

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

JUDGE: Henry J. WalshDATE: August 7, 2003CLERK: Pascal GasbarroCASE NO.: CIV219107TITLE OF CASE:MEDICAL STAFF OF COMMUNITY  
Plaintiffs

V.

COMMUNITY MEMORIAL  
DefendantsNATURE OF PROCEEDINGS:

The demurrers of the defendants Community Memorial Hospital, etc. are sustained with leave to amend as to the 1<sup>st</sup> cause of action (injunctive relief), 3<sup>rd</sup> cause of action (interference with independence of staff), 4<sup>th</sup> cause of action (retaliation), 5<sup>th</sup> cause of action (unfair business practices) and 7<sup>th</sup> cause of action (breach of fiduciary duty). The demurrers are overruled as to the 2<sup>nd</sup> cause of action (declaratory relief) and the 6<sup>th</sup> cause of action (conversion). Defendants are given to and including August 15, 2003 within which to file their answers.

Defendants initially challenge plaintiff=s standing to bring this suit. Plaintiff presents itself as an unincorporated association. This is a form of organization that is recognized in California at CCP section 369.5 (a). For purposes of a demurrer, factual allegations, including that of status, are accepted as being true. Allegations of status may be challenged by matters that are judicially noticeable, but that kind of challenge is not presented here. Defendants argue at one point that it is only a small minority of doctors who are staying themselves as the Medical Staff. That kind of argument cannot be resolved on demurrer. It is a factual contention that must be determined in some other proceeding apart from this one.

A more vexing question is the threshold right of an association of physicians practicing as the medical staff of a hospital to bring an action such as this against the hospital. Counsel for moving parties cites the court to Exeter Hospital v. Board of Trustees, 810 A.2d 53

(2002), involving a dispute arising from the removal of a doctor from the medical staff by the hospital. The New Hampshire Supreme Court determined that the medical staff was not a legal entity separate and apart from the hospital, but was rather a "...subordinate administrative unit dependent upon and accountable to the hospital." As such, it was found to have no legal life of its own, and was merely one component of the hospital corporation. Moving parties additionally argue that because the hospital is potentially liable for the results of staff privileges negligently granted, it should not be susceptible to suit from the staff over which it has ultimate authority.

Plaintiff directs the court to Hongsathavij v. Queen of Angels/Hollywood Presbyterian Medical Center, 62 Cal. App.4th 1123 (1998), another case involving removal of a physician from a hospital staff. In a footnote, which is arguably dicta, the court observes that a hospital's medical staff is "...a separate legal entity, an unincorporated association, which is required to be self-governing and independently responsible from the hospital for its own duties and policing its members."

The court finds California dicta more persuasive than New Hampshire decisional law on this point. The court concludes that the relationship between a hospital and its medical staff is a unique one where each has a potential-legal-liability-to the patient population whose welfare is their mutual concern. This does not mean, however, that disputes between them are automatically outside the province of the courts to hear and resolve. The extent to which this court, or any court, may become involved in those disputes is another matter. That is a discussion of remedy, and what causes of action are justiciable.

The court has determined from the pleadings that the two core issues involve title to the bank account maintained in the name of the medical staff at Morgan Stanley, and the Code of Conduct which the defendants have prepared and adherence to which they require as a condition of obtaining staff privileges. As such, the causes of action to resolve the issues of ownership (and access to) of the bank account, and the general relationship between the hospital (including its Board of Trustees), and the physicians, (including the Medical Staff), have a commonality such that causes of action for conversion of the bank account, and declaratory relief to determine the rights and liabilities of the parties, may legitimately be advanced by the present plaintiff.

However, other disputes e.g. out-patient medical clinics, The Prostate Institute, staff privileges to some individual physicians, and claims of retaliation against certain physicians do not involve issues in which all physicians as members of the Medical Staff may have a direct interest. These are areas where the lines are not easily drawn. However,

claims of retaliation are personal to the involved physician, and do not involve all the physicians in the class. Claims of unfair business practices, interference with staff, and breach of fiduciary duty fall into the same category. The case of Tenants Association of Park Santa Anita v. Southers, 222 Cal.App.3d 1293 (1990) contains a discussion of what claims may be asserted by an association on behalf of its members, and what claims are personal to the member such that it must be asserted by him/her in his/her own name. The present case is not one involving a challenge to governmental action where the rules are broader. Accordingly, the court has adopted the more restrictive rule that a well-defined community of interest must be present to allow derivative claims to be made. That is not evident from the allegations in the amended complaint as to those causes of action to which the demurrer has been sustained.

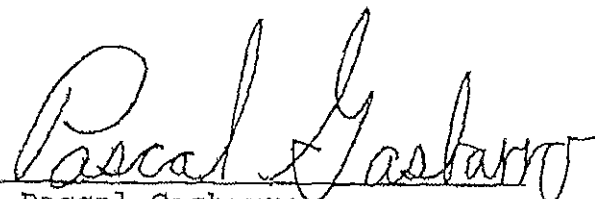
The Southers discussion, however, requires that potentially impacted individuals be given the opportunity to become parties to assert their individual grievances. As such, leave to amend through and including September 5, 2003 is being granted for this limited purpose. A case management conference is set September 17, 2003 at 8:10 am in courtroom 22B relative to the state of the pleadings. If an amended complaint is filed, that will automatically go off calendar. If an amended complaint is not filed, defendants are ordered to have their answer on file no later than September 12, 2003.

The discovery stay previously ordered by the court is ordered to remain in effect until the pleadings are settled both in this case as well as that of Brantner v. Community Memorial Hospital, CIV 219804.

The applications of American Medical Association, California Medical Association, and California Healthcare Association to appear amici curiae is granted for purposes of this demurrer only.

The clerk is directed to give notice.

MICHAEL D. PLANET, Superior Court  
Executive Officer and Clerk

  
Pascal Gasbarro  
Judicial Secretary

MINUTE ORDER