaintiff's privileges for 29 days, a 9-month proctorship, 40 hours of continuing education, an admission that he did not take sufficient steps to care for the patient and that he had previous unresolved patient-care issues, and an acknowledgment that failure to comply with the recommendations would result in his termination. After considering the fair hearing panel's recommendation, the board met on December 5, 2003, and voted to affirm its previous decision to terminate plaintiff's privileges.

¶ 14 On June 10, 2006, plaintiffs filed their first-amended complaint containing 14 counts. Count 1 alleged breach of contract and violation of fundamental rights due process and fairness against the hospital; count 2 sought judicial review of fairness against the hospital; count 3 alleged defamation and libel against defendants; count 4 alleged false light invasion of privacy against defendants; count 5 alleged tortious interference with existing contracts against defendants; count 6 alleged tortious interference with prospective economic advantage against defendants; count 7 alleged intentional infliction of emotional distress against defendants; count 8 alleged reckless infliction of emotional distress against defendants; count 9 alleged business disparagement against defendants; count 10 sought a declaratory judgment; count 11 sought an injunction against the hospital; count 12 sought a declaration of no immunity; count 13 alleged conspiracy against defendants; and count 14 alleged negligent supervision and training against the hospital.

¶ 15 Defendants filed a motion to dismiss, and on April 20, 2007, the trial court entered an order granting the motion with respect to counts 1, 5, 6, 7, 8, 9, 13, and 14 and denying the motion with respect to counts 2, 10, 11, and 12. For counts 3 and 4, the trial court granted the motion to dismiss with respect to the hospital, Powell, Reilly, and Livermore, while denying the motion with respect to Lewis, Duarte, and Lambajian-Drummond.

¶ 16 On February 11, 2009, plaintiffs dated a supplemental request to admit and then served it on

defendants. On March 2, 2009, plaintiffs dated supplemental interrogatories and then served them on defendants. On April 8, 2009, defendants filed a motion for a protective order and to quash plaintiffs' written discovery. Defendants argued that, because the trial court previously entered an order ending written discovery on January 28, 2008, plaintiffs' request to admit and supplemental interrogatories should be quashed because they were filed 14 months after the close of written discovery and two weeks after the close of all oral discovery, with the exception of two depositions the parties previously agreed to complete. Defendants also argued that the request to admit and supplemental interrogatories raised nothing new, and were cumulative and irrelevant. The trial granted defendants' motion.

¶ 17 Subsequently, the hospital filed a motion for summary judgment contending that plaintiffs failed to meet their burden of showing actual unfairness in the proceeding and procedures used during its peer review of Doe, and that it had statutory immunity from liability for civil damages under the Illinois Hospital Licensing Act (the hospital licensing act) (210 ILCS 85/10.2 (West 2006)) and the Health Care Quality Improvement Act (the health care quality act) (42 U.S.C. § 11101 *et seq.*). Defendants Lewis, Duarte, and Lambajian-Drummond also filed a motion for summary judgment contending that plaintiffs failed to put forth sufficient evidence that they defamed him or placed him in a false light, they were statutorily immune from liability under the Medical Studies Act (735 ILCS 5/8-2101 (West 2006)) and the health care quality improvement act, and plaintiffs' defamation and false light claims were barred by the one-year statute of limitations.

¶ 18 Plaintiffs filed a cross-motion for partial summary judgment, asking the court to make the following findings of law: (1) the hospital's bylaws were violated in the proceedings resulting in Doe's termination; (2) the proceedings involved actual unfairness; (3) Doe was entitled to restoration of his privileges; and (4) Doe was entitled to expungement of any report to the National

Practitioner's Data Bank made by the hospital.

¶ 19 On August 5, 2010, the trial court granted defendants' motions for summary judgment and dismissed counts 2, 3, 4, 10, 11, and 12 with prejudice. The trial court also denied plaintiffs' partial motion for summary judgment. In rendering its judgment, the trial court concluded that plaintiffs failed to identify any evidence or reasonable inference showing actual unfairness in the board's decision to terminate Doe's privileges at the hospital. The trial court held that the hospital was statutorily immune from liability for civil damages pursuant to the hospital licensing act because plaintiffs did not identify any evidence that the hospital acted with "willful and wanton misconduct" in conducting its peer review. The trial court also held that the hospital was statutorily immune pursuant to the health care quality act.

