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SIXTH DIVISION  
May 22, 2015

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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ROBERT SOE-HLAING LAI, M.D.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 13 CH 21677
	)	
GOTTLIEB MEMORIAL HOSPITAL,	)	Honorable
	)	Sophia H. Hall,
Defendant-Appellee.	)	Judge Presiding.

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JUSTICE LAMPKIN delivered the judgment of the court.  
Presiding Justice Hoffman and Justice Hall concurred in the judgment.

**ORDER**

¶1 *Held:* Where a doctor sought to enjoin a hospital from reporting to a national database the doctor's voluntary surrender of staff privileges during an investigation, the trial court's denial of preliminary injunctive relief is affirmed.

¶2 In this interlocutory appeal, plaintiff Robert Soe-Hlang Lai, M.D., challenges the trial court's denial of his motion for a preliminary injunction against defendant Gottlieb Memorial Hospital. Specifically, the trial court held that it would not enjoin defendant from reporting to a national database plaintiff's voluntary surrender of his medical and clinical staff privileges, which

had occurred while defendant was conducting proceedings to determine whether to uphold the summary suspension of plaintiff's privileges. For the reasons that follow, we affirm the judgment of the trial court.

¶3

### I. BACKGROUND

¶4 This litigation arose out of defendant's summary suspension of plaintiff's surgical privileges on June 13, 2013, based upon complications that a patient (Patient A) suffered after a surgical procedure plaintiff, a urologist, had performed earlier that month. Defendant verbally notified plaintiff of this summary suspension. Defendant also told him that Patient A's case had been referred to an out-of-state urologist for peer review and the Medical Executive Committee (MEC) would meet to review the summary suspension in 30 days.

¶5 On June 14, 2013, plaintiff was notified in writing of the summary suspension. This letter informed plaintiff that an *ad hoc* committee of the medical staff met to review the summary suspension and modified it to include "all privileges related to performing procedures." Plaintiff's privileges of prescribing medications, admitting, consults, and evaluation and management of patients not involving procedures were not suspended. The letter advised plaintiff that he was entitled to the procedural rights described in section 11.13 through 11.15 of the hospital's bylaws, a copy of which was enclosed.

¶6 On July 16, 2013, plaintiff received written notice of a special meeting of the MEC on July 19, 2013, to discuss the summary suspension and the peer review report. Plaintiff attended that MEC meeting and discussed the case of Patient A and the peer review report. During this meeting, plaintiff learned that defendant had sent the peer reviewer a list of plaintiff's past complications from surgical procedures since 2007 (the additional patient cases). Plaintiff also discussed the additional patient cases during the meeting. Plaintiff was excused from the meeting

while the MEC deliberated. Later that day, defendant's president informed plaintiff by telephone that the "trend of increasing complications" went against him, the MEC had voted to uphold the suspension and terminate his privileges, and he could appeal the decision. During this telephone call, plaintiff verbally informed defendant's president that he wished to voluntarily resign his privileges at the hospital. The record also contains plaintiff's July 19, 2013 written resignation "from the medical staff of Gottlieb Memorial Hospital, effective immediately."

¶7 In an August 2013 letter to plaintiff's counsel, defendant's counsel stated that plaintiff had failed to exercise his due process rights as contained in the hospital's bylaws and his summary suspension was final. Counsel stated that defendant would accept plaintiff's resignation effective July 22, 2013, but could not agree to void or rescind the summary suspension of his privileges. In addition, defendant would report to the National Practitioner Data Bank (NPDB), as required by federal statute, both plaintiff's summary suspension and resignation of his clinical privileges during the pendency of defendant's investigation.

¶8 In a September 12, 2013 letter to defendant's counsel, plaintiff's counsel objected to any report to the NPDB based on defendant's failure to comply with state and federal law. Counsel asserted that defendant failed to adequately notify plaintiff of his rights, including his right to an expedited hearing within 15 days of the imposition of the summary suspension; failed to review the summary suspension on an expedited basis; and considered information outside the scope of the stated basis for the summary suspension.

¶9 In a September 20, 2013 letter to plaintiff's counsel, defendant's counsel asserted that plaintiff was properly advised of the summary suspension and his due process rights. Moreover, defendant intended to report plaintiff's summary suspension to the NPDB, but would not report the MEC's termination of his medical staff privileges because he was not officially notified of that

decision as a result of his intervening resignation. In addition, defendant intended to report to the NPDB that plaintiff resigned his clinical privileges pending an investigation.

