

S196830

**IN THE  
SUPREME COURT OF CALIFORNIA**

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**Osamah El-Attar, M.D.,**  
*Plaintiff and Appellant*

v.

**Hollywood Presbyterian Medical Center,**  
*Defendant and Respondent.*

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SUPREME COURT  
**FILED**

OCT 19 2011

Frederick K. O'Riagh Clerk

Deputy

AFTER A DECISION BY THE COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION FOUR,  
CASE NO. B209056

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**ANSWER TO PETITION FOR REVIEW**

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## I. INTRODUCTION

On August 19, 2011, a unanimous panel of the Court of Appeal, Second District, Division 4, filed an opinion reversing the trial court's judgment denying the petition for writ of mandate of Osamah El-Attar, M.D., to contest the denial of his reappointment to the medical staff at Hollywood Presbyterian Medical Center ("the Hospital"). The opinion of the court of appeal in El-Attar v. Hollywood Presbyterian Medical Center, Court of Appeal Case No. B209056 ("the El-Attar Decision"), was certified for partial publication at 198 Cal.App.4<sup>th</sup> 644 (2011).<sup>1</sup> On September 7, 2011, the court denied the Hospital's Petition for Rehearing. The Hospital filed the instant Petition for Review in this Court ("the Petition") on September 29, 2011, according to this Court's electronic docket. However, based upon California Rules of Court 8.500(e)(1) and 8.264(b)(1), the Petition should have been filed no later than September 28, 2011. Accordingly, the Petition is not timely filed and should be denied.<sup>2</sup>

This Court should also deny review here because the El-Attar Decision is consistent with precedent established by this Court in Mileikowsky v. West Hills Hospital and Medical Center, 45 Cal.4<sup>th</sup> 1259

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<sup>1</sup> On September 7, 2011, the court modified the El-Attar Decision slightly to correct the appearance of amicus curiae counsel. See 2011 DJDAR 13710. (Copy attached). There was no change in the judgment. Id.

<sup>2</sup> Specifically, the Petition had to be served and filed no later than ten days after the El-Attar Decision became final in the court of appeal. Rule 8.500(e)(1). The El-Attar Decision, which was filed on August 19, 2011, became final thirty days after filing -- on September 18, 2011, pursuant to Rule of Court 8.264 (b)(1). Ten days after September 18, 2011, is September 28, 2011. The filing of the Petition on September 29, 2011, is one-day late. There is no indication that the Petition could be deemed timely filed based on priority or express mail or overnight delivery to the court, pursuant to Rule of Court 8.25(b)(3).

(2009) (“Mileikowsky”), and properly preserves the balance of power between hospital management and medical staff in the peer review process. In the El-Attar Decision, the court of appeal made a careful analysis of the peer review law, taking more than two years after the case had been fully briefed to issue a thoughtful and well-balanced decision. Contrary to the Hospital’s arguments in its Petition, the holding in the El-Attar Decision does not conflict with any other appellate precedent relating to the medical peer review process. Indeed, the court of appeal scrupulously followed this Court’s statement of the fundamental principles of the peer review process articulated in the 2009 Mileikowsky decision. See El-Attar Decision, Typed Opn., 15-17.<sup>3</sup> The court of appeal even allowed the Hospital to file a “Supplemental Opposition Brief” in May 2009, to address Mileikowsky so the court would have a full analysis of the impact of this important peer review decision on Dr. El-Attar’s appeal from both parties.

The El-Attar Decision is not only well-grounded in precedent and faithful to this Court’s explanation of the basic principles of the peer review process in Mileikowsky, but it also stands for the unremarkable (but logical) proposition that hospitals and medical staffs should follow their medical staff bylaws, along with the Business and Professions Code, in carrying out their peer review obligations. In its Petition, the Hospital asks this Court to sacrifice the clarity and common sense in the El-Attar Decision by overturning the court of appeal’s opinion and having this Court embrace the troubling notion that a Hospital can violate its medical staff bylaws whenever it deems it necessary to do so.

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<sup>3</sup> Because the pagination of the El-Attar Decision in the official California Appellate Reports has not yet been made, Dr. El-Attar refers to the typed opinion filed by the court of appeal on August 19, 2011, with the reference “Typed Opn., \_\_\_.” The Hospital uses this reference as well in its Petition.

