

Case No. S259364

IN THE SUPREME COURT OF CALIFORNIA

SUNDAR NATARAJAN, M.D.,

Petitioner and Appellant,

v.

DIGNITY HEALTH,

Respondent.

Court of Appeal of the State of California Case No. C085906

Superior Court of the State of California
County of San Joaquin Case No. STK-CV-UWM-20164821

**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF
AMICUS CURIAE BRIEF OF
CALIFORNIA HOSPITAL
ASSOCIATION
IN SUPPORT OF RESPONDENT DIGNITY HEALTH**

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REQUEST FOR JUDICIAL NOTICE

Pursuant to California Rule of Court rule 8.252(a), Amicus Curiae applicant California Hospital Association (“CHA”) hereby requests judicial notice of the attached excerpts from the CHA Annotated Model Medical Staff Bylaws, 12th edition (2019) (“Model Bylaws”), attached hereto as **Exhibit 1**.

Section 809(a)(8)¹ requires California medical staffs to adopt bylaws implementing Section 809’s peer review hearing requirements. Medical staffs throughout California use CHA’s Model Bylaws as a guide for updating and adapting their own bylaws and for understanding the latest legal requirements for peer review.

CHA’s Model Bylaws will assist the Court in understanding how Section 809’s peer review requirements are actually implemented on the ground. These model bylaws were not presented as evidence to the trial court or the Court of Appeal, although they were discussed in CHA’s amicus brief to the Court of Appeal. They are subject to judicial notice pursuant to Evidence Code section 425(h), which permits judicial notice of “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.”

This Courts has previously taken judicial notice of CHA’s Model Bylaws in *El-Attar v. Hollywood Presbyterian Medical Center* (2013) 56 Cal.4th 976, 989.

¹ All references are to the Business and Professions Code, unless otherwise noted.

For the reasons set forth above, CHA respectfully requests that the Court take judicial notice of excerpts from CHA's Annotated Model Medical Staff Bylaws, 12th edition (2019).

Respectfully submitted,

Dated: November 30, 2020

ARENT FOX LLP

By: 

Lowell C. Brown
Sarah Benator
Diane Roldán

Attorneys for Amicus Curiae
California Hospital Association

DECLARATION OF DIANE ROLDÁN

I, Diane Roldán, hereby declare:

1. I am an attorney at law duly authorized to practice before all courts of the State of California and am a member in good standing of the State Bar of California. I am an associate of the law firm of Arent Fox LLP, attorneys of record for Amicus Curiae California Hospital Association (“CHA”). I submit this declaration in support of CHA’s Request for Judicial Notice. I have personal knowledge of the facts set forth below and if called upon to testify as a witness, I could and would testify competently thereto.

2. Attached hereto is a true and correct copy of excerpts from the CHA Annotated Model Medical Staff Bylaws, 12th edition (2019).

Executed on November 30, 2020 in San Francisco,
California.

ARENT FOX LLP

By: 

Lowell C. Brown
Sarah Benator
Diane Roldán

Attorneys for Amicus Curiae
California Hospital Association

EXHIBIT 1

Medical Staff Bylaws

CHA
**Annotated Model Medical
Staff Bylaws**

A model document to assure legal protections
are in place for medical staff and hospitals.

Arent Fox, LLP

Includes commentary



CALIFORNIA
HOSPITAL
ASSOCIATION

CHA Publications

Several helpful publications are available through CHA including:

California Health Information Privacy Manual
California Hospital Compliance Manual
California Hospital Survey Manual — A Guide to the Licensing & Certification Survey Process
Consent Manual
Discharge Planning for Homeless Patients
EMTALA — A Guide to Patient Anti-Dumping Laws
Healthcare Workplace Violence Prevention
Hospital Financial Assistance Policies and Community Benefit Laws
Mental Health Law Manual
Minors and Health Care Law Manual
Model Medical Staff Bylaws & Rules
Record and Data Retention Schedule

Ordering Information

For more information, visit CHA online at www.calhospital.org/publications.

This publication is designed to produce accurate and authoritative information with regard to the subject matter covered. It is provided with the understanding that CHA is not engaged in rendering legal service. If legal or other expert assistance is required, the services of a competent professional person should be sought.

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12th edition 2019.

This publication is provided as a service to the hospital members of the California Hospital Association. Hospitals are encouraged to use the model document as a template to create hospital-specific bylaws and rules.

These CHA *Model Medical Staff Bylaws and Rules* are intended as a resource to our members to assist them in developing their own Medical Staff Bylaws and Rules. While we have made every effort to achieve compliance with California law, Medicare Conditions of Participation, and The Joint Commission accreditation standards, they are not intended as legal advice, nor is there any representation that the documents are in fact compliant with all of these requirements. Because The Joint Commission remains the predominant accrediting organization for California hospitals, the CHA *Model Medical Staff Bylaws and Rules* have not been specifically tailored to other accrediting bodies standards. Users of these resource documents are advised to consult their own legal counsel to guide and advise them as to the legal implications and requirements for compliance in development of their own Medical Staff Bylaws, Rules, and associated policies and procedures.

California Hospital Association

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Liz Mekjavich, Vice President, Publishing and Education
Bob Mion, Director, Publishing and Marketing
Emily Stone, Publishing Manager



16.5.5 The Hearing Officer

Hearing officers are optional under Business and Professions Code Section 809, and Medical Staffs can instead appoint a “presiding officer” from the hearing committee. However, given that hearings have become very legalistic under California law, our position is that Medical Staffs should always appoint a hearing officer (unless using an arbitrator) to act as the presiding officer. Moreover, hearing officers should be familiar with Medical Staff law and hearings. This model provides guidance regarding hearing officer qualifications.