¶ 20 The trial court also granted summary judgment in favor of defendants Lewis, Duarte, and Lambajian-Drummond. The trial court concluded that plaintiffs did not put forth any evidence that defendants made any false statements of fact in their written responses to a surgical committee or in their sworn testimony before the peer-review hearing panels, that their statements placed Doe in a false light before the public, or that their statements were highly offensive to a reasonable person. The trial court also held that these defendants were statutorily immune from liability for civil damages pursuant to the medical studies act and the health care quality improvement act because plaintiffs failed to put forth evidence that those defendants knew their statements were false. Finally, the trial court held that plaintiffs' false light and defamation claims against Lewis, Duarte, and Lambajian-Drummond were barred by the one-year statute of limitations.

¶ 21 Plaintiffs timely appealed the trial court's orders granting defendants' 2-619.1 motion to dismiss and motion for summary judgment.

¶ 22

## II. DISCUSSION

¶ 23 Before turning to the merits, we take this opportunity to note that the representation by defendants' counsel at the onset of oral argument that we would not be here if only Doe "showed remorse" for failing to visit the patient in the emergency room was beyond the scope of these proceedings. As will be discussed below, the issue we are primarily concerned with is whether Doe received fair hearings during his peer review process and whether the hospital adhered to its bylaws.

¶ 24 A. Motion for Protective Order and to Quash

¶ 25 The first issue we will address is whether the trial court erred in granting defendants' motion for protective order and to quash written discovery, and denying plaintiffs' oral motion to reopen written discovery. Plaintiffs argue that the trial court abused its discretion by not permitting their supplemental interrogatories and requests to admit. Plaintiffs argue that these discovery requests were legitimate follow-up questions to deposition testimony concerning whether the hospital's bylaws had been corrupted by using the evidence of previous patient-care issues as an independent ground for sustaining Doe's termination. Defendants counter that the trial court properly granted their motion because plaintiffs served their supplemental interrogatories and requests to admit after written fact discovery closed, the discovery did not involve any new issues, and were not reasonably calculated to lead to the discovery of admissible evidence.

¶ 26 Supreme Court Rule 201(c)(1) provides that a trial court may enter a protective order regulating discovery to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or oppression. Ill. S. Ct. R. 201(c) (eff. July 1, 2002). Illinois law is well settled that a trial court is afforded great latitude in ruling on discovery matters. *Avery v. Shabbia*, 301 Ill. App. 3d 839, 844 (1999). Because the decision of whether to reopen discovery rests within the sound discretion of the trial court, "we will not disturb such rulings absent a showing of abuse of discretion." *Ruane v. Amore*, 287 Ill. App. 3d 465, 471 (1997). A trial court abuses its discretion only where its ruling

is arbitrary, fanciful, or where no reasonable person would adopt the court's view. *Evitts v. DaimlerChrysler Motor Corp.*, 359 Ill. App. 3d 504, 513 (2005).

¶ 27 In the current matter, the trial court did not abuse its discretion in granting defendants' motion for a protective order and to quash written discovery, or by denying plaintiffs' oral motion to reopen discovery. The record reflects that the trial court entered an order on December 20, 2007 providing that all written fact discovery shall be completed by January 24, 2008. Plaintiffs dated their supplemental requests to admit on February 11, 2009, and their supplemental interrogatories on March 2, 2009, more than a year after written fact discovery was closed. Because the trial court has broad authority and discretion in the area of pretrial discovery, we find no abuse of discretion in the trial court's order granting defendants' motion for protective order and to quash plaintiffs' written discovery. See *Wynne v. Loyola*, 318 Ill. App. 3d 443, 455 (2000) (holding that the trial court did not abuse its discretion for not permitting the plaintiff to conduct additional discovery). In addition, our review of the trial court's order granting defendants' motion for protective order and to quash plaintiffs' written discovery is limited by plaintiffs' failure to include a transcript of the hearing before the trial court. "In the absence of such a transcript, we must presume the [trial court] did not abuse its discretion" in granting defendants' motion. See *Brostron v. Warmann*, 190 Ill. App. 3d 87, 92 (1989) (presuming that the trial court did not abuse its discretion regarding a discovery matter because the plaintiffs failed to provide a transcript).

¶ 28 B. Section 2-619.1 Motion to Dismiss

¶ 29 Plaintiffs next contend that the trial court erred in granting defendants' motion pursuant to section 2-619.1 of the Code to dismiss counts 1, 5, and 14, and dismissing with respect to defendants Livermore and the hospital counts 3 and 4. We will address each count separately.

