CASE NO. S224472

CALIFORNIA SUPREME COURT

JATINDER DHILLON,

Petitioner and Respondent,

vs.

JOHN MUIR HEALTH, BOARD OF DIRECTORS OF JOHN MUIR HEALTH

Respondents and Appellants.

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SUPREME COURT
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From an Order of Dismissal, First District Court of Appeal,
Div. Three, Case No. A143195
Contra Costa Superior Court, Case No. MSN-13-1353
The Hon. Laurel S. Brady, Judge Presiding

ANSWER TO PETITION FOR REVIEW

CARLA V. MINNARD
(CSB No. 176015)
THE MINNARD LAW FIRM
4100 Redwood Road, #145
Oakland, Ca 94619
(510) 479-1475 Telephone
(415) 358-5588 Facsimile
carlaminnard@minnardlaw.com

SHARON J. ARKIN
(CSB 154858)
THE ARKIN LAW FIRM
225 S. Olive Street, Suite 102
Los Angeles, CA 90012
(541) 469-2892 Telephone
(866) 571-5676 Facsimile
sarkin@arkinlawfirm.com

Attorneys for Petitioner and Respondent Jatinder Dhillon

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Los Angeles, CA 90012
(541) 469-2892 Telephone
(866) 571-5676 Facsimile
sarkin@arkinlawfirm.com

Attorneys for Petitioner and Respondent Jatinder Dhillon

CERTIFICATE OF INTERESTED PARTIES

Pursuant to California Rule of Court 8.208, real party in interest and his counsel certify that apart from the attorneys representing the real party in interest in this proceeding, as disclosed on the cover of this Answer, real party in interest and his counsel know of no other person or entity that has a financial or other interest in the outcome of the proceeding that real party in interest and this counsel reasonably believe the Justices of this Court should consider in determining whether to disqualify themselves under canon 3E of the Code of Judicial Ethics.

Dated: March 9, 2015

SHARON J. ARKIN

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INTRODUCTION

A. Brief Factual Summary[1]

Dr. Dhillon is a well-respected cardio-thoracic surgeon who has had clinical privileges at John Muir Health ("JMH") and various other hospitals for over 20 years. He has also been Department Co-Chair of Cardiovascular Medicine, Co-Director of Cardiac Surgery, a member of the Medical Executive Committee ("MEC") for more than a decade, and a member of the Credentialing Committee at JMH.

Starting in or about 2011, the JMH MEC took multiple disciplinary actions against Dr. Dhillon, without first obtaining Board approval and without any Judicial Review Committee hearing, all in direct violation of John Muir's own express Bylaw provisions and Dr. Dhillon's procedural rights.

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1 The full facts and proceedings are set forth, with references to the record, in Dr. Dhillon's return and opposition to JMH's writ petition, Case No. A143256, and as to which a Petition for Review was filed, and denied, in Case No. S223382.

B. Brief Summary of Proceedings

Dr. Dhillon filed a Petition for Writ of Administrative Mandamus on September 13, 2013, Contra Costa Superior Court Case No. MSN-13-1353, challenging the actions taken by JMH. The petition sought several forms of relief, including an order setting aside the original discipline imposed by JMH as well as a later summary suspension imposed on him on the basis that the there was no substantial evidence in the administrative record to support the imposition of the discipline imposed, or, in the alternative, an order requiring JMH to provide Dr. Dhillon with the procedural due process appeal rights expressly afforded to him under the JMH Bylaws.

On August 6, 2014 the trial court denied a number of Dr. Dhillon's requests for alternative relief, but granted the petition to the extent it requested that JMH be required to provide Dr. Dhillon with a Judicial Review Committee hearing regarding the discipline imposed upon him by JMH. (A true and correct copy of the trial court's order is attached as Exhibit A.)

A judgment was subsequently entered on September 8, 2014. JMH appealed from that judgment on September 30, 2014 and on October 10, 2014 JMH filed a petition for writ of mandate, prohibition or other appropriate relief with the appellate court, Case No. A143256, *specifically acknowledging that an appeal may not be the proper procedural process*

for seeking review of the trial court's order. The appellate court summarily denied that petition on December 11, 2014 after requesting and receiving a Return from Dr. Dhillon, as well as a Reply from JMH.