The Hospital also distorts the evidentiary record by arguing in its Petition that it had to appoint the judicial review committee (“JRC”) and hearing officer for the peer review hearing because the executive committee of the medical staff (“MEC”) refused or failed to make these appointments. The MEC did not fail to act in Dr. El-Attar’s case; rather, the Hospital disagreed with the MEC’s actions and usurped the authority of the MEC to appoint the JRC and hearing officer in violation of the Hospital’s Medical Staff Bylaws, which are set out at Administrative Record (“AR”) pages 2296-2414 (“Bylaws”).

At the Hospital’s urging, the MEC approved the Hospital’s vague resolution which purported to allow the Hospital to prosecute and “arrange” the peer review hearing. Giving a faithful and straightforward interpretation of the Bylaws, which required the MEC to select the JRC and hearing officer, the court of appeal appropriately found that the medical staff could not delegate its duty to appoint the JRC and hearing officer because such an abrogation of duty would “turn the peer review process on its head.” (Typed Opn., 17).

Review of the El-Attar Decision would be likely to cause more confusion, rather than clarification, in the law relating to the medical peer review process and the balance of power between hospital management, on the one hand, and medical staff, on the other hand. This court need not revisit the principles it clearly articulated in Mileikowsky or review a well-reasoned decision of a unanimous court of appeal that further clarifies the law governing the peer review process. This Court, therefore, should not grant review of the El-Attar Decision, and should deny the Hospital’s Petition.

## II. STATEMENT OF FACTS

The El-Attar Decision accurately sets forth the factual and procedural summary for this case. (Typed Opn., 3-9). Generally, on a petition for review, this Court will accept the statement of facts and issues in a court of appeal's opinion, unless a party has identified an alleged omission or misstatement of a fact or an issue in a petition for rehearing. California Rule of Court 8.500 (c)(2).

The Hospital's lengthy "Statement of the Case" violates this court's policy of deference to the court of appeal's statement of facts in its opinion. For example, the Hospital's lengthy recitation of the specific findings in the Hospital auditors' reports with regard to Dr. El-Attar's files is unnecessary and inflammatory given that these "facts" have nothing to do with the issue of whether Dr. El-Attar received a fair hearing. See Petition, pp. 11-13. The Hospital includes this inflammatory discussion in order to characterize Dr. El-Attar as a "bad" or potentially dangerous physician. However, the facts and evidence do not warrant such a conclusion. Dr. El-Attar is, and has been for many years, a licensed and board certified physician specializing in cardiology and internal medicine. (Typed Opn., 5).

More importantly, the Hospital's lengthy factual dissertation is unnecessary to the primary issue raised in the El-Attar Decision which was whether the Hospital's violation of the Bylaws in selecting the JRC and hearing officer for the peer review process compromised Dr. El-Attar's right to a fair peer review hearing. In this regard, the factual recitation also violates Rule 8.504(b)(1), which prohibits argumentative factual statements and statements of facts which include "unnecessary detail."<sup>4</sup> Accordingly,

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<sup>4</sup> The Hospital also grossly exaggerates that it was in jeopardy of losing Medicare funding because of its peer review system and tries to blame Dr. El-Attar and his practices for putting the Hospital at risk of losing this funding. Petition pp. 7-13. The Hospital's "spin" on these facts



to the extent that the Hospital's statement of facts goes beyond those stated in the El-Attar Decision, those "facts" should be disregarded here.

### **III. LEGAL ARGUMENT**

#### **THIS COURT SHOULD NOT GRANT REVIEW BECAUSE THE EL-ATTAR DECISION ADHERES TO ESTABLISHED PRECEDENT AND PROPERLY PRESERVES THE BALANCE OF POWER BETWEEN HOSPITAL MANAGEMENT AND MEDICAL STAFF IN THE PEER REVIEW PROCESS.**

California Rule of Court 8.500(b)(1) provides that the Supreme Court may order review of a court of appeal decision: "When necessary to secure uniformity of decision or to settle an important question of law." The Hospital argues in its Petition that this Court should grant review pursuant to Rule 8.500(b)(1). However, as discussed in detail below, review is not warranted here because the El-Attar Decision does not conflict with established precedent, and this Court has previously settled important legal issues regarding the fundamentals of medical peer review proceedings in Mileikowsky v. West Hills Hospital & Medical Center, 45 Cal.4th 1259 (2009) ("Mileikowsky").