¶ 30 Section 2-619.1 of the Code provides that a motion with respect to pleadings pursuant to

sections 2-615 and 2-619 of the Code may be filed together as a single motion. 735 ILCS 5/2-619.1 (West 2006). A motion to dismiss pursuant to section 2-615 of the Code tests the legal sufficiency of the complaint, whereas a motion pursuant to section 2-619 admits the legal sufficiency of the complaint but asserts an affirmative defense which defeats the claim. *Solaia Technology LLC v. Specialty Publishing Co.*, 221 Ill. 2d 558, 578-79 (2006). When reviewing a decision to grant a motion pursuant to section 2-615, our inquiry is whether the allegations of the complaint, construed in the light most favorable to the nonmoving party, are sufficient to establish a cause of action upon which relief may be granted. *Weidner v. Karlin*, 402 Ill. App. 3d 1084, 1086 (2010). Our review under either section is *de novo*. *King v. First Capital Financial Services Corp.*, 215 Ill. 2d 1, 12 (2005).

¶ 31

1. Count 1

¶ 32 Count 1 of plaintiffs' amended complaint alleged breach of contract and violation of fundamental rights to due process and fairness against the hospital. The trial court dismissed the claim, concluding that plaintiffs failed to allege a factual claim that, from a procedural standpoint, defendants were not afforded basic protections provided by the hospital's bylaws or that the board's decision did not comply with the hospital's bylaws.

¶ 33 As our supreme court noted, Illinois adopts a "rule of non-review" in cases involving private hospital staff privileges, which provides that internal staffing decisions of private hospitals are not subject to judicial review. *Adkins v. Sarah Bush Lincoln Health Center*, 129 Ill. 2d 497, 506 (1989). However, our supreme court crafted a narrow exception for when a staffing decision involves the revocation, suspension, or reduction of existing staff privileges, in which case, the hospital's action is subject to limited judicial review to determine whether such a decision was made in compliance with the hospital's bylaws. *Id.* at 506-07. The underlying policy of the judiciary's reluctance to

review internal staff decisions “reflects the unwillingness of courts to substitute their judgment for the professional judgment of hospital officials with superior qualifications to consider and decide such issues.” *Id.* Accordingly, our inquiry is limited to whether count 1 sufficiently alleged that the hospital did not make its decision to terminate Doe’s staff privileges in a manner consistent with its bylaws.

¶ 34 Our review of count one of the amended complaint reflects that plaintiffs failed to state a cause of action against the hospital for breach of contract and fundamental fairness. Count 1 incorporated the allegations contained in paragraphs 107 and 108(a) through (t) of the amended complaint. These paragraphs contained allegations that Doe did not receive fair notice of all of the reasons for the adverse action, failure to produce requested documents, an alleged conflict by the attorneys for the hospital during the hearings, the submission of evidence after the hearings ended, and bias on the part of some of the panel members. Paragraphs 66 through 69 alleged that Livermore had a personal animus towards Doe and told him the reason for the adverse action was because other staff members “just don’t like you.” Paragraphs 70 through 79 contain similar allegations that Powell and Reilly were biased toward Doe, and therefore, should not have participated in the adverse action against Doe. These allegations taken together, however, focus on plaintiffs’ dissatisfaction with the individuals involved in the review process and their credentials, and the decisions participating members made in rendering their duties pursuant to the bylaws. These allegations do not contain sufficient allegations that the hospital failed to follow the framework established by the bylaws to determine whether a staff member’s privileges should be terminated, *i.e.*, allegations that Doe was not given hearings pursuant to article XIII of the bylaws, which is what the bylaws provide. Thus, plaintiffs failed to sufficiently allege a cause of action in count 1 for breach of contract and violation of fundamental rights, and count 1 was properly

dismissed pursuant to section 2-615 of the Code.

¶ 35 2. Count 3

¶ 36 Count 3 of plaintiffs' amended complaint alleged defamation, slander, and libel against all defendants. The trial court dismissed this count pursuant to section 2-615 of the Code with respect to defendants the hospital, Powell, Livermore, and Reilly. Plaintiffs now contend that the trial court erred in dismissing this count with respect to defendants the hospital and Livermore because these defendants reported to the National Practitioner's Data Bank that "Doe's conduct in January of 2002 unnecessarily and materially endangered the health of a minor patient and fell substantially below the standard of care required of hospital medical staff members." Plaintiffs did not dispute that the hospital and Livermore had qualified immunity because they were required to report to the data bank, but argue that there is a factual issue as to whether the patient's life was ever endangered, and therefore, a question of fact whether there was malice on the part of those defendants that rendered immunity inapplicable.