On December 11, 2014, the appellate court requested briefing with respect to its jurisdiction on the appeal. After receiving briefing from both Dr. Dhillon and JMH, the appellate court dismissed the appeal on January 9, 2015, concluding that the "superior court's order remanding the matter to John Muir Health is not a final, appealable order." (A true and correct copy of the Order of Dismissal is attached as Exhibit B.) Further, the appellate court concluded, "the order and judgment at issue here are not appealable as a final determination of a collateral matter." (*Ibid.*)

WHY REVIEW SHOULD BE DENIED

There are two reasons why review should be denied. The most basic problem with JMH's request for review is that the question it presents in no way triggers any *grounds* for this Court's review as required under California Rule of Court 8.500, subdivision (b); rather, the question presented is a fact-intensive analysis of the particular circumstances, both those at issue in the underlying proceedings, and with respect to the appellate court's determination of whether jurisdiction existed.

And, despite JMH's arguments to the contrary, this Court has already established the rule to be applied: "[W]here anything further in the nature of judicial action on the part of the court is essential to a final determination of the rights of the parties, the decree is interlocutory" and appellate jurisdiction does not exist. (*Griset v. Fair Political Practices Commission* (2001) 25 Cal.4th 688, 696, 107 Cal.Rptr.2d 149, 23 P.3d 43.)

The appellate court correctly concluded that, in this case, there has been no "final determination of the rights of the parties." All that has occurred is a remand order by the Superior Court, requiring JMH to provide Dr. Dhillon with a procedural process mandated by its own Bylaws. Once that procedural process has concluded, the Superior Court will be required to address the *substantive* issues, i.e., whether, in fact, JMH's disciplinary actions were authorized and/or justified under the applicable Bylaws and in light of the substantial evidence. As evidenced by the persistence of the parties in asserting their legal rights in this litigation, it is inevitable that any decision rendered in the administrative hearing will be further challenged in the trial court and until there is a resolution of the substantive issues, there will be no "final determination of the rights of the parties;" appellate jurisdiction therefore does not lie at this early stage of the proceedings.

Review should be denied for a second reason. JMH's primary basis

for requesting review is that, absent interim review, it will be forced to provide Dr. Dhillon with his administrative due process rights which, JMH contends, is unfair because the process is unduly burdensome and expensive. JMH argues that, unless appellate review of that issue is obtained before it complies with the remand order, its right to appellate review of the remand order will be forever lost.

But JMH's argument ignores the fact that JMH *has been* afforded appellate review of the remand order. JMH filed a writ petition based on the very same remand order that was the subject of its notice of appeal. The appellate court issued a *Palma* notice and requested a response from Dr. Dhillon. A formal return was filed and JMH filed its reply.

After what amounted to full briefing on the issue of whether the trial court's order requiring JMH to provide a Judicial Review Committee hearing was correct, the writ petition was summarily denied. Notably, a summary denial does not mean that JMH was deprived of its right to appellate review: "We hasten to dispel the bar's common misconception that a summary denial of a writ petition suggests summary consideration. The Courts of Appeal review and evaluate the hundreds of petitions filed each year in each appellate district. *The merits of these petitions are fully examined.* Sheer volume prohibits a written decision in every case, and one is not required." (*James B. v. Superior Court (Humboldt County Child*

Welfare Services (1995) 35 Cal.App.4th 1014, 1018, emphasis added.)

The conclusion that JMH has been afforded appellate review is actually supported by the authorities cited by JMH. In *Leone v. Medical Board* (2000) 22 Cal.4th 660, this Court held that the statute limiting a doctor to obtaining review of an administrative decision by the Medical Board by a writ petition rather than an appeal *is not a deprivation of the right to appellate review.* (See, also, *Powers v. City of Richmond* (1995) 10 Cal.4th 85, 92-93.) As this Court explained in *Leone*: "Thus, the ordinary and widely accepted meaning of the term 'appellate jurisdiction' is simply the power of a reviewing court to correct error in a trial court proceeding. By common understanding, a reviewing court may exercise this power *in the procedural context of a direct appeal* ***or*** *a writ petition.*" (Emphasis added.) *Leone* further confirms (contrary to JMH's fundamental argument) that "a reviewing court may exercise appellate jurisdiction – that is, the power to review and correct error in trial court orders and judgments – either by a direct appeal or by an extraordinary writ proceeding." (*Leone*, at 668.) Because the appellate court in this case did, in fact, exercise its appellate jurisdiction to address the issue presented by JMH by obtaining full briefing on the issue in the writ proceedings, JMH is hard-pressed to maintain its claim that it has not been afforded appellate review of the issue.

Thus, the appellate court's summary denial of JMH's writ petition in *this* case does not mean that JMH was deprived of review by the appellate court on the merits; it only means that the appellate court assessed and determining the issue but, because the review occurred in the writ context, it was not required to issue a written opinion in denying the writ. (See, e.g., Eisenberg, Horvitz and Wiener, *California Practice Guide: Civil Appeals and Writs* (Rutter 2014) ¶ 15:233.1.)