¶10 On September 20, 2013, plaintiff filed a complaint for declaratory and injunctive relief against defendant. Plaintiff alleged that defendant violated state and federal statutory law because it failed to notify him of his right to a fair hearing within 15 days of the imposition of the summary suspension. Moreover, defendant's bylaws did not even provide for an expedited hearing after a summary suspension. Further, defendant failed to provide plaintiff with a full explanation of the reasons for the summary suspension, written notice of the MEC's July 2013 adverse decision, and notice of plaintiff's right to a fair hearing on that July 2013 adverse decision. Plaintiff asked the trial court to declare defendant's summary suspension and subsequent termination of plaintiff's medical staff membership and clinical privileges null and void. Plaintiff also asked the trial court to prohibit defendant from enforcing the summary suspension and subsequent termination and from reporting those actions to any person or third party.

¶11 After the complaint was filed, the parties agreed that in return for the dismissal of plaintiff's lawsuit without prejudice, defendant would provide written notice and process pursuant to its bylaws and the relevant state and federal statutes to allow plaintiff the fullest opportunity permitted by law to challenge the summary suspension of his medical and clinical staff privileges. Defendant also agreed not to make any report to the NPDB until the parties settled or the court made a decision on plaintiff's request for injunctive relief. Defendant sent plaintiff the written notice on November 12, 2013, and plaintiff requested a hearing on the summary suspension and 30 days advance written notice of the place and time of the hearing and the reasons considered in making the adverse recommendation. Plaintiff's hearing request was made without waiving his objections that: defendant's July 19, 2013 decision was procedurally flawed; defendant lacked

standing to pursue corrective action against him because he no longer had any privileges at the hospital; and the consideration of the additional patient cases at the July 19, 2013 meeting was procedurally and legally improper.

¶12 Thereafter, the parties exchanged correspondence wherein defendant contended the substance of the hearing should include the Patient A case and the additional patient cases.

Plaintiff, however, argued that the additional patient cases did not form the basis of the summary suspension and, thus, objected to the inclusion of the additional patient cases in the hearing.

Plaintiff also argued that defendant lacked standing to pursue a disciplinary action against him due to the fact that he no longer had clinical privileges at the hospital. Further, plaintiff contended defendant should be permanently enjoined from reporting him to the NPDB as a result of defendant's failure to follow the federal statutory standards for professional review actions.

¶13 In February 2014, plaintiff moved the trial court for a permanent injunction or, in the alternative, a preliminary injunction. Plaintiff sought a permanent injunction to prevent defendant from reporting him to the NPDB based on his claim that defendant lacked standing to pursue disciplinary action against him. In the alternative, plaintiff sought a preliminary injunction to prevent defendant from reporting to the NPDB plaintiff's summary suspension and voluntary resignation while under investigation before plaintiff receives a hearing on the summary suspension in conformance with state and federal statutory requirements. Plaintiff also asked the court to limit the scope of the hearing to the Patient A case because the additional patient cases were never mentioned to plaintiff prior to the July 19, 2013 MEC meeting and were antiquated and extraneous information unrelated to the purpose of the summary suspension. Plaintiff argued that he had a clear and ascertainable right in need of protection; he would suffer irreparable harm if defendant was allowed to take disciplinary action against his clinical privileges and report him to

the NPDB; he had no adequate remedy at law because monetary damages would not adequately compensate him for the damage to his professional career and reputation, and a report to the NPDB would make it impossible for him to keep his current job in Indiana or find future employment; and the balance of hardships weighed in his favor.

¶14 In its response, defendant argued that the relevant federal statute requires a physician reviewing body to report to the NPDB, among other things, a physician's surrender of privileges when the physician is under an investigation. Defendant also argued that the issue of whether plaintiff's summary suspension was proper was separate from the issue of whether defendant must comply with its duty to report plaintiff's voluntary resignation of privileges. Further, defendant argued plaintiff could not establish the required elements for either a preliminary injunction or permanent injunctive relief. Defendant stated that the parties had agreed to dismiss plaintiff's complaint in exchange for a fair hearing, but they were now before the trial court because they were unable to agree (1) on the scope of the hearing and (2) whether, regardless of the result of such hearing, defendant had an independent duty under federal law to report plaintiff's voluntary surrender of clinical privileges.

¶15 In his reply, plaintiff argued, *inter alia*, that the trial court had authority to enjoin defendant from reporting both plaintiff's summary suspension and voluntary resignation to the NPDB. Specifically, plaintiff argued that proceeding to a fair hearing would render his resignation null and void because defendant could not conduct corrective action procedures against him without acknowledging that he was a member of the medical staff subject to corrective action. Plaintiff also argued that his resignation was not reportable to the NPDB because, at the time of his resignation, there was no independent investigation occurring aside from the legally and procedurally improper summary suspension proceeding.