¶ 37 To state a claim for defamation, a plaintiff must present facts showing that a defendant made a false statement about the plaintiff, the defendant made an unprivileged publication of that statement to a third party, and the publication resulted in damages. *Green v. Roger*, 234 Ill. 2d 478, 491 (2009). A defamatory statement is one that harms a person's reputation to the extent that it lowers the person's reputation in the eyes of the community or deters the community from association with that person, and a statement is defamation *per se* if the harm caused by the statement is obvious and apparent on its face. *Id.* at 491-92 (noting that "words that impute a person is unable to perform or lacks integrity in performing her or his employment duties" is one of five recognized categories of defamation *per se*). However, even defamatory *per se* statements may not be actionable if the statement is immunized by an absolute privilege or protected by qualified

privilege. *Barakat v. Matz*, 271 Ill. App. 3d 662, 667 (1995). The protection afforded by the qualified privilege can be defeated if the plaintiff can show a direct intention to injure or reckless disregard of the plaintiff's rights. *Id.* at 669-70.

¶ 38 The allegations contained in count 3 are insufficient to support a claim of defamation *per se* because the allegations, even if taken as true, do not defeat the qualified privilege. In *Barakat*, the reviewing court held that insurance reports made by a defendant doctor to an insurance company and workers' compensation claimants, which advised the recipients of the defendant's prior poor experience with the physician plaintiff, were subject to a qualified privilege. Therefore, the defamation claims relating to those written reports were properly dismissed pursuant to section 2-619 of the Code. See *id.* at 668-70. The court in *Barakat* reasoned that the defendant doctor was protected by a qualified privilege, in part, because the Workers Compensation Act (820 ILCS 305/12 (West 1993)) required that he submit written reports to the injured employee or its representative and that the report be an exact copy furnished to the employer. Therefore, the court found "nothing improper" with the defendant's submission of the allegedly defamatory written reports to insurers or the claimants and upheld the trial court's dismissal of the defamation claims relating to the written reports. *Id.* at 670. Similarly here, the hospital and Livermore as its chief executive officer were required by federal law to make a report to the National Practitioner's Data Bank once Doe's medical staff privileges were terminated. See 42 U.S.C. § 11133. Further, there is no dispute that the statement provided to the practitioner's data bank accurately reflected the board's conclusion that Doe endangered the life of a patient. Therefore, we find no circumstances under which a jury could find that the report made to the National Practitioner's Data Bank was made with an intention to harm plaintiffs or with the reckless disregard for their rights (see *id.*), and count 3 was properly dismissed pursuant to section 2-615 of the Code.

¶ 39

3. Count 4

¶ 40 Plaintiffs next argue that the trial court should not have dismissed count 4 with respect to defendants the hospital and Livermore pursuant to section 2-615 of the Code. Count 4 alleged a claim of false-light invasion of privacy against all defendants, and according to plaintiffs, “nothing could be more offensive to a physician” than a statement that he endangered the life of a patient.

¶ 41 Plaintiffs’ argument that the trial court erred in dismissing count 4 with respect to defendants the hospital and Livermore is misplaced. To recover for a claim of false-light invasion of privacy, plaintiffs must allege that they were placed in a false light before the public, that the false light would be highly offensive to a reasonable person, and that defendants acted with actual malice. See *Duncan v. Peterson*, 401 Ill. App. 3d 911, 920 (2010). For the reasons discussed above with respect to count 3, plaintiffs’ allegations cannot demonstrate that the report to the National Practitioner’s Data Bank that Doe endangered the life of a patient resulted from malice on the part of defendants’ the hospital and Livermore because that statement accurately reflected the board’s finding regarding Doe’s treatment of the patient, and federal law required those defendants to make the report.

¶ 42

4. Count 5

¶ 43 Plaintiffs next argue that the trial court erred in dismissing count 5, which alleged tortious interference with a contract. According to plaintiffs, this claim is intertwined with their defamation *per se* and false-light invasion of privacy claims, and that the statement to the National Practitioner’s Data Bank that Doe “endangered the life of a minor patient” induced breach of contracts plaintiffs had with the hospital, other hospitals, insurers, referring physicians, and patients.

¶ 44 Plaintiffs’ allegation of tortious interference with a contract is deficient, and thus, was properly dismissed pursuant to section 2-615 of the Code. To sufficiently allege intentional interference with a contract, a plaintiff must plead (1) the existence of a valid and enforceable

contract between the plaintiff and another; (2) the defendant's knowledge of the contractual relationship; (3) the defendant's intentional and unjustified inducement of a breach of the contract; (4) a subsequent breach by the other, caused by the defendant's wrongful conduct; and (5) resulting damages. *HPI Health Care Services, Inc. v. Mt. Vernon Hospital, Inc.*, 131 Ill. 2d 145, 154-55 (1989). Plaintiffs failed to plead any allegations to satisfy the third element. Specifically, plaintiffs alleged that the peer review resulting in Doe's termination and publication of those incidents, including in the practitioner's data bank, "improperly influenced other hospitals, physicians, healthcare organization, third-party payers, insurance companies, patients, and licensing agencies not to deal" with Doe. Although plaintiffs strenuously disagree with the board's finding, they failed to allege that the statements were inaccurate or improper reports of the board's findings resulting from the peer review process. Therefore, plaintiffs failed to allege sufficient facts to support its conclusion that defendants were not justified in making their statements.