Moreover, because the appellate court requested and obtained a complete responsive brief from Dr. Dhillon, and a reply from JMH, the appellate court's consideration of the issue was obviously anything but "summary," except in the sense that the appellate court obviously agreed with the trial court but did not issue a written decision to that effect. JMH has failed to establish in its petition for review that the appellate court abused its discretion in denying JMH's petition for writ mandate given the facts and circumstances in this case.

Thus, contrary to JMH's assertion, it *has* obtained appellate review of the trial court's remand order – but the relief it requested was denied. Thus, the very relief requested in this petition for review, i.e., forcing the appellate court to consider the issue on its merits, has already been afforded to JMH and there is no basis for the relief requested from this Court.

Because this Court has already established the applicable standard

for the determination of appellate jurisdiction in *Griset*, and because the facts in this case warranted the appellate court's dismissal of JMH's appeal, review is not necessary to "settle an important question of law;" nor are there any conflicting decisions which require securing any "uniformity of decision." (California Rule of Court 8.500, subdivision (b)(1).)

Fundamentally, JMH simply argues that the appellate court was wrong in dismissing the appeal and in denying JMH's petition for writ of mandate and that the trial court's determination that Dr. Dhillon was entitled to further procedural protections should ultimately be reversed. But correcting an allegedly-erroneous trial court or appellate court determination has never been a basis for review by this Court. (*People v. Davis* (1905) 147 Cal. 346, 348, 81 P. 718, 719.)

The petition for review should, therefore, be denied.

LEGAL ARGUMENT

BECAUSE THE TRIAL COURT'S ORDER IS A REMAND FOR FUTHER PROCEEDINGS, THE ORDER WAS NOT APPEALABLE AND THE APPEAL WAS PROPERLY DISMISSED

In addition to the fact that JMH has failed to provide any grounds for this Court's review, review should also be denied because, in fact, the appellate court's dismissal of the appeal was correct under controlling authority. In *Griset v. Fair Political Practices Commission* (2001) 25 Cal.4th 688, 696, 107 Cal.Rptr.2d 149, 23 P.3d 43, this Court confirmed that a "reviewing court has jurisdiction over a direct appeal *only* when there is (1) an appealable order or (2) an appealable judgment" and a "trial court's order is appealable when it is made so by statute." (Emphasis added.)

Further, this Court reiterated the analysis for determining whether an appellate court has jurisdiction to determine an issue on appeal as opposed to examining it by way of a writ petition: "It is not the form of the decree but the substance and *effect* of the adjudication which is determinative. As a general test, which must be adapted to the particular circumstances of the individual case, it may be said that where no issue is left for future

consideration except the fact of compliance or noncompliance with the terms of the first decree, that decree is final, but *where anything further in the nature of judicial action on the part of the court is essential to a final determination of the rights of the parties, the decree is interlocutory.*" (*Id.*, at 698-699, internal citations and quotations omitted, emphasis added.) Thus, the fact that the order is issued in the form of a "judgment" is not controlling; rather, it is the relief ordered which is determinative. (*Griset*, at 698-699.)

The reason for this rule is simple: "The theory is that piecemeal disposition and multiple appeals in a single action would be oppressive and costly, and that a review of intermediate rulings should await the final disposition of the case." (*Conley v. Shewry* (2005) 131 Cal.App.4th 1354, 1365, 32 Cal.Rptr.3d 667, internal quotations and citation omitted.)

Griset and other decisions acknowledge that the outright denial of *all* relief sought in a petition for administrative mandate constitutes an appealable order or judgment. (*Griset*, at 699; *see, also, Catalina Investments, Inc. v. Jones* (2002) 98 Cal.App.4th 1, 6, fn 3, 119 Cal.Rptr.2d 256; *Kennedy v. South Coast Regional Comm.* (1977) 68 Cal.App.3d 660, 666, 137 Cal.Rptr. 396.) This makes sense given that, in such a situation, the order *does* constitute a final disposition of the issues and, absent the right to appeal, the issues could never be joined.

The situation is different, however, when the trial court's writ remands the issues to the administrative board for compliance with required *procedural* processes. In that situation, the cases confirm that such remand orders are not appealable because, in fact, the *substantive issues will not be finally resolved until further action is taken by the administrative tribunal.* (*Board of Dental Examiners v. Superior Court (Sedler)* (1998) 66 Cal.App.4th 1424, 1430-1431, 78 Cal.Rptr.2d 653; *Village Trailer Park, Inc. v. Santa Monica Rent Control Board* (2002) 101 Cal.App.4th 1133, 1139-1140, 124 Cal.Rptr.2d 857; *Gillis v. Dental Board of California* (2012) 206 Cal.App.4th 311, 318, 141 Cal.Rptr.3d 213.)[2]

The latter rule applies in this case, i.e., the trial court's order remanded the matter to JMH's administrative process, requiring JMH to provide Dr. Dhillon with a hearing before the Judicial Review Committee to challenge the suspension of his privileges. (See, Exhibit A, p. 2, ¶ 2.)

