California Supreme Court Allows Whistleblowing Doctor to Sue Before Exhausting Judicial Remedies

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Fahlen v. Sutter Central Valley Hospitals, S205568 (February 20, 2014): The California Supreme Court recently held that a physician, who claimed that a hospital terminated his staff privileges in retaliation for raising concerns about patient care, does not have to exhaust the hospital administrative review process before filing a civil suit under California’s whistleblower statute.

Mark Fahlen, a kidney specialist, was employed by Gould Medical Group in Modesto. In 2004, he was granted staff privileges at Memorial Medical Center, which was operated by Sutter Central Valley Hospital. On several occasions, Fahlen had confrontations with nurses at the hospital over patient care instructions. He complained to hospital administrators that the nurses were insubordinate and providing substandard care. According to Fahlen, the hospital’s administration blamed him for the confrontations and he eventually lost his staff privileges. Fahlen sued the hospital for retaliation under California Health and Safety Code section 1278.5.

The hospital asked the court to dismiss Fahlen’s case on the basis that he failed to exhaust his judicial remedies by way of a mandamus proceeding to set aside the decision by the hospital’s board of trustees. The trial court refused to dismiss the case. The Court of Appeal affirmed in part and reversed in part, holding that Fahlen did not have to exhaust the hospital administrative review process.

The issue before the California Supreme Court was whether, in a whistleblower retaliation case, a physician who has lost his privileges “must first prevail in an administrative mandamus proceeding to set the decision aside.” The state’s high court determined that exhausting the mandamus process is not required before pursuing a whistleblower retaliation lawsuit. In reaching this decision, the court held, “the Legislature’s failure to expressly provide that a medical peer review decision be overturned on mandamus before a physician could claim, under section 1278.5, that the decision constituted forbidden retaliation strongly suggests no such limitation on the statutory cause of action was intended.”

According to a shareholder in the Orange County office of Ogletree Deakins: “The decision in Fahlen has taken away a long-standing administrative requirement for doctors to exhaust the internal administrative process before filing a whistleblower lawsuit under California Health and Safety Code section 1278.5, and it is now much easier for such a claim to be asserted. The other significant implication for health care providers is that often an employee making a whistleblower claim under section 1278.5 is arguing that his or her action was taken in the interest of patient safety.”
Now that medical staff can go directly to court, these employers will have to address patient health care issues with their medical staff by way of litigation, rather than first working through an internal process to sort them out."

*For an in-depth look at the court’s decision in the Fahlen case, see our blog post, “When Titans Clash: California Whistleblower Protections Trump Law on Review of Internal Hospital Staff Privilege Procedures.”

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