¶ 45 We find support for our conclusion in *Voyles v. Sandia Mortgage Co.*, 196 Ill. 2d 288 (2001). In *Voyles*, the plaintiff alleged tortious interference with prospective business advantage against the defendant after the defendant informed two credit agencies of the status of the plaintiff's mortgage and its initiation of foreclosure proceedings. *Id.* at 293. The plaintiff brought suit against the defendant alleging that it was negligent in reporting information about her to the credit agencies and failing to promptly correct falsely reported information. *Id.* at 293-94. The supreme court held that the plaintiff's claim for tortious interference with a prospective business advantage failed because the plaintiff could not prove the intentional and unjustified interference by the defendant causing a breach or expectancy of a business relationship because those reports were accurate and proper. Thus, according to the *Voyles* court, "they [the reports to the credit agencies] cannot represent an unjustified interference with the plaintiff's business expectancy." *Id.* at 300.

¶ 46 Although the relevant cause of action in *Voyles* was tortious interference with prospective business advantage, whereas here, plaintiffs alleged intentional interference with a contract, both causes of action share a common element—that plaintiff establish that the interference was intentional and unjustified. See *id.* at 300-01 (outlining the necessary elements of intentional interference with prospective business advantage). Therefore, the *Voyles* court’s conclusion that the plaintiff’s claim failed because the defendant’s alleged interference was not unjustified is applicable to the current matter. Here, plaintiffs did not allege that the report to the National Practitioner’s Data Bank inaccurately reflected the board’s finding that Doe endangered the life of a minor patient. Therefore, plaintiffs failed to plead sufficient facts that defendants’ alleged interference with plaintiffs’ existing contracts was unjustified, and the claim is therefore subject to dismissal pursuant to section 2-615 of the Code.

¶ 47 5. Count 14

¶ 48 Plaintiffs next argue that the trial court erred in dismissing count 14, which alleged that the hospital failed to properly supervise and train the participants in the corrective action proceeding against Doe, because it is a recognized cause of action pursuant to *Friigo v. Silver Cross Hospital*, 377 Ill. App. 3d 43 (2007). In *Friigo*, the reviewing court recognized a cause of action against a hospital for negligent credentialing. *Id.* at 70-73. The *Friigo* court held that a hospital has an independent duty to select and retain competent physicians seeking staff privileges and could be liable for failing to exercise due care in the selection and retention of a physician on its staff. *Id.* at 70. The court in *Friigo* held that, for a hospital to be liable for negligent credentialing, a plaintiff must establish that (1) the hospital failed to meet the standard of reasonable care in the selection of the physician to whom it granted medical staff privileges, (2) that the physician’s treatment provided the basis for the underlying medical malpractice claim, (3) that the physician breached the

applicable standard of care while practicing pursuant to the negligently granted medical staff privilege, and (4) that the negligent granting of medical staff privileges was the proximate cause of the plaintiff's injuries. *Id.* at 72. According to plaintiffs, although *Friigo* involved an injury sustained by a patient resulting from the hospital's negligence in credentialing a physician, its claim, though novel, should be recognized because the alleged failure by the hospital to conduct a peer review pursuant to its bylaws could have been controlled through proper supervision and training.

¶ 49 We decline plaintiffs' request to extend the holding in *Friigo* to recognize a cause of action by a physician against a hospital for negligent supervision and training resulting from the termination of his medical staff privileges following a peer review. Further, we are not aware of any other Illinois case recognizing such a cause of action, and therefore, the trial court properly dismissed count 14 pursuant to section 2-615 of the Code.