Indeed, this situation is the flip side of the exhaustion of remedies doctrine. Under that doctrine, Dr. Dhillon would not be able to obtain administrative mandate unless and until he exhausted his appeals under

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2 Other courts have, in fact, decided cases on appeal in which remand was ordered by the Superior Court in administrative writ proceedings, but did so without any analysis as to the appealability of the orders at issue. (*See, e.g., Hackenthal v. Loma Linda Community Hospital Corp.* (1979) 91 Cal.App.3d 59, 153 Cal.Rptr. 783; *Bode v. Los Angeles Metropolitan Medical Center* (2009) 174 Cal.App.4th 1224, 94 Cal.Rtpr.3d 890.)

JMH's administrative procedures. (*Westlake Community Hospital v. Superior Court* (1976) 17 Cal.3d 465, 474-475.) In this case, the trial court's remand is nothing more than a requirement that *JMH allow Dr. Dhillon to exhaust the mandated administrative processes* before any determination on the merits of the imposition of discipline can be assessed and determined.

JMH argues that the remand order in this case is "final" in the sense that there is nothing further required of the Superior Court except to assess whether JMH complies, or does not comply, with that order. But in reality, further substantive challenges will inevitably be sought by Dr. Dhillon or JMH after Dr. Dhillon is provided with all his procedural rights and the administrative action is substantively resolved. That means that the trial court will have to be involved in further proceedings in order to make the substantive determination of whether the administrative record supports the ultimate administrative determination.

This is fundamentally the same procedural posture that was at issue in *Village Trailer Park.* In that case, the petitioner had been provided with an administrative appeal from the underlying decision, but appealed from the final order on several grounds, including a challenge to the damages calculation. The trial court remanded the matter for further proceedings on the calculation of damages. (*Id.* 1139.) As the *Village Trailer Park* court

noted, the proper procedure to challenge that order was by way of a writ petition, not an appeal. (*Id.*, at 1139-1140.)

Like the situation here, the remand to the administrative body in *Village Trailer Park* could arguably have been "final" for purposes of appeal because the only thing required to enforce the order was a determination of whether the board acted as ordered, i.e., whether it recalculated damages. But the practical reality in that case, like the practical reality in this case, is that further Superior Court proceedings may have been (and in that case ultimately were) required to assess whether the *outcome* from complying with the order is *substantively* correct, i.e., whether the ultimate administrative decision is correct. In *Village Trailer Park*, the question would be whether the damages recalculation was supported by the administrative record; in this case, the question will be whether the ultimate determination from the Judicial Review Committee and/or the Board is supported by the administrative record.

Thus, as in *Village Trailer Park*, the remand for further proceedings in this case renders the trial court's order one that is not a final order and therefore one which is not appealable. That, of course, does not strip JMH of any ability to obtain review of that order. As it acknowledged it its writ petition to the appellate court, it has, at the very least, the ability to seek interim review of the trial court's order remanding the matter for further

proceedings – and it exercised that right. The fact that the appellate court summarily denied that writ petition is conclusive and renders the trial court's order enforceable by Dr. Dhillon, i.e., he is entitled to the administrative appeal rights he sought.

There is one other issue. A number of cases have concluded that although an appeal from a non-final order cannot lie, the appellate court has the power to construe the appeal as a writ petition and may decide the issue on that basis. (*See, e.g., Board of Dental Examiners*, at 1430; *Village Trailer Park*, at 1140.) But the standards for doing so do not apply in this case.

First, of course, JMH *did* file a writ petition, and it was denied after the appellate court's consideration of the petition, Dr. Dhillon's opposition and JMH's reply. To then construe the appeal as a writ petition would have been unnecessarily duplicative and a waste of both the appellate court and the parties' resources.

Second, the appellate courts generally exercise their discretion to construe an appeal as a writ proceeding only where the matter has been fully briefed on the merits and when "there is public interest in a matter." (*Gillis v. Dental Board of California* (2012) 206 Cal.App.4th 311, 318, 141 Cal.Rptr.3d 213.) Neither circumstance existed here: JMH's opening brief had not been filed before the appeal was dismissed and this case does not

present a matter of general public interest but is of interest only to the parties. Accordingly, there was neither any need for, nor justification for, an exercise of the appellate court's discretion in construing the appeal as a writ petition, especially since JMH's writ petition had already been presented and denied.