#### **A. THE EL-ATTAR DECISION IS NOT IN CONFLICT WITH APPELLATE COURT PRECEDENT ON MEDICAL PEER REVIEW MATTERS.**

In the El-Attar Decision, the court of appeal held that in the absence of a bylaw provision to the contrary, the elected medical executive

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is unsubstantiated argument that should be excluded from the Petition. Indeed, the Hospital's focus on Dr. El-Attar seems just as likely to have arisen from the fact that he was a frequent critic of the Hospital's practices regarding patient care and that he was one of the medical staff members who signed a petition in 2002 to remove Albert Greene as the Hospital's CEO. (Typed Opn., 5).

committee of the hospital must appoint the peer review hearing panel and hearing officer and cannot delegate these tasks to the hospital's governing board. (Typed Opn., 2). Contrary to the Hospital's assertions here, this holding does not conflict with precedents of this Court or any court of appeal. In fact the El-Attar Decision follows this Court's most recent pronouncement on the peer review process in Mileikowsky, and upholds the balance of power between the Hospital's administrative governing body (which might not include healthcare professionals) and the medical staff, which is responsible for providing medical services at the Hospital.

As this Court noted in Mileikowsky, "although a hospital's administrative governing body makes the ultimate decision about whether to grant or deny staff privileges, it does so based on the recommendations of its medical staff committee [citation], giving 'great weight to the actions of peer review bodies . . .'" 45 Cal.4th at p. 1272 (quoted in the El-Attar Decision at Typed Opn., 16).

The balance of power is maintained in a working peer review system as established in the medical staff bylaws. "That structure promotes the goal of shielding physicians from arbitrary and discriminatory disciplinary actions by effectively insulating a governing body bent on removing the physician from the hospital medical staff." (Typed Opn., 17). Using the fundamental principles for peer review articulated in Mileikowsky, the court of appeal here found that the Hospital undermined "the purpose of the peer review mechanism" when it violated the Bylaws and picked the JRC and hearing officer. "Allowing the Governing Board to handpick the JRC members jeopardizes the integrity of the hearing from the beginning and it undercuts the medical staff's right and obligation to perform this self-governing function." (Typed Opn., 17).

Neither Hongsathavij v. Queen of Angels/Hollywood Presbyterian Medical Center, 62 Cal.App.4th 1123 (1998), nor Weinberg v. Cedars-Sinai

Medical Center, 119 Cal.App.4th 1098 (2004), are in conflict with the El-Attar Decision. Indeed, in Hongsathavij (as opposed to the present situation), the medical executive committee appointed the judicial review committee in accordance with the bylaws. 62 Cal.App.4th at 1130. Moreover when the medical executive committee declined to prosecute the charges against the physician, the Hospital handled prosecution of the charges in accordance with the bylaws. Id., at 1130, n.2. Thus, the significant bylaw violations at issue in the present case relating to the Hospital's appointment of the JRC and hearing officer did not occur in Hongsathavij. In addition, the bylaw deviation in Hongsathavij, which involved the Hospital's right to appeal the JRC's decision (a right which was not specifically articulated in the bylaws), was not deemed to be "material" by the court. Hongsathavij, 62 Cal.App.4th at 1143.

In the present case, the court of appeal found that the Hospital's selection of the JRC and hearing officer was a significant violation of the Bylaws that "undermines the purpose of the peer review mechanism." (Typed Opn., 15-16). The court of appeal noted that not every violation of a hospital bylaw referring to the peer review process is a per se denial of the physician's right to a fair hearing. (Typed Opn., 17, n.9). Thus, the court acknowledged that inconsequential violations of bylaws did not always compromise the fairness of the hearing. Accordingly, there is no conflict in the El-Attar Decision with Hongsathavij, Weinberg and other cases in which the courts found that non-material deviations from the bylaws, which do not fundamentally undermine the fairness of a hearing, do not constitute a violation of a physician's right to a fair hearing.

