

**No. S259364**  
**IN THE SUPREME COURT**  
**OF THE STATE OF CALIFORNIA**

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**SUNDAR NATARAJAN, M.D.,**

*Petitioner and Appellant,*

vs.

**DIGNITY HEALTH,**

*Respondent.*

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After a Decision of the Court of Appeal  
Third Appellate District, No. C085906

San Joaquin County Superior Court  
No. STK-CV-UWM-2-16-4821

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**RESPONDENT'S MOTION TO STRIKE MATERIAL IN  
APPELLANT'S ANSWER TO BRIEFS OF AMICI CURIAE**

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Respondent Dignity Health moves this Court for an order striking improper material from Petitioner Sundar Natarajan, M.D.'s Answer to Amicus Curiae Briefs (Amicus Answer).<sup>1</sup> This material is a detailed recitation of evidence that Natarajan contends demonstrates that the disciplinary charges and action against him in this case were not warranted. This material is patently irrelevant because Natarajan expressly waived any claim that the charges were unfounded and not supported by substantial evidence.

If the Court does not strike this improper material, then the Court should not consider it. Natarajan similarly included this material when responding to the amicus curiae brief of the California Hospital Association in the Court of Appeal. Dignity Health moved to strike the material there as well. The Court of Appeal denied the motion, but explained:

The motion formally to strike matters in plaintiff Natarajan's consolidated answer to amicus briefs, to the extent it references evidence challenging the decision to revoke his hospital membership and privileges, is denied. The court is capable of disregarding matters in briefing that are outside the scope of the issues as framed on appeal without modifying the filed briefing.

(Feb. 21, 2019 Order.) The Court of Appeal's Opinion did in fact completely disregard these evidentiary matters. Yet Natarajan has presented the evidence again to this Court, for the same

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<sup>1</sup> Specifically, this motion seeks to strike the material at page 38, line 1 to page 53, line 11 and at page 99, footnote 15 of

improper purpose of expanding the limited issues that he chose to pursue in this case.

Natarajan had the opportunity to argue that the decision to take disciplinary action against him was not supported by substantial evidence (Code Civ. Proc., § 1094.5, subd. (d)), but he chose *not* to make such an argument in his briefing in the superior court. That court found in its Statement of Decision that “[t]he Community Board’s decision terminating Dr. Natarajan’s Medical Staff membership and clinical privileges was supported by substantial evidence, which evidence is not challenged by Dr. Natarajan.” (9-CT-2518:20-22.)<sup>2</sup> Natarajan never challenged the Statement of Decision, and its factual findings bind him. (See *Rael v. Davis* (2008) 166 Cal.App.4th 1608, 1612.)

Further, and consistently, Natarajan did not (and could not) make a substantial evidence challenge in his principal briefing in the Court of Appeal or before this Court. (See Appellant’s Opening Brief, p. 15 [Natarajan did “not contend that

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Natarajan’s Amicus Answer.

<sup>2</sup> Natarajan also affirmatively eschewed a substantial evidence argument in his prior administrative appeal to the St. Joseph’s Hospital Community Board. (See PAR00011:13-14 [“Dr. Natarajan is not appealing [the JRC decision] on the ground that the decision is not supported by substantial evidence.”]; see also PAR00185 [Decision and Report to St. Joseph’s’ Community Board noting that “it is conceded by appellant that the record contains substantial evidence which supports the factual findings and conclusions of the hearing committee”].)

there was no substantial evidence to support the hearing decision pursuant to Code of Civil Procedure § 1094.5, subd. (d) . . .”].) The Court of Appeal thus stated “Plaintiff does not contest the sufficiency of the evidence in support of the internal decision . . . .” (*Natarajan v. Dignity Health* (2019) 42 Cal.App.5th 383, 385.) And, in this Court, “Dr. Natarajan did not argue the lack of substantial evidence . . . .” (Reply Brief on the Merits, p. 56.)

This case thus presents no issue as to whether substantial evidence supported St. Joseph’s’ action under Code of Civil Procedure, section 1094.5, subdivision (d). It solely involves whether Natarajan received a fair hearing based on his claim that the hearing officer was tainted with financial bias. Natarajan himself concedes that the evidence he now argues to this Court is “not directly relevant to the question of whether Dr. Natarajan received a fair hearing.” (Amicus Answer, p. 38.)