¶16 On April 2014, a hearing was held on plaintiff's motion for preliminary injunctive relief; plaintiff abandoned his request for a permanent injunction until such time as an evidentiary hearing on the merits was held. During the hearing, the trial court questioned the parties about the effect of plaintiff's voluntary resignation on defendant's reporting obligations to the NPDB and whether the resignation rendered moot plaintiff's request to enjoin defendant from reporting the summary suspension to the NPDB. Plaintiff maintained that he was not subject to any corrective action by defendant because he was not currently on staff; however, if there was going to be a report to the NPDB, then plaintiff was first entitled to a full due process hearing on the summary suspension. Defendant argued that plaintiff's resignation did not render the fair hearing issue moot because plaintiff was still subject to corrective action since he resigned while he knew he was under investigation. When the trial judge said she thought she "was looking at the reporting as the immediate concern," defense counsel suggested that, given defendant's agreement "not to report until it goes through the fair hearing process," the only real issue was the scope of that hearing. Thereafter, defendant agreed when the trial judge stated, "So nothing immediate is going to happen until I determine the scope of the fair hearing."

¶17 On July 21, 2014, the trial court denied plaintiff's motion for a preliminary injunction because he could not establish the elements required for relief. The trial court found that plaintiff did not have a likelihood of success on the merits because the relevant federal statute did not provide a private cause of action for practitioners regarding a peer review body's failure to follow the standards for professional review actions. Furthermore, because plaintiff resigned his privileges when he knew he was under investigation, defendant was required to report the voluntary resignation to the NPDB regardless of whether defendant followed the relevant federal statutory standards for review actions. The trial court also found that plaintiff did not have an

ascertainable right in need of protection and would not suffer irreparable harm if the injunction did not issue. The trial court continued the case for a hearing on plaintiff's motion to reconsider and noted that defendant stipulated that it would "not make any report" to the NPDB until the court ruled on the motion to reconsider.

¶18 In his motion to reconsider, plaintiff argued the court did not answer the precise issue brought to its attention by the parties. According to plaintiff, the sole question before the court at the April hearing had been the proper scope of the fair hearing because defendant had already agreed not to report plaintiff to the NPDB until the fair hearing was completed. Plaintiff complained that the issue of enjoining defendant from reporting plaintiff's voluntary resignation to the NPDB was not the question that the parties verbally had asked the court to consider. Plaintiff also argued that he would suffer irreparable harm from the court's ruling that defendant could report plaintiff's voluntary resignation to the NPDB before plaintiff received the fair hearing. Plaintiff asked the court to restore the parties to their status following his December 2013 request for a fair hearing and enjoin defendant from reporting him to any third party, including the NPDB, until his fair hearing was completed.

¶19 In its response, defendant argued the court correctly concluded that, under the facts presented, the hospital was authorized to report plaintiff's voluntary resignation in the instant case. Defendant also argued the scope of the fair hearing should include the additional patient cases.

¶20 At the hearing on the motion to reconsider, plaintiff argued that defendant should be enjoined from making any report to the NPDB until plaintiff received a full hearing on the merits. Plaintiff stated that if he agreed to go forward with a fair hearing on the Patient A case and the additional patient cases, then defendant would have to drop the argument that it could report to the NPDB plaintiff's resignation while under investigation because the giving of a full due process

hearing would essentially erase the investigation conducted after the June 2013 summary suspension.

¶21 Defendant argued that when a physician resigns during a period of time when he knows he is being investigated, the hospital needs to report that resignation to the NPDB. Because the report would simply say that the physician resigned from the medical staff while under investigation, it would not violate defendant's agreement not to report anything related to the summary suspension until plaintiff had received the fair hearing.

¶22 The trial court denied the motion to reconsider and stayed enforcement of the order until plaintiff's interlocutory appeal was decided. Plaintiff appealed.

¶23 II. ANALYSIS

¶24 A trial court's decision to deny a preliminary injunction based on the plaintiff's failure to establish the requirements for such relief is reviewed under the abuse of discretion standard. *Mohanty v. St. John Heart Clinic*, 225 Ill. 2d 52, 62-63 (2002). However, a trial court's decision denying preliminary injunctive relief that involves the interpretation of a state or federal statute merits *de novo* review. *Caro v. Blagojevich*, 385 Ill. App. 3d 704, 708-09 (2008). Accordingly, we review *de novo* the trial court's conclusion that defendant's obligation under federal statutory law to report plaintiff's surrender of clinical privileges was separate and apart from defendant's obligation to report the summary suspension following a due process fair hearing. We review for an abuse of discretion the trial court's conclusion that plaintiff failed to establish the requirements for preliminary injunctive relief.