Similarly, Weinberg did not involve a situation where the Hospital appointed the JRC or hearing officer. Like Hongsathavij, the court in Weinberg did not address the issue of whether the Hospital, as opposed to the MEC, could appoint the peer review panel. In Weinberg, the medical

staff's constitution, rules and regulations expressly entitled the governing board to make final decisions regarding peer review matters. Weinberg, 119 Cal.App.4th at 1114. In the present case, the Hospital's governing board had the same final say on the recommendation of the peer review panel. The problem in the present case, however, had to do with the Hospital selecting the initial peer review panel in violation of the Bylaws – an issue not addressed by the court in Weinberg.

The El-Attar Decision does not conflict with Weinberg or Hongsathavij and is consistent with the fundamental principles for medical peer review set forth by this Court in Mileikowsky. The Hospital's reliance on Kaiser Foundation Hospitals v. Superior Court, 128 Cal.App.4th 85, 107-109 (2005), is also misplaced. In Kaiser, the court of appeal found that the hospital's selection of the peer review panel was not a sufficient violation of the bylaws to excuse the physician from exhausting his administrative remedies to complete the peer review process before challenging the process in court. The El-Attar Decision is not an exhaustion of remedies case, and thus is distinguishable from Kaiser. In any event, the El-Attar Decision is not inconsistent with Kaiser. Indeed, Dr. El-Attar challenged the Hospital's selection of the JRC and hearing officer in violation of the Bylaws by writ of mandate in superior court prior to the start of the hearing, but lost that challenge because the court found (as it did in Kaiser) that Dr. El-Attar had to complete the peer review process before seeking relief in the courts. (Typed Opn., 6-7).

The Hospital also suggests that the El-Attar Decision is contrary to Business & Professions Code § 809.05(c), which provides in relevant part, that “[i]n the event the peer review body fails to take action in response to a direction from the governing body, the governing body shall have the authority to take action against a licentiate.” However, section 805.05(c) does not authorize the Hospital to appoint the JRC and hearing officer for

the peer review hearing. Rather, section 809.05(c), permits the Hospital to initiate corrective action against a physician when the medical staff fails to do so. The court of appeal in the El-Attar Decision accepted that proposition. (Typed Opn., 12). As the court of appeal noted: “That the Governing Board is authorized to initiate a corrective action against appellant says nothing about its authority to appoint the hearing officer and JRC once appellant requests a hearing to challenge that action.” (Typed Opn., 12). Moreover, even when the Hospital initiates charges against a physician, the Bylaws (Article VIII, section C, subdivision (11)) require that the MEC select the JRC and hearing officer. *Id.* Indeed, there is nothing in the El-Attar Decision that conflicts with Business and Professions Code § 809.05(c). The Hospital was still required to adhere to the Bylaws and have the MEC select the review panel and hearing officer even though the Hospital was going to prosecute the charges against Dr. El-Attar.

Thus, review is not necessary to secure “uniformity of decision” because the holding in the El-Attar Decision does not conflict with precedent or the Business & Professions Code. Moreover, because this Court established the fundamentals for the medical peer review process in Mileikowsky in 2009, and the El-Attar Decision is consistent with those fundamentals, review is not necessary “to settle an important question of law.” Rule of Court, 8.500(b)(1).

**B. CONTRARY TO THE HOSPITAL’S ASSERTION, THE MEC DID NOT FAIL TO ACT IN DR. EL-ATTAR’S CASE; RATHER THE HOSPITAL USURPED THE MEC’S AUTHORITY BY INSISTING THAT THE HOSPITAL SELECT THE JRC AND HEARING OFFICER.**

The Petition relies on a fallacious premise – that the MEC failed or otherwise refused to act with regard to the Hospital’s charges against Dr.

El-Attar. The record is clear that the MEC responded to and conducted its own investigation of the Hospital's charges against Dr. El-Attar. For example, at the Hospital's request and following the Hospital's secret investigation of Dr. El-Attar's files, the MEC examined Dr. El-Attar's files and found that no corrective action against Dr. El-Attar was needed. (AR 1890-1893).

