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No-Cause Termination Provision in Exclusive Radiology Agreement Invalidated by Arbitrator Based on Medical Staff Bylaws

By Harry Shulman

Exclusive contracts for hospital-based services often include no-cause termination provisions, allowing either party to terminate the contract at will, subject only to a specified period of advance notice. Arbitration provisions are also typical elements of these contracts, for purposes of resolving any disputes that might arise.

At many hospitals, there are medical staff bylaws provisions that preclude the termination of membership or privileges except in accordance with the procedures established in the bylaws, or for reasons other than deficiencies in the quality of care. It is commonly understood, however, that these provisions are unrelated to the exclusive contract provisions described above, and that, if they were to clash, the contract language would prevail. Recently, a California Court of Appeal issued an Opinion illustrating how mistaken this could be.

Chudnovsky v. Chapman Medical Center, Inc. (G047990, Fourth Appellate District, 12/23/13) involved an exclusive contract for radiology services. Prior to the expiration of the two-year term of the contract, the hospital invoked the no-cause termination provision, and entered into an exclusive agreement with a group of radiologists that did not include Dr. Chudnovsky. Dr. Chudnovsky was unsuccessful in his efforts to join the group, which precluded him from exercising his clinical privileges at the hospital. No action had been taken against his privileges pursuant to the Medical Staff Bylaws. The matter went to arbitration, where the arbitrator ruled that the bylaws applied to the termination of Dr. Chudnovsky's contract, and that the bylaws, which contained provisions of the type described above, "preempt, override or 'trump' the terms and effect of any contract of a staff member." The arbitrator found that Dr. Chudnovsky's contract was terminated "without cause and for economic reasons," entitling him to monetary damages.

The hospital brought suit to have the arbitrator's award vacated. Both the trial court and the Appellate Court sided with Dr. Chudnovsky, not based on a determination that the arbitrator was "right" about the facts or the law, but because the grounds for overturning an arbitrator's decision are very narrow. Here, for example, the hospital argued that he had "exceeded his authority," which is among the recognized grounds under the applicable law. However, it is very difficult to meet this test. As the appellate court explained:

When parties contract to resolve their disputes by private arbitration, their agreement ordinarily contemplates that the arbitrator will have the power to decide any question of contract interpretation, historical fact or general law necessary, in the arbitrator's understanding of the case, to reach a decision. [Cite.] The question of whether the termination clause in the Agreement was valid and enforceable is indisputably within the arbitrator's appointed task. Thus, we need not concern ourselves with whether the arbitrator correctly interpreted the Agreement and applied the law.

The Opinion in *Chudnovsky* has not been certified for publication in official reports, which means that it cannot be cited as precedent in other litigation. However, since the principles applied by the Appellate Court that relate to arbitrations have already been clearly established in reported cases, this makes little difference in terms of the lessons it offers. Among the most important lessons are:

1. Hospitals should be wary of proposed medical staff bylaws provisions like those in *Chudnovsky*, that could affect the governing body's prerogatives to make business and managerial decisions regarding operational issues. Such decisions include whether to "close" a service and require that physicians be affiliated with a contracted group in order to exercise clinical privileges within a particular specialty. They could also include whether to require that medical staff members meet other "administrative" requirements, such as maintaining malpractice insurance or complying with other standards or criteria that do not necessarily relate directly to "quality of care."
2. If possible, assure that medical staff bylaws include language that expressly defers to contract provisions except when medical disciplinary cause or reason is involved. This would help to clarify the role of the medical staff in addressing different types of issues.
3. Hospitals should be attentive to potential inconsistencies between the medical staff bylaws and contracts with physicians or medical groups. Where such contracts exist, they should include language stating that, in the event of a conflict between the contract and the medical staff bylaws, the contract language will prevail. (Note that the Appellate Court Opinion in *Chudnovsky* does not reveal whether there was such clause in that case, or, if so, how the arbitrator dealt with it.)
4. Weigh the pros and cons of arbitration provisions. Good arguments can be made both in favor of them and against them; they should not be included "automatically."

Hooper, Lundy and Bookman serves hospitals and medical staffs regarding all aspects of medical staff affairs and hospital operations, including exclusive contracting. For more information, please contact: In San Francisco, Harry Shulman, Steve Lipton, or Clark Stanton at 415.875.8500; in Los Angeles, Larry Getzoff at 310.551.8111; and in San Diego, Jennifer Hansen at 619.744.7300.