None of the cases cited to or relied on by JMH require a different result in this case. For example, in *Carson Gardens, LLC v. City of Carson Mobilehome Park Rental Review Board* (2006) 135 Cal.App.4th 856, 866, a mobilehome park owner applied to the rental board for a 50% increase in space rentals. The board rejected that requested increase and authorized only a nearly 9.8% increase in rents. The park owner sought administrative mandate relief from the superior court and that court granted *substantive relief* on the basis of its interpretation of the controlling statutes as to how rent increases were to be calculated and remanded the matter to the rent control board for recalculation of the rental increase. The rent control board did not seek appellate review of that substantive requirement or the trial court's interpretation of the statute either by way of direct appeal or by way of writ petition.

After further proceedings before the rent control board and a new calculation of the rent increases authorized by the board, the matter returned to the superior court, which again found the rent control board's

methodology inappropriate under the statute. The superior court ordered another remand and the board appealed from that order.

In its appeal, the board challenged the trial court's interpretation of the rental increase statutes made by the trial court in the first remand order. But the appellate court concluded that the board had waived that challenge by failing to appeal from that first order. The appellate court, however, never provided *any analysis whatsoever* for its conclusion in that respect; it never cited to *Griset*, in never referenced the *Sedler* line of cases, and it did not actually cite any authority at all for its conclusion that the initial remand order was appealable.

Furthermore, the issues in the first remand in *Carson Gardens* related to *substantive issues*, and did not merely require the rental board to provide procedural due process, as is the issue in this case. Nor did the board seek writ review from the appellate court in that case after the first remand order. Thus, the factual context in *Carson Gardens* has no application here.

The same factual distinctions exist with respect to *Los Angeles International Charter High School v. Los Angeles Unified School District* (2012) 209 Cal.App.4th 1348. In that case, a charter school sought administrative mandamus to require the school district to provide facilities to it as required under Proposition 39. The superior court granted the

substantive relief requested in the petition for administrative mandate and neither party appealed from the order, either by way of a direct appeal or by way of an appellate writ petition. When the school district refused to provide access to facilities at the specific high school location the charter school preferred, the charter school went back to the superior court, which found that the district met its legal obligations in offering the facilities it did and discharged the writ. The charter school appealed the discharge and the appellate court affirmed the discharge.

As part of its analysis, the appellate court concluded that by failing to appeal from the initial mandamus order, the charter school had waived the right to challenge the language of the initial order. Again, there was no analysis of that conclusion and again there was no discussion of the *Griset* rule or the *Sedler* case. And, again, the facts there involved a *substantive* determination on the original mandate and did not involve a procedural remand like the one here. Nor was there any effort by the charter school to obtain appellate relief, either by way of appeal or an appellate writ petition. Thus, as with the *Carson Gardens* case, the *Los Angeles International* case has no application to the issues presented.

In fact, the only case cited by the *Los Angeles International* court to support its assertion that the issue had been waived was *City of Carmel-By-The-Sea v. Board of Supervisors* 1982) 137 Cal.App.3d 964, 970. But that

case found that the party had waived the right to appeal from a *substantive* mandamus order because it had voluntarily complied with the order. There is nothing in this record to demonstrate that JMH has or will voluntarily comply with the *procedural* mandate ordered by the trial court in this case; to the contrary, JMH has fought that order by every means available, it has maintained its refusal throughout these proceedings to provide the requested appeal hearing, and there is no conceivable argument that it has "voluntarily" complied with anything. Thus, neither the *City of Carmel* case nor the *Los Angeles International* case has anything in common with the facts here.

JMH's reliance on *California Assn. of Psychological Providers v. Rank* (1990) 51 Cal.3d 1 is particularly inapt since that case has absolutely no relationship to either the procedural or factual context of this case: It does not deal with administrative mandate or the remand of an administrative mandate proceeding on either substantive or a procedural basis. In fact, this Court's remand to the appellate court in that case was for further proceedings after this Court had assessed and determined the substantive issues on the merits. That circumstance does not exist here since JMH has not even sought review from this Court on the *merits* of the trial court's procedural remand in this case.