While the MEC was investigating the Hospital's allegations against Dr. El-Attar, the Hospital summarily suspended Dr. El-Attar's staff privileges in violation of the Bylaws. (AR 2349-2350). Moreover, the MEC acted on Dr. El-Attar's application for reappointment to the medical staff and recommended that he should be reappointed. (AR 1871-1872). The MEC acted on Dr. El-Attar's charges by making its own examination of his files; however, the Hospital disagreed with the MEC's finding that Dr. El-Attar should keep his staff privileges, and proceeded to "stack the deck" in its favor in the peer review process so the Hospital would obtain an advantage over Dr. El-Attar in the hearing.

Significantly, the MEC never refused to appoint the JRC or the hearing officer, as the Hospital incorrectly suggests. Rather, the Hospital prepared and presented an ambiguous resolution to the MEC in a March 2003 meeting of the MEC. As reflected in the minutes of a March 12, 2003, meeting, the MEC voted to "leave the actions related to the Judicial Review Hearing procedures to the Governing Board." (AR 1890-1894). Nothing in the MEC minutes suggest that the MEC failed or refused to appoint the JRC. In fact, it was the Hospital which insisted that it prosecute the charges against Dr. El-Attar (which the Bylaws allowed it to do) and that it select the JRC and hearing officer for the peer review hearing (which the Bylaws required the MEC to do). The MEC was not given the opportunity to appoint the JRC and hearing officer, and certainly did not refuse to do so.

The court of appeal gave the Hospital the benefit of the doubt on the meaning of the ambiguous resolution in the March 12 minutes, finding that there was substantial evidence to prove that the MEC purported to delegate its duty under the Bylaws to select the JRC and hearing officer. (Typed Opn., 13). Indeed, the minutes prove that the MEC did not refuse or fail to act with regard to Dr. El-Attar's charges, but, at the Hospital's request, it delegated its authority to the Hospital to replace the MEC in "arranging the hearing." (Typed Opn., 13).

Thus, contrary to the Hospital's assertion, the MEC did not fail to act with regard to the charges against Dr. El-Attar. Petition, pp. 24-25. The MEC did act with regard to the charges brought against Dr. El-Attar and took action, at the Hospital's urging, to delegate the "arrangements" for the hearing to the Hospital. The court of appeal correctly noted that "[n]o issue is raised as to whether the Governing Board would be entitled to appoint the JRC and hearing officer if the MEC refused to do so." (Typed Opn., 18, n.10). The minutes of the March 12, 2003 meeting did not prove a refusal by the MEC to fulfill its duties under the Bylaws with regard to peer review. Id. Rather, the MEC incorrectly tried to delegate its duties under the Bylaws – at the urging of the Hospital.

Accordingly, there was no need for the court to apply a vague "rule of necessity" or to give the Hospital the implied authority under the Bylaws to carry out the peer review process in the face of the MEC's actual refusal to do so. The Hospital is distorting the facts and evidence to create a false issue that the El-Attar Decision clearly does not raise. Therefore, review of the El-Attar Decision to address this phantom issue contrived by the Hospital in its Petition would not be appropriate.

**C. THE HOSPITAL'S PETITION INVITES CONFUSION  
RATHER THAN CLARITY IN THE PEER REVIEW  
PROCESS AND THREATENS TO SKEW PEER REVIEW IN  
FAVOR OF HOSPITAL ADMINISTRATION TO THE  
DETRIMENT OF MEDICAL STAFF.**

As this Court noted in Mileikowsky, every licensed hospital is required to have a medical staff responsible for the adequacy and quality of medical care to the hospital's patients. The medical staff is required to adopt written bylaws "which provide formal procedures for the evaluation of staff applications and credentials, appointments, reappointments, assignments of clinical privileges, appeals mechanisms, and such other subjects or conditions which the medical staff and governing body deem appropriate." Mileikowsky, 45 Cal.4th at 1267 (citations omitted). These bylaws set out the rules for the hospital and medical staff to follow with regard to the peer review process. In addition, California enacted legislation which codified the peer review process for physicians and hospitals to set the minimum standards for peer review and to supplement the process in the medical staff bylaws. Id. See Business & Prof. Code §809 et seq.

