

Examining a Hearing Officer's Risk of Bias from Alleged Financial Conflict in Peer Review Proceedings: The California Supreme Court's Ruling in *Natarajan v. Dignity Health* (Aug. 12, 2021, S259364)

Insights

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PROFESSIONAL

On August 12, 2021 the California Supreme Court concluded the specific circumstances surrounding a hearing officer's appointment did not create an intolerable risk of bias that would require disqualification under Business and Professions Code section 809.2(b)^[1] in *Natarajan v. Dignity Health*. The Supreme Court noted that potential future employment, on its own, is not automatically disqualifying, disagreeing with the Court of Appeal's suggestion in *Yaqub v. Salinas Valley Memorial Healthcare System* that disqualification was required because of an appearance of bias, even in the absence of a direct financial interest in the outcome of the case. Ultimately, the question concerns "when the risk of financial bias becomes intolerable under the circumstances." The Supreme Court held that this is an "inherently context-sensitive inquiry" that should be undertaken with appropriate regard for the unique features of the hospital peer review context.

Background

Dr. Sundar Natarajan was hired in 2007 by St. Joseph's Medical Center of Stockton ("St. Joseph's"), a private hospital owned Dignity Health, as the director of its hospitalist program. In 2011, St. Joseph's medical staff raised concerns regarding Dr. Natarajan's hospitalist practice. Following an investigation into Dr. Natarajan's alleged deficient recordkeeping, excessive length of patient stay, and misuse of consultants, the medical executive committee recommended termination of his medical staff membership and hospital privileges. Dr. Natarajan requested a peer review hearing to challenge the medical executive committee's decision and a hearing officer was duly selected by the hospital president to preside over the proceeding.

Dr. Natarajan objected to the hearing officer's appointment under Business and Professions Code section 809.2(c). Notably, the hearing officer's contract contained a provision that precluded St. Joseph's from hiring him again for three years. Nevertheless, Dr. Natarajan argued that because the same hearing officer had presided over eight peer review matters for other Dignity Health hospitals (none of which were at St. Joseph's) and would be paid by Dignity Health in this case—the officer would be tempted to favor St. Joseph's medical staff in the hope that he would be hired again for future cases.

The hearing officer denied Dr. Natarajan's challenge. After several evidentiary proceedings, the peer review panel upheld the medical executive committee's recommendation to revoke Dr. Natarajan's membership and privileges, and the hospital's governing board affirmed the panel's decision. Thereafter, Dr. Natarajan filed an administrative appeal in the superior court based on his claim that he did not receive a fair hearing due to the hearing officer's alleged financial conflict.

The trial court rejected Dr. Natarajan's claims and denied his petition. In affirming the trial court's ruling, the Court of Appeal determined that in the case of a private hospital, disqualification standards in peer review proceedings are governed by statute—namely, section 809.2(b), which states that a hearing officer "shall gain no direct financial benefit from the outcome." (Bus. & Prof. Code, § 809.2, subd. (b).) Applying the statute's plain language, the Court of Appeal concluded that possible



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employment by the same hospital at some future point in time was simply not enough to confer a direct benefit to the hearing officer. The Supreme Court granted review.

The Supreme Court's Analysis

Although the parties agreed that section 809.2(b) requires disqualification when a financial conflict creates an unacceptable risk of bias, they disagreed as to whether a direct financial conflict existed based solely on the hearing officer's potential future employment in peer review proceedings. Although disagreeing with the Court of Appeal's analysis to some extent, the Supreme Court affirmed its decision and held that the possibility of future employment may—but does not always—give rise to a disqualifying conflict when a hearing officer has been appointed on an *as needed* basis. In other words, potential future employment by the same hospital (by itself) does not automatically disqualify a person from serving as a hearing officer. The Supreme Court reasoned that the adoption of such a rule would require that a hospital hire and train a new hearing officer for every peer review matter—an inefficient and costly endeavor, which would ultimately undermine the integrity of the peer review process.

Having concluded that a direct financial benefit is not gained simply because a hearing officer has been hired by a hospital—and may be hired again at some point in the future—the Supreme Court went on to find that Dr. Natarajan failed to establish that the prospect of the hearing officer's future employment with St. Joseph's created an intolerable risk of bias that warranted disqualification under section 809.2(b). Two central factors guided the Supreme Court's inquiry: (1) whether a particular entity exercises control over the hearing officer selection process; and (2) the extent and likelihood of future financial opportunities that the hearing officer may receive from the same entity. In this case, the medical staff delegated the authority to appoint the hearing officer to the hospital's president who contacted and formally appointed him. Thus, the Supreme Court found that Dignity Health had no control over the hearing officer's selection—a decision that ultimately resided with St. Joseph's officials. In addition, the Supreme Court reasoned that St. Joseph's three-year contractual bar on future employment sufficiently eliminated any significant financial interest the hearing officer may have otherwise had in the outcome of the proceedings. Accordingly, there was no reasonable basis to believe that the hearing officer in this case would be incentivized to favor the medical staff in the hopes of obtaining future work from another Dignity Health hospital.

Optional Tools to Ensure Basic Statutory Preconditions

A hospital's medical staff has a variety of tools at its disposal to ensure fair procedure—only one of which is a potential contractual period during which the hospital may agree to refrain from hiring the same hearing officer. A temporary bar is not required, but the inquiry about the possible risk of bias will depend upon the circumstances. The medical staff bylaws might also provide additional protections to guide how the hearing officer selection process is conducted. What additional measures a hospital may employ to ensure fair procedure will depend on the circumstances of each case and if such measures adequately address whether the hearing officer stands to gain a financial benefit that creates an unacceptable risk of bias in presiding over the hearing.

[1] All further statutory references are to the California Business and Professions Code.

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