California Court Finds Peer Review Speech, but Not Actions, Are Protected Under State Anti-SLAPP Statutes

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The California Supreme Court decided to take on the issue of Anti-SLAPP protection for peer review discussions and actions this summer in *Bonni v. St. Joseph Health System, et al.*\(^1\)

The plaintiff, Aram Bonni, M.D., was an OB/GYN who held privileges at two affiliated hospitals, Mission Hospital Regional Medical Center (“Mission”) and St. Joseph
Hospital of Orange ("SJO"). His care at both hospitals gave rise to allegedly dangerous outcomes that seriously injured multiple patients and nearly caused a patient’s death. After learning of these patient injuries, physicians at the two hospitals voted to summarily suspend his privileges with a recommendation to terminate his medical staff membership and privileges. Dr. Bonni participated in judicial review committee hearings at both hospitals, which led to a settlement with SJO under which Dr. Bonni agreed to resign. Separately, his privileges were terminated at Mission.

Following the proceedings, Dr. Bonni claimed he was a patient safety whistleblower. Dr. Bonni sued the health systems, hospitals, medical staffs, and peer review physicians ("Defendants"), alleging retaliation under Health and Safety Code section 1278.5. Dr. Bonni claimed the defendants “unlawfully retaliated against him for raising patient safety concerns by summarily suspending him, reporting his suspensions to the state medical board, subjecting him to lengthy and humiliating peer review proceedings, defaming him, and ultimately terminating his hospital privileges.”

In response to the lawsuit, the Defendants filed an “anti-SLAPP” motion, which the trial court granted. SLAPP is an acronym for “strategic lawsuits against public participation.” Anti-SLAPP laws are intended to prevent people from using courts, and potential threats of a lawsuit, to intimidate people who are exercising their First Amendment rights. Here, the Defendants argued that Dr. Bonni’s case should be dismissed due to Defendant’s proper exercise of speech on a matter of public concern, i.e., the health and safety of California’s citizens through peer review.

The trial court agreed with Defendants and found that Dr. Bonni’s retaliation claim arose from the Defendants’ participation in hospital peer review and such participation was activity protected by California’s anti-SLAPP statute. Dr. Bonni appealed and the Court of Appeal ruled in favor of Dr. Bonni, finding that the physician’s mere allegation of retaliatory animus by Defendants completely removed anti-SLAPP protections for what might otherwise be protected activity, and finding that no part of the peer review process enjoyed anti-SLAPP protection.

The Defendants petitioned for review with the California Supreme Court. The court held that while peer review speech is generally protected by the anti-SLAPP statute, peer review conduct, including the discipline imposed through the peer review process, is not. Relying on its earlier decision in Park v. Board of Trustees, the court explained that “the anti-SLAPP statute protects speech and petitioning activity taken in connection with an official proceeding, but not necessarily the decisions made or actions taken as a result of those proceedings.” The court reasoned in Bonni that disciplinary actions, including summary suspensions and the termination of privileges, do not qualify as a “statement in connection with an official proceeding” or as “conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech.” As such, the disciplinary actions are not afforded anti-SLAPP protection.
The court held that the following peer review statements are anti-SLAPP protected and the physician could not bring a lawsuit stifling such statements:

- Reporting physicians to the California Medical Board or National Practitioner Data Bank;
- Discussing physician qualifications and competence in peer review committee meetings;
- Testifying in peer review hearings; and
- Recommending discipline, including a Medical Executive Committee’s recommendation to terminate a physician’s privileges. \[12\]

The court held that the actual decisions imposed through the peer review process are not protected. Those decisions include the summary suspension of a physician’s privileges and governing body’s final termination of a physician’s privileges. \[13\]

**Takeaway**

The *Bonni* decision confirms that, in California, medical staff reporting activity is clearly protected by the anti-SLAPP statute as protected speech. Medical staffs should feel confident in participating in peer review hearings and making recommendations that are in the best interest of patient care. By holding that certain actions imposed through the peer review process are not protected by the anti-SLAPP statute, the California Supreme Court has potentially exposed California medical staffs to an increase in frivolous and retaliatory lawsuits filed solely to chill the peer review process.

**FOOTNOTES**


[2] *Id.* at 684.

[3] *Id.*

[4] *Id.*

[5] *Id.* at 685.

[6] *Id.* at 685-86.


