

## Client Advisory

November 2000

# Illinois Supreme Court Declines to Rule on Whether Medical Staff Bylaws Are a Contract

For over three decades in Illinois, medical staffing decisions of private hospitals have been subject to limited court review solely to determine whether there was substantial compliance with the hospital's bylaws and whether the hearing was fair. This "rule of limited review," along with various statutory immunities, also provides that damages may not be awarded when a hospital fails to follow its bylaws in suspending, revoking, or reducing medical staff privileges. The remedy instead is that a hospital must reconvene the hearing and follow its bylaw procedures. In 1998, one Illinois appellate court deviated from Illinois precedence when it held that hospital bylaws constitute a contract between the medical staff and the hospital and that a violation of those bylaws provides a physician with a claim for damages against the hospital. See *Garibaldi v. Applebaum* 301 Ill. App.3d 849 (1998). The *Garibaldi* decision also was significant because it left the long-standing rule of limited review open to attack and arguably put hospitals at risk for damages awards for bylaws violations.

The *Garibaldi* decision was appealed to the Illinois Supreme Court and generated much interest, including amicus briefs filed by the Illinois Hospital & HealthSystems Association ("IHHA") and the Illinois State Medical Society. On October 26, 2000, the Illinois Supreme Court reversed *Garibaldi* but, significantly, did not review or decide whether hospital bylaws constitute a contract with the medical staff or whether damages are available to a physician for a bylaws violation as the lower court in *Garibaldi* held. This Client Advisory discusses the impact of that recent Supreme Court decision.

## Background Facts

The plaintiff, Dr. Abel Garibaldi, is a cardiovascular surgeon who held clinical privileges at St. Francis Hospital and Health Center ("St. Francis" or the "Hospital") in Blue Island, Illinois since 1981. From 1981 to 1992, Dr. Garibaldi was a member of a group of cardiovascular surgeons who performed open heart procedures at several Chicago area hospitals including St. Francis. Internal differences arose between Dr. Garibaldi and the other members of the group, and, as a result, on January 1, 1993, a new group was formed that included most of the former group members except Dr. Garibaldi. The new group, Cardiovascular Medical Consultants ("CMC"), entered into an exclusive contract with St. Francis that allowed only CMC members to perform, among other things, open heart surgery at St. Francis. On January 26, 1993, Dr. Garibaldi brought an action in the circuit court of Cook County alleging three claims: (1) declaratory and injunctive relief against St. Francis, CMC and its members asserting that his medical staff privileges were constructively revoked by the exclusive contract and that the hospital bylaws were violated because he did not receive the hearing they required when staff privileges are suspended,

revoked, or reduced; (2) tortious interference with contract against CMC and its members for interference with his alleged contract (his staff privileges) with St. Francis; and (3) breach of contract and damages against St. Francis for not providing him a hearing under the bylaws.

A chancery judge granted defendants' motion for summary judgment on Dr. Garibaldi's first claim, finding that his staff privileges had not been revoked or reduced by virtue of the exclusive contract and therefore that he was not entitled to a bylaws hearing. Dr. Garibaldi's other two claims were set for hearing before another judge. Dr. Garibaldi appealed the chancellor's ruling, and, on June 29, 1995, the Illinois appellate court reversed the chancellor's ruling, finding that the hospital bylaws constituted a contract between the medical staff and a hospital and that the formation of an exclusive group that excludes a physician from performing medical services at a hospital, even though the hospital took no action to affect his privileges, is an "adverse" reduction in privileges sufficient to require a hearing under the bylaws. The appellate court remanded Dr. Garibaldi's claim back to the chancery court for further hearing consistent with its opinion.

Meanwhile, Dr. Garibaldi's other two claims were before the trial court. Before, the appellate court ruled on his first claim, the trial court granted summary judgment in favor of defendants on the remaining two counts, finding that the hospital bylaws did not constitute a contract and that, even if they did, they were not breached when the hospital entered into the exclusive contract without providing Dr. Garibaldi notice and a hearing. Dr. Garibaldi appealed this decision too.