¶ 50 C. Defendants' Motion for Summary Judgment

¶ 51 The next issue is whether the trial court erred in granting defendants' motion for summary judgment. Plaintiffs contend that the trial court erred in granting summary judgment because it improperly relied on the qualified immunity protections of the hospital licensing act and the health care quality act. Plaintiffs argue that those acts are only applicable when a hospital complies with its bylaws and the affected physician is given proper notice, access to evidence, and an opportunity to be heard. According to plaintiffs, the hospital does not have immunity because it did not follow its bylaws during the peer review process. In addition, plaintiffs argue that submitting false statements, concealing evidence, or otherwise corrupting the fair hearing process, if found to have occurred by a jury, would support a finding of willful and wanton conduct, which would also render statutory immunity inapplicable. Therefore, plaintiffs maintain, the trial court erred in determining that defendants' conduct in terminating Doe's medical staff privilege did not amount to willful and

wanton conduct during summary judgment. Finally, plaintiffs maintain that the trial court erred in granting summary judgment on counts 10, 11, and 12. Plaintiffs argue that the evidence in this case establishes that the fair hearing procedures were not fair because Doe was attacked personally and called a liar after answering that he had never been proctored, and that the evidence further reflects that he had not, in fact, been proctored.

¶ 52 This court reviews *de novo* a trial court's ruling on motions for summary judgment. *Chubb Insurance Co. v. DeChambre*, 349 Ill. App. 3d 56, 59 (2004) (citing *Travelers Insurance Co. v. Eljer Manufacturing, Inc.*, 197 Ill. 2d 278 (2001)). The purpose of summary judgment is to determine whether a genuine issue of material fact exists, not to try a question of fact. *Brown & Brown, Inc. v. Mudron*, 379 Ill. App. 3d 724, 727 (2007). Summary judgment is proper if, and only if, the pleadings, depositions, admissions, affidavits and other relevant matters on file show that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. *Chubb Insurance Co.*, 349 Ill. App. 3d at 59 (citing *Prowell v. Loretto Hospital*, 339 Ill. App. 3d 817, 822 (2003)). In determining whether a genuine issue of material fact exists, we must construe the pleadings, affidavits, and admissions strictly against the movant and liberally in favor of the non-moving party. *Chubb Insurance Co.*, 349 Ill. App. 3d at 59. In addition, as a court of review, "we can sustain the decision of the circuit court on any grounds which are called for by the record regardless of whether the [trial] court relied on the grounds and regardless of whether the [trial] court's reasoning was sound." *Canada Life Assurance Co. v. Salwan*, 353 Ill. App. 3d 74, 79 (2004). However, if this court's review reveals the existence of a material issue of fact or an error in legal interpretation by the trial court, reversal is warranted. *American Family Insurance Co. v. Woiwode*, 276 Ill. App. 3d 176, 178 (1995) (citing *Zoeller v. Augustine*, 271 Ill. App. 3d 370, 374 (1995)).

¶ 53

1. Count 2

¶ 54 Summary judgment is warranted with respect to count 2 against the hospital, which plaintiffs alleged failed to follow its bylaws and acted in bad faith during Doe’s peer review. As noted above, Illinois courts adhere to a “rule of non-review” in cases involving private hospital staff privileges, and in cases when a hospital’s action results in the revocation, suspension, or reduction in privileges, a court will conduct a limited judicial review to determine whether the hospital’s decision was made in compliance with its bylaws. *Adkins*, 129 Ill. 2d at 506-07. A court is also justified in reviewing a private hospital’s actions even where the bylaws are followed if the record demonstrates actual unfairness on the part of the hospital, its committees, or individual committee members. *Id.* at 514. In addition, section 10.2 of the hospital licensing act provides that no hospital or its agents shall be liable for civil damages as a result of acts, omissions, decisions, or any other conduct unless those acts involve willful and wanton misconduct, which the act defines as “a course of action that shows actual or deliberate intention to harm or that, if not intentional, shows utter indifference to or conscious disregard for a person’s own safety and to the safety of others.” 210 ILCS 85/10.2 (West 2004).

¶ 55 The hospital’s bylaws provide that after a physician has received a statement of grounds outlining the reasons for why a recommendation for adverse action was made, the physician can request a hearing before the review committee. During the hearing, the physician has the right to be accompanied by counsel, present evidence, and question witnesses. If, after considering the recommendations from the executive committee and the review committee, the board recommends an adverse action, the affected physician, after receiving notice, has the right to appeal the recommendation to the fair hearing panel. The physician has the opportunity to once again be accompanied by an attorney, present evidence, including evidence not submitted before the review

committee, and question witnesses.

