G066724

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION THREE

HOAG MEMORIAL HOSPITAL PRESBYTERIAN,
Petitioner,

v.

SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF ORANGE,
Respondent.

CERTAIN JOHN DOE PLAINTIFFS
(details on next page),
Real Parties in Interest.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE • CASE NO. 30-2023-01370866-CU-PO-NJC
MELISSA R. MCCORMICK, JUDGE • TELEPHONE NO. (657) 622-5305

AMICUS CURIAE BRIEF OF THE CALIFORNIA HOSPITAL ASSOCIATION IN SUPPORT OF PETITIONER

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The real parties in interest are those John Doe plaintiffs in the Master Complaint associated with these Unique Identification Numbers: 2, 4, 5, 6, 8, 9, 10, 11, 13, 14, 16, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, 37, 39, 41, 43, 44, 46, 50, 51, 57, 59, 62, 64, 65, 66, 67, 68, 69, 71, 72, 76, 77, 78, 79, 80, 81, 86, 87, 88, 90, 91, 92, 93, 94, 97, 98, 99, 100, 101, 104, 105, 107, 109, 111, 112, 113, 116, 117, 118, 119, 121, 122, 123, 124, 125, 127, 129, 130, 133, 134, 135, 136, 137, 138, 140, 141, 144, 148, 152, 153, 156, 157, 158, 159, 160, 164, 165, 167, 168, 169, 171, 173, 174, 176

Real Parties in Interest.

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ARGUMENT: WHY WRIT RELIEF SHOULD BE GRANTED

I. In the complex health care field, the Legislature has struck a simple balance: hospitals and hospital medical staff regulate physicians within the walls of the hospital, and the Medical Board regulates physicians beyond the hospital walls.

A. The statutorily mandated peer review process guarantees hospital patients both safety and care while they are treated by the medical staff in the hospital.

"In California, hospitals are composed of an administrative governing body that oversees hospital operations and a medical staff that provides medical services and ensures its members provide adequate medical care to patients." (*Natarajan v. Dignity Health* (2021) 11 Cal.5th 1095, 1102 (*Natarajan*).) These are distinct legal entities with distinct responsibilities. (*Bichai v. Dignity Health* (2021) 61 Cal.App.5th 869, 880; *Medical Staff of Doctors Medical Center in Modesto v. Kamil* (2005) 132 Cal.App.4th 679, 685.) The medical staff is "responsible for the adequacy and quality of the medical care rendered to patients in the hospital." (*Mileikowsky v. West Hills Hospital & Medical Center* (2009) 45 Cal.4th 1259, 1267 (*Mileikowsky*).) To discharge its responsibilities, the medical staff acts through the peer review process, which is a part of a "comprehensive statutory scheme" for regulating physicians. (*Ibid.*)

Through peer review, "a committee comprised of licensed medical personnel at a hospital 'evaluate[s] physicians applying for staff privileges, establish[es] standards and procedures for patient care, assess[es] the performance of physicians currently on staff,' and reviews other matters critical to the hospital's functioning." (*Kibler v. Northern Inyo County Local Hospital Dist.* (2006) 39 Cal.4th 192, 199.) These committees also "investigate complaints about physicians and recommend whether staff privileges should be granted or renewed." (*Mileikowsky*, *supra*, 45 Cal.4th at p. 1267.) These investigations involve "strictly circumscribed" statutory procedures, like written notices and formal hearings. (*Arnett v. Dal Cielo* (1996) 14 Cal.4th 4, 10 (*Arnett*), citing Bus. & Prof. Code, §§ 809.2–809.6.) After an investigation, the peer review committee can recommend restricting a physician's ability to practice in a hospital or eliminate it altogether. (*Natarajan*, *supra*, 11 Cal.5th at p. 1103.) The hospital's governing board must defer to the decisions of peer review bodies that are supported by substantial evidence after a fair procedure. (See Bus. & Prof. Code, § 809.05, subd. (a).)

"If a hospital restricts or revokes a physician's staff privileges as a result of a determination by a peer review body, the discipline must be reported to the Medical Board." (*Arnett*, *supra*, 14 Cal.4th at p. 11.) This reporting requirement is no mere suggestion. To the contrary, failing to file a report on time is punishable by civil or criminal penalties, depending on whether the failure was intentional. (See *ibid.*; see also Bus. & Prof. Code, § 805, subds. (g) & (h).)

