



# Fahlen v. Sutter Central Valley Hospitals, 58 Cal. 4th 655 (Cal. 2014)

Topics Covered: Employment, Medical Staff, SLAPP Laws and Termination of Employment

## Outcome: Very Favorable

### Issue

The issue in this case was whether physicians who lose their medical staff privileges for criticizing patient care at a hospital can invoke the California Whistleblower Protection Act, Cal. Health and Safety Code § 1278.5 (WPA), to restore their lost privileges and obtain concomitant monetary damages.

### AMA Interest

The AMA believes physicians should advocate for their patients' health care.

### Case Summary

Mark Fahlen, MD, was employed at a Sutter Central Valley Hospital. On several occasions, he became embroiled with the hospital nurses regarding the proper care to be provided to his patients. The hospital indicated that it wished to terminate his employment and his medical staff privileges, and the matter was referred to a peer review panel. The peer review panel found that, although Dr. Fahlen had not acted properly in every regard, termination of his employment and medical staff privileges would be unwarranted. Despite this finding, the hospital terminated his employment and refused to renew his privileges.

Dr. Fahlen sued the hospital under the WPA, asserting that his termination had been in retaliation for his complaints about nursing incompetence and substandard care at the hospital. He sought monetary damages as well as a restoration of his medical staff privileges. His WPA suit was in contrast to the usual California procedure for challenging medical staff terminations, which would have been through a common law petition for *mandamus*.

Based on the California Anti-SLAPP ("Strategic Lawsuit Against Public Participation") statute, Cal. Code Civ. Proc. § 425.16, the hospital moved to dismiss Dr. Fahlen's lawsuit. The Anti-SLAPP law was enacted to prevent litigation abuse, which would otherwise chill or punish a party's exercise of constitutional rights to free speech and to petition the government for redress of grievances (as provided in the Federal First Amendment and in comparable provisions of the state constitution). The trial court denied the Anti-SLAPP motion to dismiss.

The hospital appealed the denial of the Anti-SLAPP motion to the California Court of Appeal. In its decision, the Court of Appeal observed that one requirement of an Anti-SLAPP motion is the plaintiff's inability to demonstrate that the complaint is supported by *prima facie* facts sufficient to sustain a favorable judgment if those facts are credited at the actual trial. In this regard, the issue was whether Dr. Fahlen could demonstrate *aprima facie* case, inasmuch as he had not

sought a writ of *mandamus* to challenge the denial of his medical staff privileges. According to the hospital, Dr. Fahlen could bring a WPA suit only if he had first exhausted his rights through a *mandamus* action. However, the Court of Appeal rejected the hospital's argument. Based on its reading of the WPA, it held the trial court had correctly denied the hospital's Anti-SLAPP motion and Dr. Fahlen's lawsuit could proceed.

The hospital appealed to the California Supreme Court, which affirmed the Court of Appeal decision. It held that such exhaustion of Dr. Fahlen's rights through a *mandamus* action is not required for physician whistleblowers.

### **Litigation Center Involvement**

The Litigation Center joined the California Medical Association in an *amicus* brief to the California Supreme Court in support of Dr. Fahlen. Also, the CMA attorney spoke on behalf of the Litigation Center at oral argument.

California Supreme Court brief