¶25 To prevail on a claim for a preliminary injunction, a party must show (1) a certain and clearly ascertainable right requiring protection; (2) irreparable injury if an injunction is not issued; (3) no adequate remedy at law; and (4) a likelihood of success on the merits. *Mohanty*, 225 Ill. 2d

at 62. “On appeal, we examine only whether the party seeking the injunction has demonstrated a *prima facie* case that there is a fair question concerning the existence of claimed rights.” *Id.*, quoting *People ex rel. Klaeren v. Village of Lisle*, 202 Ill. 2d 164, 177 (2002).

¶26 Plaintiff argues the trial court’s decision should be reversed and remanded because it ruled on only the federal statutory basis for plaintiff’s request for injunctive relief but failed to address the state statutory basis plaintiff offered to support his request for relief. Specifically, plaintiff complains the trial court wholly failed to address his claim under section 10.4(b)(2)(C) of the Hospital Licensing Act (210 ILCS 85/10.4(b)(2)(C) (West 2012)), which requires a hospital to provide a medical staff member with a fair hearing that must be commenced within 15 days after the summary suspension and completed without delay unless otherwise agreed to by the parties. Plaintiff also argues the trial court left unanswered the parties’ specific question about the proper scope of plaintiff’s fair hearing.

¶27 Although the parties may have focused during argument before the trial court on the issue of the scope of the future fair hearing, we agree with the trial court that a dispositive preliminary issue was whether defendant could be enjoined from reporting to the NPDB that plaintiff had voluntarily resigned while under investigation. Moreover, this issue was intertwined with the arguments plaintiff raised concerning the alleged procedurally and legally improper summary suspension and the fair hearing. The reporting of the resignation issue involves the interpretation of a statute, the Health Care Quality Improvement Act of 1986 (HCQIA) (42 U.S.C. § 11101 *et seq.* (2011)), and this question of law is subject to *de novo* review. See *Caro*, 385 Ill. App. 3d at 708-09.

¶28 Congress enacted the HCQIA to improve the quality of medical care by encouraging physicians to participate in peer review and by restricting the ability of incompetent physicians to

move from state to state without the disclosure or discovery of their previous incompetent performance. 42 U.S.C. § 11101 (2011); *Diaz v. Provena Hospitals*, 352 Ill. App. 3d 1165, 1167 (2004). To accomplish the latter goal, Congress created the NPDB, which is a national repository of information and facilitates a comprehensive review of physicians' and other health care practitioners' professional credentials. *Diaz*, 352 Ill. App. 3d at 1167 (citing National Practitioner Data Bank Guidebook, at E-1 (September 2001)). Hospitals are required to report to the NPDB (1) professional review actions that are related to a physician's competence or conduct and that adversely affect clinical privileges for more than 30 days, and (2) a physician's voluntary surrender or restriction of clinical privileges while under, or to avoid, investigation. 42 U.S.C. §§ 11133(a)(1)(A), (a)(1)(B) (2011); *Diaz*, 352 Ill. App. 3d at 1167. The HCQIA is intended to protect patients, not doctors. *Diaz*, 352 Ill. App. 3d at 1172 (citing *Brown v. Medical College of Ohio*, 79 F. Supp. 2d 840, 845 (N.D. Ohio 1999)).

¶29 In *Diaz*, 352 Ill. App. 3d at 1170-73, this court recognized that the HCQIA, under the doctrine of implied preemption, preempts state law and requires hospitals to report to the NPDB a physician's surrender of privileges. The NPDB is a source of information for hospitals, licensing boards, and other health care entities, and Congress has determined that it is important for these entities to have access to data regarding physicians' surrender of privileges while investigations are pending in order to protect the health and safety of patients by preventing incompetent physicians from continuing to practice without any record of past problems. *Id.* at 1172-73.