The purposes of this "comprehensive statutory scheme" are straightforward. (*Mileikowsky*, *supra*, 45 Cal.4th at p. 1267.) One purpose is to reduce "the exposure of the hospital to potential tort liability," which the peer review process accomplishes by "weeding out incompetent or impaired staff physicians." (*Arnett*, *supra*, 14 Cal.4th at p. 12.) Another is to protect "the patients of the particular hospital in question." (*Ibid.*) Because the peer review process is "institution specific," as the California Supreme Court has observed, the " 'public' protected by the peer review process is not the public at large." (*Ibid.*) These twin purposes—limiting *a hospital's* tort liability and protecting *a hospital's* patients—make clear that the Legislature intended to confine hospitals' powers to regulate physicians within their walls.

Indeed, the CHA's model bylaws confirm as much. By statute, the "medical staff must adopt written bylaws" that govern its operation. (See *Mileikowsky*, *supra*, 45 Cal.4th at p. 1267.) As part of its responsibilities to nearly 400 hospitals and health care systems in the state, the CHA has drafted model bylaws that stress "quality-of-care responsibilities and accountability." (CHA, *Model Medical Staff Bylaws & Rules* <https://calhospital.org/publications/2019-model-medical-staff-bylaws-rules-3/> [as of Mar. 30, 2026].)

Model provisions about peer review, expectations of professional conduct, and investigations limit themselves to the hospital, not beyond it. The peer review provisions state that the "Medical Staff is responsible . . . for the adequacy and quality of patient care services *provided at the Hospital*." (CHA, Model

Medical Staff Bylaws & Rules (2019) § 13.1 (CHA Bylaws & Rules), emphasis added <https://calhospital.org/file/model-medical-bylaws-templates/> [as of Mar. 30, 2026].) The provisions on professional-conduct expectations stress that medical professionals must "not engage in any unacceptable and/or inappropriate conduct . . . *while at the Hospital*" and must "not tolerate hostile or threatening behavior against any individual *at the Hospital*." (CHA, Bylaws & Rules, § 8.8.3, emphasis added.) And the provisions about investigations clarify that only activities within the hospital merit investigation, calling for one when a physician has done anything reasonably likely to be "[d]etrimental to patient safety or to the delivery of quality patient care *within the Hospital*" or "[i]ntimidating or harassing to staff, colleagues, patients, or other persons *at the Hospital*." (CHA, Bylaws & Rules, §§ 14.1.1 & 14.1.4, emphasis added.) These model bylaws don't stand alone, for the California Medical Association's model bylaws focus just as much on in-hospital conduct as the CHA's model bylaws do. (E.g., California Medical Association, Annotated Model Medical Staff Bylaws (2020) §§ 1.1 & 6.6-1.)

All this—the comprehensive statutory scheme, case law, and the CHA's model bylaws—make one thing clear: hospitals and the hospital medical staff regulate the conduct of physicians within the hospital walls and only with respect to hospital patients. But that does not leave nonhospital patients without recourse, for they can always turn to the Medical Board.

B. Outside hospitals, the Medical Board is statutorily empowered to investigate and resolve physician issues.

The Medical Board of California is "the statewide agency authorized to license and discipline medical practitioners." (*Arnett*, *supra*, 14 Cal.4th at p. 8.) To protect "the public against incompetent, impaired, or negligent physicians," the Legislature has vested the Medical Board with "the power to revoke medical licenses on grounds of unprofessional conduct." (*Ibid.*)

"The Board investigates physicians based on complaints or on its own initiative." (*Lewis v. Superior Court* (2017) 3 Cal.5th 561, 567.) It receives complaints "from the public, from other licensees, [or] from health care facilities." (*Ibid.*) These investigations can result in formal adjudicative proceedings, and the Medical Board has several remedial options. (*Arnett*, *supra*, 14 Cal.4th at p. 9.) It "may either suspend or revoke the license, or place the licensee on probation, or issue a public reprimand." (*Ibid.*) It can also "require the licensee to obtain additional professional training," to pass professional examinations, or to refrain from certain types of medical practice. (*Ibid.*)

II. The trial court's ruling upends the balance that the Legislature struck and imposes an unworkably vague duty of care that hospitals can never meet.

By effectively imposing on hospitals an abstract duty of care for nonhospital patients for physician conduct away from the hospital, the trial court's ruling flouts the twin purposes of the peer

review process. One purpose of peer review is to protect the "patients of the particular hospital in question." (*Arnett*, *supra*, 14 Cal.4th at p. 12.) But the trial court's ruling does no such thing, for it concerns itself with patients who never stepped foot in the hospital in connection with the care at issue. The other purpose is to reduce "the exposure of the hospital to potential tort liability." (*Ibid.*) But because peer review is concerned with regulating conduct within hospitals, this purpose is best understood as reducing hospitals' exposure to potential tort liability from its patients. Here, too, the trial court's ruling undermines this purpose because it, again, concerns itself with nonhospital patients.