Using both a hospital's medical staff bylaws and the standards in the Business and Professions Code, physicians and hospital administrators have clear rules and regulations to govern the peer review process. Accordingly, adherence to these rules and regulations is important to ensure that physicians receive a fair hearing and/or due process when a hospital decides to terminate or not renew a physician's staff privileges. Indeed, "[a] hospital's decision to deny staff privileges . . . may have the effect of ending the physician's career." Mileikowsky, 45 Cal.4th at 1268.

In its Petition, the Hospital asks this Court to review the El-Attar Decision to consider giving hospitals certain rights to depart from their



bylaws governing peer review if it becomes “necessary” for the hospitals to do so. Specifically, the Hospital here invites this Court to review the El-Attar Decision to establish an amorphous right for lay hospital administrators to bypass the medical staff in setting up the peer review process and to violate well-established bylaws which require the medical staff to fulfill that function.

Although the Hospital argues that review is necessary to clarify the law; in reality, the Hospital asks this Court to pave the way for an ambiguous and arbitrary process that would be controlled by the whims of the hospital’s administrators, who may not have medical training, to the detriment of the medical staff. In Mileikowsky, this court went to great lengths to articulate the importance of a balance of power between the hospital, on the one hand, and its medical staff, on the other had, in the peer review process. Adherence to the letter of the medical staff bylaws and Business and Professions Code in the peer review process is essential to fair procedure and in furthering the goals of protecting patients in the hospital and in safeguarding physicians from arbitrary and unfair decisions that can destroy their careers.

The Hospital has asked this Court to review a well-reasoned, unanimous decision of the court of appeal that embraces the fundamental principles of the peer review process articulated by this Court in Mileikowsky. Moreover, the Hospital invites this Court to depart from requiring adherence to its medical staff bylaws and to give ambiguous implied powers to hospital administrators to deviate from those rules when the Hospital deems it “necessary” to do so. The pernicious result of the Hospital’s argument for review would skew the peer review process in the Hospital’s favor to the detriment of the medical staff. Indeed, the Hospital here asks this court to upend the balance of power between medical staff

and administrators recently reaffirmed in Mileikowsky and faithfully followed in the El-Attar Decision.

Such a result would render the medical staff's role in the peer review process illusory, even when the bylaws have vested the medical staff with rights and duties with regard to peer review. Accordingly, review of the El-Attar Decision is not appropriate. The Court should deny the Hospital's Petition.

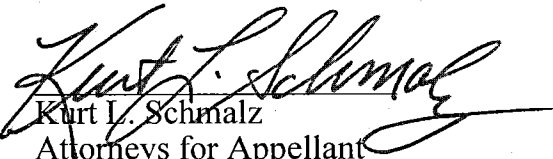
#### IV. CONCLUSION

Based upon the foregoing, this Court should deny the Hospital's Petition for Review of the Court of Appeal's unanimous decision in El-Attar v. Hollywood Presbyterian Medical Center, 198 Cal.App.4th 664 (2011).

Dated: October 13, 2011 Respectfully Submitted,

LURIE, ZEPEDA, SCHMALZ & HOGAN  
KURT L. SCHMALZ

By:

  
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Osamah El-Attar, M.D.

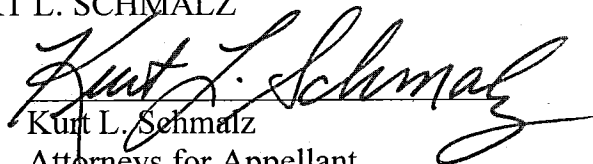
**CERTIFICATE OF COMPLIANCE**  
**(CALIFORNIA RULES OF COURT,**  
**APPELLATE RULE 8.204(c)(1)**

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Dated: October 13, 2011 Respectfully Submitted,

LURIE, ZEPEDA, SCHMALZ & HOGAN  
KURT L. SCHMALZ

By:



Kurt L. Schmalz  
Attorneys for Appellant  
Osamah El-Attar, M.D

brought section 1202.4, subdivision (d) to the trial court's attention, the trial court would have had an opportunity to clarify its statement. Thus, arguably, on this record Julian waived any section 1202.4, subdivision (d) error.