¶ 56 Here, the record reflects that Doe received notice of the executive committee's decision to pursue an adverse action against him on June 17, 2002. Doe requested a hearing before the review committee, and during that hearing, was accompanied by counsel, had the opportunity to present evidence, and cross-examined witnesses. On February 17, 2003, Doe received notice that the board, after considering the recommendations of the review committee and the executive committee, voted to affirm the executive committee's recommendation and terminate Doe's medical staff privileges. The February 17, 2003, letter expressly advised Doe of his right to appeal to the fair hearing panel, inspect pertinent information in the hospital's possession, and present evidence before the fair hearing panel. The fair hearing panel conducted a hearing on September 10, 2003. During that hearing, Doe was again accompanied by counsel and afforded the opportunity to present evidence and cross-examine witnesses. The fair hearing panel did not recommend termination, but rather, a 29-day suspension, proctorship for nine months, 40 hours of continuing education, and an admission by Doe that he did not take sufficient steps to properly care for the patient. The board rejected the fair hearing panel's recommendation and affirmed its previous recommendation of termination. Considering these non-disputed facts, we conclude that there is no genuine issue of material as to whether the hospital followed the procedures put forth in its bylaws during Doe's peer review.

¶ 57 Doe does not claim that he was the denied the right to appear before the review committee or appeal to the fair hearing panel, but rather, argues that there was actual unfairness during the proceedings. Doe claims that he was not given proper notice in the statement of grounds for the reason for the adverse action, new grounds for adverse action were introduced into the proceedings—the prior patient-care incidents in 1995 to 1997—that did not reasonably relate to the reasons for adverse action put forth in the statement of grounds, a hospital attorney authored a

portion of the fair hearing panel report, the executive committee did not provide documents it relied on recommending adverse action, the executive committee submitted *ex parte* evidence before the fair hearing panel, and competitors of Doe participated in the proceedings.

¶ 58 Doe's claims of unfairness are not supported by the record, and therefore, do not create a genuine issue of material fact regarding whether the proceedings were unfair or whether defendants engaged in willful and wanton conduct in terminating Doe's medical staff privileges. See *Tagliere v. Western Springs Park District*, 408 Ill. App. 3d 235, 245 (2011) (deciding that summary judgment was warranted because the record reflected that the defendant's alleged misconduct is not willful and wanton conduct). The record indicates that Doe was asked before the fair hearing panel about prior patient-care issues that allegedly occurred between 1995 and 1997. Although those incidents were not referenced in the statement of grounds issued to Doe in the hospital's June 17, 2002, letter, article XIII, section 12(b)(vii) of the hospital's bylaws provides that once a hearing before the fair hearing panel was requested, the panel is not bound by the statement of grounds on which the prior action was based. Instead, the fair hearing panel can broaden the issues so long as they reasonably relate to the initial statement of grounds and each side is given the opportunity to submit evidence. The June 17, 2002, statement of grounds concerned Doe's care of a 20-monthold patient admitted to the hospital's emergency room and his alleged failure to properly treat the patient. The new evidence introduced before the fair hearing panel concerned whether Doe had prior issues with patient care, and therefore, the fair hearing panel could have concluded that it was reasonably related to the initial statement of grounds. In addition, consistent with the hospital's bylaws, the record clearly reflects that, after Doe stated that he had never had any previous patient-care issues, the fair hearing panel provided both parties an opportunity to revisit Doe's testimony, including providing Doe with an opportunity to change his testimony, submit additional written evidence on the subject,

and submit additional briefs on the issue. Further, the hospital, in a letter dated October 21, 2003, turned over to Doe “a complete copy of the file relating to [Doe] retained by [the hospital’s quality management department].” Thus, because the fair hearing panel gave Doe an opportunity to further address his testimony regarding prior patient-care issues, the introduction of that evidence did not constitute actual unfairness in the proceedings. Finally, Doe’s argument that the proceedings were not fair because the hospital’s attorney made assertions that Doe had been proctored when, in fact, he had not been proctored, is not persuasive. The record reflects that Doe was subject to random proctoring in December 1997. Therefore, the statements by the hospital’s attorney that Doe had been proctored as opposed to “subject to proctoring” did not render the peer review process unfair.

¶ 59 Moreover, the participation by Duarte, Hewell, and Reilly in the peer review process did not constitute actual unfairness. Plaintiffs argue that these doctors were competitors of Doe, and therefore, should not have participated in the peer review process. However article XIII, section 4(a) provides that “[n]o individual \*\*\* who is in direct economic competition with the affected member shall serve on the [review committee],” and article XIII, section 10(a) has a similar prohibition with respect to the fair hearing panel. The record is clear that none of these physicians served on either the review committee or the fair hearing panel. Specifically, Duarte was a witness for the hospital and participated in the board meetings regarding the adverse action against Doe; Hewell participated in the board meetings during which Doe’s peer review was discussed; and Reilly presented the executive committee’s case before the review committee and the fair hearing panel. Even if these physicians were in direct economic competition with Doe, the bylaws only prevented them from serving on either the review committee or the fair hearing panel but did not prohibit them from participating in the peer review process in a different capacity.