Just as it flouts the purpose of peer review, the trial court's ruling would require hospitals to impermissibly intrude on the Medical Board's jurisdiction. The Legislature created two discrete regulatory and investigatory systems. Peer review protects hospital patients; the Medical Board protects nonhospital patients. (Compare *Arnett*, *supra*, 14 Cal.4th at p. 9 [observing that "[the Medical Board] licenses and disciplines all physicians and surgeons in California, not simply those practicing in a particular medical facility"] with *id.* at p. 12 [observing that peer review's protection "is limited to the patients of the particular hospital in question"].) By imposing a duty of care with respect to nonhospital patients, the trial court's ruling demands hospitals to do the very job that the Legislature entrusted to the Medical Board.

This intrusion invites turmoil. For one thing, the trial court's ruling will lead to a breakdown of the reporting and

enforcement requirements for each system, because hospitals will not know whether they or the Medical Board are responsible for reporting and investigating particular complaints. This breakdown is all the more problematic considering that hospitals cannot employ or control physicians in light of "California's ban on the corporate practice of medicine." (*Markow v. Rosner* (2016) 3 Cal.App.5th 1027, 1033.) The Legislature understood the need for clear lines of accountability and reporting, and courts are ill equipped to substitute their beliefs "for the judgment of the Legislature elected by the people to enact appropriate regulatory legislation." (*Goodman v. Cory* (1983) 142 Cal.App.3d 737, 741.)

For another, the ruling forces hospitals to investigate complaints based on incidents that occur beyond their walls—places where their staffs' expertise and knowledge are at their lowest. (See *Arnett*, *supra*, 14 Cal.4th at p. 12 [noting that, in the peer review process, "the conduct of the errant physician is not reviewed by independent, professional investigators, but by the physician's own colleagues practicing in the same hospital: it is, by definition, a *peer* review committee"].)

And further still, the ruling sows confusion because hospitals will struggle to handle complaints from nonhospital patients because they will lack clear rules. Rather than a "comprehensive statutory scheme" (*Mileikowsky*, *supra*, 45 Cal.4th at p. 1267), hospitals will be at the mercy of regulation by litigation as they discern the contours of this newfound duty and standard of care case by case. But the Legislature decided against such an "ill defined and amorphous" approach, and the trial court had no

power to impose one. (Cf. *Sheen v. Wells Fargo Bank, N.A.* (2022) 12 Cal.5th 905, 945 ["In contrast with such detailed [statutory] schemes, tort liability—with a yet-to-be articulated standard of care—is ill defined and amorphous."].) The Legislature's decision makes good sense, for the trial court's novel, abstract standard of care fails to supply the guidance that hospitals need to tailor their conduct accordingly. (See *Hacala v. Bird Rides, Inc.* (2023) 90 Cal.App.5th 292, 314; accord, *Ronnfeldt Farms, Inc. v. Arp* (Neb. 2024) 11 N.W.3d 371, 387 ["The duty to use reasonable care does not exist in the abstract, but must be measured against a particular set of facts and circumstances."]; see also *Murray v. Briggs* (Fla.Dist.Ct.App. 1990) 569 So.2d 476, 481 [observing that a regulation that "sets out only a general or abstract standard of care cannot establish negligence"].)

What's more, the CHA agrees with petitioner that the Legislature has chosen to implement a statutory scheme that is so "general and comprehensive" that it rejects any attempts to graft a common law duty of care onto it. (*Asiryan v. Medical Staff of Glendale Adventist Medical Center* (2024) 100 Cal.App.5th 947, 966 (*Asiryan*); see PWM § II.C.) Such a scheme signals the Legislature's intent to " 'totally supersede and replace the common law dealing with the subject matter.' " (*Asiryan*, at p. 966, quoting *I.E. Associates v. Safeco Title Ins. Co.* (1985) 39 Cal.3d 281, 285.) This court should confirm that the Legislature decided against using a traditional tool to address a modern issue.

CONCLUSION

The California Hospital Association respectfully requests that this court grant the petition for a writ of mandate.

March 31, 2026

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CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, rule 8.486(a)(6).)

The text of this amicus brief consists of 1,947 words as counted by the computer program (Microsoft Word) used to generate the brief.

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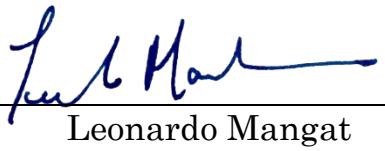

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