Natarajan may not now set forth his version of the facts underlying the disciplinary action in this Court, especially not in an answer to amicus briefs to which Dignity Health has no ability to respond. The material has no purpose other than to cause prejudice to Dignity Health. Further, his evidentiary recitation is wholly one-sided, in violation of the rule, applicable to substantial evidence challenges, requiring an appellant to set forth the evidence favorable to the decision.

Dignity Health respectfully requests that the Court strike, or not consider, the factual and evidentiary recitation on page 38, line 1 to page 53, line 11 and at page 99, footnote 15 of Natarajan's Answer.

Dated: January 21, 2021

MANATT, PHELPS & PHILLIPS, LLP

By: /s/Barry S. Landsberg  
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## MEMORANDUM OF POINTS AND AUTHORITIES

Respondent Dignity Health moves to strike improper material from Petitioner Sundar Natarajan, M.D.'s Answer to Amicus Curiae Briefs (Amicus Answer). This material (set forth at page 38, line 1 to page 53, line 11 and at page 99, footnote 15) contains factual discussion that is relevant only to a substantial evidence argument that Natarajan expressly waived in his internal administrative appeal and did not to assert in the superior court and in his principal briefs to the Court of Appeal and this Court. (See, e.g., 9-CT-2518:20-22; Appellant's Opening Brief, p. 15; Reply Brief on the Merits, p. 56; PAR00011:13-14; PAR00185; see also *Natarajan v. Dignity Health* (2019) 42 Cal.App.5th 383, 385 ["Plaintiff does not contest the sufficiency of the evidence in support of the internal decision"].) Natarajan concedes that the evidentiary recitation is "not directly relevant to the question of whether Dr. Natarajan received a fair hearing." (Amicus Answer, p. 38.) The only question presented is whether Natarajan received a fair hearing based on his claim that the hearing officer who presided at the hearing was financially biased against him.

Moreover, Natarajan has provided these purported facts only after the completion of briefing, in his answer to amicus briefs to which Dignity Health has no opportunity to respond. This material should be stricken, or, at a minimum, the Court



should not consider such “matters in briefing that are outside the scope of the issues as framed on appeal.” (Feb. 21, 2019 Order [Court of Appeal order addressing same evidentiary presentation].)

## **I. BACKGROUND**

This case is a challenge under Code of Civil Procedure, section 1094.5 to the decision of the Hospital Community Board of St. Joseph’s Medical Center to uphold the recommendation of a Judicial Review Committee (JRC) to terminate Natarajan’s Medical Staff membership and Hospital privileges. Natarajan’s argument has focused exclusively on his contention that he was not afforded fair procedure in his peer review hearing because the hearing officer who presided at the hearing was financially biased against him.<sup>3</sup> He elected not to challenge the substantive findings against him at the administrative level, including the specific finding by the JRC that it “finds no persuasive evidence in support of Dr. Natarajan’s suggestion that Medical Staff leaders were pressured to initiate the investigation or reach adverse conclusions in the investigative process for reasons other than concern for efficient and high quality patient care at the

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<sup>3</sup> In the superior court and Court of Appeal, Natarajan also contended that the Medical Staff did not apply objective standards when disciplining him, but he did not pursue that argument in this Court. (See Amicus Answer, p. 58 [noting that the purported failure to apply objective standards “is not an issue before this Court”].)

Medical Center.” (PAR09430-09431, fn. 8; see also PAR00011:13-14 [“Dr. Natarajan is not appealing [the JRC decision] on the ground that the decision is not supported by substantial evidence.”]; PAR00185 [Decision and Report to St. Joseph’s Community Board noting that “it is conceded by appellant that the record contains substantial evidence which supports the factual findings and conclusions of the hearing committee”].) Yet Natarajan’s factual recitation in his Amicus Answer effectively challenges the JRC’s precise, never-before-challenged finding.