- (a) The Medical Executive Committee shall appoint a Hearing Officer to preside at the hearing before a judicial review committee or a dedicated

hearing panel. The Hearing Officer shall be an attorney at law qualified to preside over a quasi-judicial hearing, but attorneys from a firm regularly utilized by the Hospital, the Medical Staff, or the Practitioner for legal advice regarding their affairs and activities shall not be eligible to serve as Hearing Officer. The Hearing Officer shall gain no direct financial benefit from the outcome, shall not be in direct economic competition with the Practitioner, and must not act as a prosecuting officer or as an advocate.

As required by Business and Professions Code Section 809.2(b).

- (b) The Medical Executive Committee will attempt to appoint a Hearing Officer that is acceptable to the Practitioner. In the event that the Medical Executive Committee and the member cannot agree on the Hearing Officer, the Medical Executive Committee may unilaterally appoint a Hearing Officer who meets the Hearing Officer qualifications described in these Bylaws.

The California Society for Healthcare Attorneys maintains a list of qualified hearing officers. Hospitals and Medical Staffs should always independently vet the qualifications of the any hearing officer before engagement; however, this list is a good place to start.

Notably, California case law regarding the payment of Hearing Officers is evolving. Two cases, Haas v. County of San Bernardino (2002) 27 Cal.4th 1017 and Yaqub v. Salinas Valley Memorial Healthcare System (2004) 122 Cal.App.4th 474, together suggested that the possibility that a Hearing Officer might benefit from future engagements by the medical staff could raise the “appearance of bias,” which would disqualify the Hearing Officer from serving. However, a recently published Court of Appeal decision (Natarajan v. Dignity Health (Cal. Ct. App., Oct. 22, 2019, No. C085906) 2019 WL 5387284)) rejected this line of reasoning for privately owned hospitals. (Note: At the time this Model was released, the window of time during which the parties in Natarajan could request review by the California Supreme Court was still open; therefore, it is possible that review might be requested and granted, and a California Supreme Court decision could at some point supersede the Court of Appeal decision.)

Publicly owned hospitals have different responsibilities than privately-owned hospitals, and publicly owned hospitals should discuss with counsel their responsibilities under Hass and Yaqub. Publicly owned hospitals may want to adopt the waiting period described above in order to avoid the appearance of bias.

- (c) The Hearing Officer shall endeavor to assure that all participants in the hearing have a reasonable opportunity to be heard and to present relevant oral and documentary evidence in an efficient and expeditious manner, and that proper decorum is maintained. The Hearing Officer shall be entitled to determine the order of, and procedure for, presenting evidence

and argument during the hearing and shall have the authority and discretion to make all rulings on questions which pertain to matters of law, procedure, or the admissibility of evidence. These rulings shall be consistent with legal authority and the provisions of this Article.

- (d) When no attorney accompanies a party to the proceedings, the Hearing Officer shall have the authority to interpose and rule on appropriate objections throughout the course of the hearing. The Hearing Officer shall not, however, have the authority to override or revise the Representation section of this Article.
- (e) If the Hearing Officer determines that either side in a hearing is not proceeding in an efficient and expeditious manner, the Hearing Officer may take such discretionary action as warranted by the circumstances, including, but not limited to, limiting the scope of examination and cross-examination and setting fair and reasonable time limits on either side's presentation of its case.
- (f) The Hearing Officer may participate in the deliberations of the committee and be a legal advisor to it, but the Hearing Officer shall not be entitled to vote. The Hearing Officer may assist in preparation of the Trier of Fact's report and recommendations.

16.5.6 Voir Dire

The Practitioner and the Medical Executive Committee shall be entitled to a reasonable opportunity to question and challenge the impartiality of Trier of Fact members and the Hearing Officer. Challenges to the impartiality of any Trier of Fact member or the Hearing Officer shall be ruled on by the Hearing Officer.

Although it may appear odd for the Hearing Officer to rule on his or her own impartiality, Business and Professions Code Section 809.2(c) specifically provides this.

ORDER

The motion of California Hospital Association requesting judicial notice of the attached excerpts from the CHA Annotated Model Medical Staff Bylaws, 12th edition (2019) having been read and filed, and good cause appearing therefor,

IT IS HEREBY ORDERED that this Court takes judicial notice of the CHA Annotated Model Medical Staff Bylaws, 12th edition (2019).

Date: _____

By: _____
Presiding Judge

PROOF OF SERVICE

**Natarajan v. Dignity Health
Case No. S259364**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is 55 2nd Street, 21st Floor, San Francisco, CA 94105.

On November 30, 2020, I served true copies of the following document(s) described as:

**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF
AMICUS CURIAE BRIEF OF
CALIFORNIA HOSPITAL ASSOCIATION
IN SUPPORT OF RESPONDENT DIGNITY HEALTH;
DECLARATION OF DIANE DIANE ROLDÁN**

on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION:

Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling) as indicated on the attached service list:

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

Executed on November 30, 2020, at Oakland, California.



Kim Denison

Natarajan v. Dignity Health
Case No. S259364

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<p>Hon. Barbara A. Kronlund (Case No. STK-C-UMW-20164821) c/o Clerk of the Court San Joaquin County Superior Court 180 E. Weber Avenue, Suite 200 Stockton, CA 95202</p>	<p>Service by US Mail</p>
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STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **NATARAJAN v. DIGNITY HEALTH**

Case Number: **S259364**

Lower Court Case Number: **C085906**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **Diane.Roldan@arentfox.com**
3. I served by email a copy of the following document(s) indicated below:

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

12/1/2020

Date

/s/Diane Roldn

Signature

Roldn, Diane (288224)

Last Name, First Name (PNum)

Arent Fox LLP

Law Firm