The other cases cited to and relied on by JMH are also factually

and/or procedurally distinguishable. All of them deal with a trial court's determination of the substantive issues presented in a petition for writ of mandamus and none of them – not one – deals with remand for the purposes of requiring the administrative body to provide the procedural due process rights mandated by the standards that control the parties' relationship. (See, e.g., *Public Defenders' Organization v. County of Riverside* (2003) 106 Cal.App.4th 1403 [mandamus compelling county to recognize organization as majority representative of county's public defenders]; *Griset, supra* [determining that prior Supreme Court decision was final and there was no basis for further appeal]; *People v. Karriker* (2007) 149 Cal.App.4th 763 [trial court's order disposed of single substantive issue raised in petition and was therefore final and appealable]; *U.D. Registry, Inc. v. Municipal Court* (1996) 50 Cal.App.4th 671 [trial court order permitting access to municipal court unlawful detainer files despite statute limiting access was final, appealable order]; *Bollengier v. Doctors Medical Center* (1990) 222 Cal.App.3d 1115 [*denial* of a petition for writ of mandamus, which the cases universally conclude is appealable].)

At pages 14 to 15 of its petition, JMH cites to several cases for the proposition that a remand order is appealable. But those cases either do not stand for that proposition at all or do not apply in the context of the facts here. One of those cases, *Carson Gardens*, was discussed above and, as

noted, the remand in that case was *substantive*, not procedural like the remand in this case. Furthermore, the aggrieved party in that case, unlike JMH in this case, failed to seek any appellate relief, either by way of appeal or writ. Nor did the *Carson Gardens* court provide any analysis whatsoever – or even any citation to any authority – to support its assertion that the remand order was appealable. As such, *Carson Gardens* does not assist JMH's argument. Nor, as discussed above, do the decisions in *City of Carmel,* and *Los Angeles International.*

JMH's reliance on *Quintanar v. County of Riverside* (2014) 230 Cal.App.4th 1226 is particularly misplaced because it, in fact, support's Dr. Dhillon's position. In *Quintanar*, a police officer filed an administrative mandamus petition seeking to overturn a hearing officer's conclusion that he used excessive force, thereby justifying his demotion. The petition asserted that the hearing officer did not exercise his own independent judgment on the issue, in conflict with the controlling requirements. The trial court remanded the matter for a determination on whether the hearing officer exercised his independent judgment. There was no appeal or writ taken from that order and the appellate court never concluded that any party had waived the right to appeal the trial court's determination on that issue during a subsequent appeal.

After the hearing officer responded to the remand order, describing

his determination process in reaching his decision, the trial court concluded that he had not, in fact, exercised his independent judgment and granted an order on the substantive issue, i.e., commanding the hearing officer to exercise his independent judgment in assessing the issues. The County filed an appeal from that second remand order.

Contrary to JMH's representation in it is brief, the appellate court did not definitively determine that the order was appealable; rather, the court 'hedged its bets' and concluded that, even if the order was not, in fact, appealable, it had "discretion to treat a failed appeal as a petition for a writ of mandate . . . we would do so in this case." (*Id.*, at 232.)

Unlike the court in *Quintanar*, the appellate court in this case clearly declined JMH's writ petition, after full briefing on the issues, thereby signaling that it did not disagree with the trial court's assessment of the procedure-based remand order requiring JMH to provide Dr. Dhillon with his procedural due process rights.

And JMH itself provides the resolution to its purported dilemma of being forced to improperly (it believes) provide Dr. Dhillon with his allegedly-unwarranted and time-consuming and expensive procedural due process rights in the absence of an appeal: It can be held in contempt for refusing to comply with the trial court's order and can thereafter challenge the validity of that order on the merits on appeal. (Petition for Review, p.

15.)

It is especially ironic that JHM claims that its right to appeal the trial court's remand order "is thus about process, not the result of the process." (Petition for Review, p. 16.) Indeed, that was the very point of Dr. Dhillon's petition for administrative mandate: JMH denied him the right to the process expressly and specifically provided under JMH's own Bylaws. Once JMH fulfills its obligation to provide the process it promised to its physician staff, it will then be in a position to obtain the process it claims is due to it in these proceedings.

JMH's argument at pages 18 to 19 of its petition for review is particularly misplaced. JMH argues that the Legislature has mandated that final judgments and certain orders are appealable and that the courts are required to comply with that mandate. But JMH's argument begs the question: Which judgments or orders are, in fact, "final" under the legislative fiat? The determination of how the statutes are applied in the specific facts of an individual case is at the very heart of what the courts are authorized and empowered to do. (*Carter v. California Dept. of Veteran Affairs* (2006) 38 Cal.4th 914, 922 ["'[T]he interpretation of a statute is an exercise of the judicial power the Constitution assigns to the courts.'. . . When this court 'finally and definitively' interprets a statute, the Legislature does not have the power to then state that a later amendment

merely declared existing law."].)

JMH has not cited to a single statute establishing that *every* order issued in response to an administrative writ petition is *necessarily* an appealable order; indeed, the Legislature has never so declared. And, as this Court confirmed in *Griset*, it "is not the form of the decree but the substance and *effect* of the adjudication which is determinative" of the appealability of an order or judgment. (*Id*, at 698-699, emphasis added.) Thus, the mere fact that the order was reduced to a judgment does not, in fact, render it "appealable."