¶30 Consistent with the trial court's conclusion, we find that the plain language of the statute provides that the hospital's compliance with the standards set forth in section 11112(a) of the HCQIA determines only whether the hospital meets the criteria for immunity from civil damages with respect to the professional review action; it does not provide a private cause of action for

practitioners under the HCQIA if the hospital fails to follow the section 11112(a) standards. Specifically, section 11111(a)(1) of the HCQIA provides that if the professional review action of a professional review body meets all the standards specified in section 11112(a) of the HCQIA (concerning a reasonable belief that the action furthers quality health care and was warranted by the facts, a reasonable effort to obtain the facts of the matter, and adequate notice and hearing procedures), then the professional review body shall not be liable in damages under any law of the United States or of any State (or political subdivision thereof) with respect to the action. 42 U.S.C. §§ 11111(a)(1), 11112(a) (2011). See also *Held v. Decatur Memorial Hospital*, 16 F. Supp. 2d 975, 977 (C.D. Ill. 1998) (HCQIA did not create a cause of action in favor of a physician against a professional peer review group that had allegedly violated its due process requirements); *Busch v. Graphic Color Corp.*, 169 Ill. 2d 325, 335 (1996) (federal decisions interpreting a federal act are binding on Illinois courts).

¶31 The authority of a hospital to report a physician's surrender of privileges during an investigation is a separate and distinct legal question from a hospital's authority to report a summary suspension after a physician has had an opportunity to exercise his due process rights. Accordingly, the trial court correctly concluded that, under the facts of this case, and based on plaintiff's motion for preliminary injunctive relief, defendant could not be enjoined from reporting plaintiff's surrender of clinical privileges. Moreover, plaintiff's claim that the trial court failed to address his request for relief based upon section 10.4(b)(2)(C) of the Hospital Licensing Act (210 ILCS 85/10.4(b)(2)(C) (West 2012))—which requires a hospital to provide a medical staff member with a fair hearing that must be commenced within 15 days after the summary suspension and completed without delay—is unavailing; as discussed above, the HCQIA pre-empts state law.

¶32 We also conclude that the trial court did not abuse its discretion in denying plaintiff's request for preliminary injunctive relief where plaintiff cannot establish a clearly ascertainable right requiring protection, an irreparable harm, and a likelihood of success on the merits. Plaintiff argues that he presented a *prima facie* case that there was a fair question concerning the existence of his right to a hearing under state law—*i.e.*, the Hospital Licensing Act (210 ILCS 85/10.4(b)(2)(C) (West 2012))—and the hospital's bylaws, and he will suffer irreparable harm to his professional reputation and career if defendant is allowed to make an adverse report to the NPDB before a fair hearing is held on the merits of defendant's decision to summarily suspend and subsequently terminate his privileges. We disagree.

¶33 First, defendant has agreed not to report plaintiff's summary suspension to the NPDB until such time as plaintiff is able to exercise his due process rights under state and federal law. Consequently, no injunctive relief is needed by plaintiff on this issue. Second, plaintiff cannot meet his burden to show his entitlement to injunctive relief concerning the reporting of the voluntary resignation. As discussed above, the HCQIA preempts state law, so plaintiff's attempt to support his claim for injunctive relief based upon state law is unavailing. Moreover, the HCQIA is intended to protect patients, not physicians and, thus, affords no remedy to plaintiff. A hospital's reporting obligations under the HCQIA concerning a physician's voluntary resignation during an investigation are separate and distinct from a hospital's reporting obligations concerning the suspension of a physician's privileges following a fair hearing. If physicians could avoid corrective action by simply resigning, they would frustrate Congress's stated intent in enacting the HCQIA to protect the public through the creation of a public database. While plaintiff is entitled to a due process hearing on the summary suspension before any report relating to such suspension is filed with the NPDB and to have any corrections made to the written notice of hearing he was

provided as a result of any deficiencies under the hospital's bylaws, his surrender of privileges while under investigation is a separate reportable event. Furthermore, plaintiff's claim of irreparable harm rings hollow considering the self-inflicted nature of the alleged injury. See *Ty, Inc. v. Jones Group, Inc.*, 237 F.3d 891, 903 (7th Cir. 2001) (in a trademark infringement action by a manufacturer of plush toy animals against a competitor, the competitor's claim of irreparable harm rang hollow considering it knew the potential consequences when it decided to produce its plush toy cars). Here, plaintiff voluntarily chose to surrender his privileges while under investigation by the hospital. We conclude the trial court did not abuse its discretion by denying plaintiff injunctive relief concerning the reporting of his voluntary resignation.

¶34 Finally, the parties agree that the trial court did not address the issue of whether the scope of the fair hearing should include a review of the additional patient cases. Accordingly, we remand this matter to the trial court to address the proper scope of the fair hearing.

¶35 Accordingly, we affirm the judgment of the circuit court denying injunctive relief and remand for a determination on the scope of the fair hearing.

¶36 Affirmed and remanded.