However, we reject Julian's argument on two more fundamental bases. First, we do not agree the trial court's statement reflects an unambiguous abdication of the trial court's duty under section 1202.4, subdivision (d). Rather, read in its entirety, and along with the other views the trial court expressed at the time of sentencing, the trial court's statement of its reasons for imposing the maximum restitution fine strongly suggest the trial court determined that notwithstanding *any* inability to pay, the horrific nature of the losses suffered by the victims nonetheless required imposition of the maximum restitution fine. Such a determination is plainly within the terms of section 1202.4, subdivision (d) which only requires the inability to pay be considered along with other factors, including the seriousness and gravity of the crime, the number of victims and the psychological harm caused by the crime.

Second, even if we found that the trial court erred in the manner in which it expressed its determination, it is clear from all the views the trial court expressed, had the requirements of section 1202.4 subdivision (d) been brought to the trial court's attention, the trial court would have imposed the maximum fine. Plainly, the trial court believed, and the record supports its belief, the grievous harm Julian caused justified the fullest punishment available under the law. Thus, Julian cannot demonstrate he was prejudiced by the trial court's statement.

## VI

*Presentence Credits*

Finally, Julian has requested us to allow him to augment the record with bail bond documents, which he contends show he is entitled to an additional four days of presentence credits. The Attorney General has objected to the motion to augment on the grounds the bail bond documents suggest, but do not prove, Julian is entitled to additional credits. In light of this factual dispute, we deny the motion to augment without prejudice to Julian's ability to seek the additional credits in the trial court under section 1237.1.

## DISPOSITION

The judgment is affirmed.

BENKE, Acting P. J.

WE CONCUR:  
MCDONALD, J.  
IRION, J.

## MODIFICATION CIVIL PROCEDURE

*Elected committee must appoint hearing panel and may not delegate this task to governing board in absence of contrary bylaw provision.*

Cite as 2011 DJDAR 13710

OSAMAH A. ELATTAR,  
Petitioner and Appellant,

v.  
HOLLYWOOD PRESBYTERIAN  
MEDICAL CENTER,  
Defendant and Respondent.

No. B209056  
(Los Angeles County  
Super. Ct. No. BS105623)  
California Courts of Appeal  
Second Appellate district  
Division Four  
Filed September 7, 2011

CERTIFIED FOR PARTIAL PUBLICATION

ORDER MODIFYING OPINION  
[NO CHANGE IN JUDGMENT]

THE COURT:\*

It is ordered that the published opinion filed on August 19, 2011, and reported in the Official Reports (198 Cal.App.4th 664) be modified as follows:

On page 1, the appearance of counsel is modified to reflect that the California Medical Association Amicus Curiae brief was filed by: "Francisco J. Silva and Astrid G. Meghrigian for California Medical Association as Amicus Curiae on behalf of Petitioner and Appellant."

There is no change in the judgment.

\*EPSTEIN, P. J. WILLHITE, J. MANELLA, J.

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is: 9107 Wilshire Boulevard, Suite 800, Beverly Hills, California 90210-5533.

On **October 13, 2011**, I served  the original  a true copy of the within document(s) described as **ANSWER TO PETITION FOR REVIEW** on all interested parties in this action:

- BY MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Beverly Hills, California addressed as set forth on the attached service list. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at 9107 Wilshire Boulevard, Suite 800, Beverly Hills, California in the ordinary course of business. I am aware on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- BY FEDEX:** I enclosed the documents in an envelope or package provided by FedEx and addressed to the person[s] on the attached service list. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- BY FACSIMILE:** I sent such document from facsimile machine on the above date, to the facsimile number to the attention of the individual set forth below. I certify that said transmission was completed and that all pages were received and that a report was generated by the facsimile machine which confirms said transmission and receipt.
- BY ELECTRONIC MAIL:** by transmitting via electronic mail a true copy of the above listed document(s) to the email addresses set forth below on this date before 5:00 p.m.
- (State)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- (Federal)** I declare that I am employed in the office of a member of the State Bar of this Court at whose direction the service was made.

Executed on **October 13, 2011**, at Beverly Hills, California.

Claudia Stroe  
Type or Print Name

\_\_\_\_\_  
Signature

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