In light of the fact that the appellate court's dismissal was proper, petition for review should be denied.

CONCLUSION

JMH had the opportunity for appellate review of the trial court's procedural remand order requiring it to provide Dr. Dhillon with his procedural due process rights under the JMH Bylaws: It filed a writ petition on that interim ruling and the appellate court was within its power and jurisdiction to deny that writ. The appellate court also correctly determined that the order was not appealable. As such, it properly dismissed the appeal.

JMH provides no sufficient grounds for invoking this Court's review. It merely disagrees with the procedural process used by the appellate court, i.e., it thinks the appellate court was wrong. But that is not a basis for invoking this Court's review. And given the intensely factual circumstances at issue here, and given JMH's inability to articulate a broad public policy issue arising from the facts of this case, review should be declined.

Dated: March 9, 2015

MINNARD LAW FIRM

THE ARKIN LAW FIRM

By:_____

CARLA V. MINNARD
SHARON J. ARKIN
Attorneys for Petitioner
and Respondent Jatinder
Dhillon

CERTIFICATE OF BRIEF LENGTH

I, Carla V. Minnard, declare under penalty of perjury under the laws of the State of California that the word count for this Brief, excluding Tables of Contents, Tables of Authority, Proof of Service and this Certification is 5,516 words as calculated utilizing the word count feature of the Word for Mac software used to create this document.

Dated: March 9, 2015

SHARON J. ARKIN

EXHIBIT A

Carla V. Minnard, Esq. (CSB No. 176015)
THE MINNARD LAW FIRM
4100 REDWOOD ROAD, #145
OAKLAND, CA 94619
(510) 479-1475 Telephone
(415) 358-5588 Facsimile
carlaminnard@minnardlaw.com

Attorneys for Petitioner
JATINDER DHILLON

ORIGINAL

FILED

2014 AUG -6 A 11: 27

STEPHEN L. NASH
CLERK OF THE SUPERIOR COURT
COUNTY OF CONTRA COSTA, CA
BY: D. WEBER DEPUTY CLERK

SUPERIOR COURT OF CALIFORNIA – COUNTY OF CONTRA COSTA

UNLIMITED JURISDICTION

JATINDER DHILLON, M.D., Petitioner, v. JOHN MUIR HEALTH, BOARD OF DIRECTORS OF JOHN MUIR HEALTH Respondents.	Case No. N13-1353 ~~[PROPOSED]~~ ORDER DATE: July 28th, 2014 TIME: 9:00 A.M. DEPT: 31 Honorable Laurel Brady Judge Presiding

This matter came on regularly for hearing on July 28th, 2014 in the above referenced Court, the Honorable Laurel Brady Judge Presiding. Carlo Coppo appeared for Respondent John Muir Health and John Muir Health Board of Directors. Carla Minnard appeared on behalf of Petitioner Dr. Jatinder Dhillon.

The Court, having reviewed the moving, opposition and reply papers, having heard the oral argument of counsel and considered the matter, finds as follows:

IT IS HEREBY ORDERED THAT:

Petitioner Jatinder Dhillon M.D.'s motion to for peremptory administrative writ is granted in part and denied in part, as follows:

[PROPOSED] ORDER

1. Petitioner's peremptory writ of mandate ordering Respondent to set aside and vacate its suspension of Petitioner's privileges is denied.

2. A peremptory writ ordering a hearing before the Judicial Review Committee or other appropriate body on both the initial and underlying complaint as well as the subsequent suspension is granted. Under Article 7.1-6 of John Muir bylaws prescribe the right to a hearing whenever actions such as: (c) Suspension of Medical Staff Membership, and, (g) Suspension of Clinical Privileges. John Muir must provide Petitioner with Judicial Committee Review and appellate rights consistent with Article VII of the John Muir bylaws. Petitioner demonstrated he was deprived of a due process when John Muir Health and Board of Directors of John Muir Health (hereinafter "Respondents") suspended his clinical privileges for less than 13 days without providing him a hearing.

3. A peremptory writ of mandate ordering Respondent to set aside and vacate its imposition of discipline and to remand the matter to Respondent in order to render adequate findings is denied.

4. A peremptory writ of mandate ordering Respondent to vacate its determinations on the basis that the discipline imposed on Petitioner was prejudicial abuse of discretion, that the determination by the Ad Hoc Committee is not supported by any findings, and/or the findings are not supported by the evidence is denied.