While all this was transpiring, the Illinois legislature amended the Hospital Licensing Act requiring notice and a hearing when a physician's privileges are adversely affected by an exclusive group contract, assuming that the physician has not otherwise waived his right to a hearing. Before the appellate court could consider Dr. Garibaldi's second appeal, St. Francis amended its bylaws to conform to the Hospital Licensing Act and then gave Dr. Garibaldi a hearing consistent with the Act. After the hearing, defendants moved to dismiss the complaint on the grounds that a hearing was provided and, therefore, that Dr. Garibaldi's first claim for injunction was moot. The trial court granted the motion. Dr. Garibaldi appealed that ruling, and it was consolidated with the other appeal on his dismissed claim for damages, which was already pending.

On November 12, 1998, the appellate court in *Garibaldi* reversed the trial court's grant of summary judgment on Dr. Garibaldi's two claims for damages. Significantly, the appellate court held that hospital bylaws constitute a contract between the medical staff and the hospital. Further, contrary to well-settled Illinois decisions, including those of the Supreme Court, and statutory immunities, the appellate court found that a court may award damages against a hospital if the hospital bylaws were breached. Defendants appealed this decision to the Illinois Supreme Court.

## **The Supreme Court Decision**

Based on the foregoing, the highest court in Illinois was poised to decide several important issues including: (1) whether hospital bylaws constitute a contract; (2) whether the formation of an exclusive group that effectively prevents a physician from performing services at a hospital constitutes a reduction, suspension, or revocation of privileges sufficient to require a hearing under the bylaws; and (3) most significantly, whether a hospital can be liable for damages in its medical staffing decisions when it does not follow its bylaws. Defendants and the IHHA urged the Supreme Court to follow significant Illinois precedence under the rule of limited review and the statutory immunities under the Hospital Licensing Act and

Medical Practice Act to deny Dr. Garibaldi's claim for damages and, instead, limit any remedy for a bylaws violation to a new hearing. The Supreme Court, however, chose the path of least resistance and concluded that a hospital's contract with an exclusive group does not revoke, suspend, or reduce staff privileges because, among other reasons, the grant of medical staff privileges simply signifies that a physician is qualified to practice at the hospital but does not constitute a right to exercise those privileges, which may be adversely affected by a host of factors unrelated to quality of care concerns. Therefore, the Supreme Court found that no bylaws hearing was required and that the hospital's conduct in not providing one was not a violation of those bylaws.

Significantly, the Supreme Court chose not to decide whether the hospital bylaws constitute a contract between the hospital and the medical staff and whether a physician would be entitled to damages if the bylaws were not followed by a hospital as Dr. Garibaldi claimed.

## **The Aftermath**

What does all this mean? The Supreme Court's determination that a hearing was not required under the facts of *Garibaldi* is rendered somewhat irrelevant given the new requirements under the Hospital Licensing Act. By not addressing the contract and damages issue, however, the Supreme Court has left open the argument that damages are available for bylaws violations as the appellate court held in *Garibaldi*. While hospitals may still argue that the appellate court in *Garibaldi* failed to follow long-standing Supreme Court precedence and statutory immunities and therefore should not be followed, hospitals seeking to invoke the deferential standard of the rule of limited review will likely continue to face uncertainty and possible damages claims for not substantially complying with their bylaws regarding medical staffing decisions.

In light of these risks, there are a number of principles that bear repeating as a result of the *Garibaldi* decision:

1. Courts are extremely reluctant to substitute their judgments for those of hospitals and medical staffs if:
  - hospitals follow their medical staff bylaws, rules and regulations;
  - the bylaws, rules and regulations are fair and uniformly applied.
  - If these bylaws, rules and regulations are followed, the prospect of damages is greatly diminished if not eliminated.
2. The statutory immunity provisions are no longer absolute. A wilful and wanton standard has been added but will be difficult for a plaintiff physician to prove.
3. If you enter into exclusive contracts, consider adding a waiver of hearing provision, which is acceptable under state laws.
4. Remember that new legal requirements mandate that a hospital advise and explain its decision to the medical staff when it decides to close a department or service.
5. Do *not* agree to add any reference in the medical staff or corporate bylaws that the medical staff bylaws are a contract. While, arguably, the appellate court's decision finding that bylaws are a contract and allowing damages is good law at least in one appellate district, you should not provide additional fuel for a claim by agreeing that the bylaws constitute a contract.

## Follow-up

Katten Muchin Zavis Rosenman is prepared to assist you in all aspects of Health Care law, including medical staff credentialing decisions, hearings and litigation. If you have any questions or wish to be on our distribution list for future Client Advisories relating to health care issues, please contact one of us.

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