¶ 60 Finally, plaintiffs’ claim that the record demonstrates actual unfairness during Doe’s peer

review because the fair hearing panel's attorney drafted a portion of their report is also unavailing. Plaintiffs argue that "[t]here is no authority in the [b]ylaws for [the hospital] counsel assigned to assist the [fair hearing panel] to author a portion of the [fair hearing panel's] report or summarize contested evidence in argumentative ways, either in communications to the [fair hearing panel], or in portions of the [fair hearing panel] report authored by counsel." However, article XIII, section 12(h) does not prohibit the attorney assigned to assist the fair hearing panel from authoring a portion of its report, and we decline to conclude that doing so rendered the peer review process unfair. In addition, as we previously noted, with respect to statements made by the fair hearing panel's attorney in letters to the panel that were allegedly inaccurate, the record reflects that Doe was provided an opportunity to revisit his prior testimony.

¶ 61 In sum, we emphasize that, pursuant to the principles set forth by our supreme court in *Adkins*, our inquiry is limited to whether the hospital followed its bylaws during Doe's peer review and whether the proceedings were fair. While the peer review process was adversarial in nature, the record clearly reflects that Doe was given notice of the hearings, assisted by counsel, and afforded the opportunity to question witnesses and present evidence. With respect to the prior patient-care issues introduced before the fair hearing panel, the fair hearing panel could have concluded that this evidence was reasonably related to the initial statement of grounds provided to Doe, and the record likewise reflects that Doe had the opportunity to revisit his testimony and submit additional evidence. Therefore, there is no genuine issue of material fact regarding whether the hospital followed its bylaws during the peer review process, whether the record demonstrated actual unfairness, or whether the hospital or its agents acted with willful or wanton conduct. Therefore, summary judgment in favor of the hospital with respect to count 2 was warranted because there is no genuine issue of material fact regarding whether there was actual unfairness during Doe's peer

view or whether the hospital acted with willful and wanton conduct. See *Adkins*, 129 Ill. 2d at 511 (“[C]onsidering the character and sequence of events, the evidence and the seriousness of the charges against [the plaintiff], there is nothing to suggest on review that the decision to discipline [the plaintiff] was anything other than a professional judgment that such was required in the best interest of [the hospital], and the patients it served.”).

¶ 62

2. Counts 10, 11, and 12

¶ 63 Summary judgment is also warranted on counts 10, 11, and 12 of plaintiffs’ amended complaint. Count 10 sought a declaratory judgment against all defendants; count 11 sought an injunction against the hospital; and count 12 sought a declaration of no immunity against all defendants. According to plaintiffs, “[t]he evidence in this case relevant to these counts established that the [fair hearing procedures]” were not fair and that Doe’s reputation was sullied with false statements presented by the hospital and its agents.

¶ 64 Initially, we note that plaintiffs’ argument for why the court erred in granting summary judgment on these counts is undeveloped and lacks citation to authority. See Ill. S. Ct. R. 341(h)(7) (eff. Sept. 1, 2006); *Velocity Investments, LLC v. Alston*, 397 Ill. App. 296, 297 (2010) (noting that the court is entitled to have issues clearly defined with pertinent authority cited and cohesive arguments presented, and that the court is not a repository into which a party may place the burden of argument and research). However, these claims rest on the same factual allegations as count 2. Therefore, for the reasons discussed above with respect to count 2, the record demonstrates that the hospital followed its bylaws during Doe’s peer review, and plaintiffs are unable to demonstrate actual unfairness during the proceedings. Therefore, there is no genuine issue of material fact with regard to these counts, and defendants are entitled to a judgment as a matter of law.

¶ 65 D. Plaintiffs' Motion for Partial Summary Judgment

¶ 66 The final issue on appeal is whether the trial court erred in denying plaintiffs' motion for partial summary judgment with respect to counts 2 and 10. As discussed above, the record demonstrates that there is no genuine issue of material fact regarding whether the hospital adhered to its bylaws during Doe's peer review, or whether there was actual unfairness on the part of the hospital, or whether defendants acted with willful or wanton conduct in terminating Doe's medical staff privileges. Therefore, because the trial court properly granted defendants' motion for summary judgment with respect to counts 2 and 10, it properly denied plaintiffs' motion for partial summary judgment on those counts. See *Herlehy v. Bistersky*, 407 Ill. App. 3d 878, 2010 (holding that the trial court properly granted the defendants' motion for summary judgment and also properly denied the plaintiffs' cross motion for summary judgment).

¶ 67 III. CONCLUSION

¶ 68 For the foregoing reasons, we affirm the judgment of the circuit court of Kane County.

¶ 69 Affirmed.