5. A peremptory writ of mandate finding that the application of the procedural processes under Article VI of the Bylaws violate due process and are unenforceable where the discipline resulting from the Article VI process affect the accused Practitioner's clinical reporting and disclosure requirements is denied.

6. Petitioner's prayer for an Order restraining Respondent from communicating to anyone that Petitioner has had "communication/professional conduct" issues at John Muir or otherwise making any similar or other disparaging comments about Petitioner to anyone is denied.

7. Petitioner's prayer for an Order permitting Petitioner's common law claims to proceed in an immediate tort suit for damages is denied.

8. Petitioner's prayer for costs of suit, including attorneys' fees, is denied. Petitioner did not cite a specific statute mandating attorney fees nor did Petitioner offer proof of a contract agreeing to pay attorney fees.

Evidentiary Objections

Respondents' Objections

Objections 1-5: Sustained. Petitioner does not object to Respondents' objection.

[PROPOSED] ORDER

Objection 6: Overruled. The AMA Model Medical Staff Code of Conduct dated 2012 is relevant because John Muir's Code of Conduct specifically states it used and referred to AMA's code of Ethics in drafting its policy.

Objection 7: Overruled. This email is relevant to show John Muir's deliberation process, which is a central issue. Respondents cite no statute supporting a claim of privilege.

Objection 8: Sustained. There is no evidence the documents are relevant to the time period at issue.

Objection 9: Overruled. The 2014 PACE brochure, updated in 2013, is relevant because it was made when Dr. Dhillon was order to attend the PACE program, in 2013.

Objection 10: Overruled. The 2009 article about PACE's clinical evaluation is relevant because it describes the program Dr. Dhillon was ordered to attend and only describes the program, so it therefore not prejudicial. It is not lacking in foundation because it was authored by the Director of the PACE program.

Objection 11: Overruled. The document is relevant as to time because it goes back nine years from 2014, covering a recent time period.

Objection 12: Overruled. The letter is relevant to show the documents Petitioner requested be transmitted as part of the administrative record.

Petitioner's Objections

[PROPOSED] ORDER

Objection 1-2. Sustained. Respondents failed to produce these documents until after the Petitioner filed his brief, unfairly prejudicing Petitioner.

IT IS SO ORDERED

July 28th, 2014

JUDGE LAUREL BRADY

Approved as to form:

Carlo Coppo, Attorney for Respondent

[PROPOSED] ORDER

EXHIBIT B

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

Court of Appeal First Appellate District
FILED
JAN 9 2015
Diana Herbert, Clerk
by _____ Deputy Clerk

JATINDER DHILLON,

Plaintiff and Respondent,

v.

JOHN MUIR HEALTH et al.,

Defendants and Appellants.

A143195

(Contra Costa County
Super. Ct. No. MSN-13-1353)

THE COURT:*

On December 11, 2014 the court requested that the parties brief "the issue of whether the appeal should be dismissed because the Contra Costa County Superior Court order, filed on August 6, 2014. . . is or is not an appealable order." Having reviewed the parties' briefs, on its own motion, the court now dismisses the appeal. The superior court's order remanding the matter to John Muir Health is not a final, appealable order. (See *Board of Dental Examiners v. Superior Court* (1998) 66 Cal.App.4th 1424; see also *Gillis v. Dental Board of California* (2012) 206 Cal.App.4th 311, 318.) Furthermore, the order and judgment at issue here are not appealable as a final determination of a collateral matter.

Dated: JAN - 9 2015

McGuiness, P.J. P.J.

* McGuiness, P.J., Pollak, J., & Jenkins, J.

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address 225 S. Olive Street, Suite 102, Los Angeles, CA 90012.

On **March 9, 2015**, I served the within document described as:

ANSWER TO PETITION FOR REVIEW

on the interested parties in this action by electronic mail as follows:

PARTIES	ATTORNEYS
Respondents: **John Muir Health, Board of Directors of John Muir Health**	**David S. Ettinger** **H. Thomas Watson** **Horvitz & Levy LLC** **15760 Ventura Boulevard, 18th Floor** **Encino, CA 91436** **Carlo Coppo** **Michael R. Popcke** **Shelley A. Carder** **DiCaro, Coppo & Popcke** **2780 Gateway Road** **Carlsbad, CA 92009** **Ross E. Campbell** **Hooper Lundy & Bookman, PC** **575 Market Street, Suite 2300** **San Francisco, CA 94105**
Court of Appeal **First Appellate District** **Division Three** **350 McAllister Street** **San Francisco, Ca 94102**	
Contra Costa Superior Court **725 Court Street** **Martinez, CA 94553**	

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 9, 2015 at Brookings, Oregon.

Sharon J. Arkin