Natarajan has never claimed at any level of his judicial action that the disciplinary actions were not supported by substantial evidence in the record. The superior court found in its Statement of Decision that “[t]he Community Board’s decision terminating Dr. Natarajan’s Medical Staff membership and clinical privileges was supported by substantial evidence, which evidence is not challenged by Dr. Natarajan.” (9-CT-2518:20-22.) Natarajan never challenged or even mentioned the Statement of Decision, and its factual findings bind him. (See *Rael v. Davis* (2008) 166 Cal.App.4th 1608, 1612.) Natarajan also did not try to resurrect a substantial evidence challenge in his principal briefing in the Court of Appeal or before this Court (and it already had been waived). (See Appellant’s Opening Brief, p. 15 [Natarajan did “not contend that there was no substantial evidence to support the hearing decision pursuant to Code of

Civil Procedure § 1094.5, subd. (d) . . .”].) The Court of Appeal’s opinion recognized that “Plaintiff does not contest the sufficiency of the evidence in support of the internal decision . . . .” (*Natarajan*, 42 Cal.App.5th at 385.)

In his briefing to this Court, Natarajan affirmatively represented that he was not pursuing an argument that the Hospital’s decision was not supported by substantial evidence under Code of Civil Procedure section 1094.5, subdivision (d). (See, e.g., Reply Brief, p. 56 [“Dr. Natarajan did not argue the lack of substantial evidence because it was unnecessary to do so, given the unfairness of the hearing, and because it is always very difficult to prove that no substantial evidence supports a hospital’s termination of a physician’s privileges . . .”]; see also Dignity Health’s Answer Brief on the Merits, p. 14 [“Natarajan did not challenge the substantial evidence supporting the action against him. Nor did he assign error to any superior court finding in the statement of decision.”].)<sup>4</sup> Because Natarajan did not make a substantial evidence challenge, he was not required to, and did not, set forth in his principal briefing the evidence supporting the merits of the adverse Hospital decision. (See *infra* Part II.)

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<sup>4</sup> In the superior court, Natarajan argued that the substantial evidence standard of review in Code of Civil Procedure, section 1094.5, subdivision (d) is unconstitutional (an argument he abandoned on appeal), but he did not argue that the decision was not supported by substantial evidence. (7-CT-1828.)

Following the completion of merits briefing, on January 14, 2021, Natarajan filed his Amicus Answer, responding to amicus briefs filed in support of Dignity Health. In the Amicus Answer, Natarajan argues that amici wrongly assert that medical staffs, not hospitals, generally handle physician peer review. (Amicus Answer, p. 38.) Natarajan’s Amicus Answer purports to respond to amici by reciting extensive “facts” to try to demonstrate that the peer review in his case was influenced by the Hospital administration prior to the hearing that he here challenges as unfair.

In doing so, Natarajan is in fact attempting to argue—for more than 16 pages—that the evidence was not sufficient to support the charges and the adverse action taken against him. He even explains that:

[t]he manner in which Dignity arrived at charges against Dr. Natarajan is also relevant to show that what might appear on the surface to be “substantial evidence,” when closely examined, can be either false or completely meaningless, in terms of a physician’s ability to practice safely.

(Amicus Answer, p. 38.) This introductory statement is followed by several pages of purported facts and evidence purporting to show that the charges against Natarajan were false and unsupported.

In the Court of Appeal, Natarajan attempted to submit a nearly identical evidentiary presentation in responding to the California Hospital Association’s amicus brief in that court. Dignity Health filed a motion to strike the material on January 16, 2019. Following opposition and reply briefing, the Court on February 21, 2019 denied the motion, but explained:

The motion formally to strike matters in plaintiff Natarajan’s consolidated answer to amicus briefs, to the extent it references evidence challenging the decision to revoke his hospital membership and privileges, is denied. The court is capable of disregarding matters in briefing that are outside the scope of the issues as framed on appeal without modifying the filed briefing.

(Feb. 21, 2019 Order.) The Court’s Opinion, issued on October 22, 2019, did not reference any of Natarajan’s evidentiary assertions, doubtless because they were “outside the scope of issues as framed on appeal.” (*Ibid.*)

## **II. THE MATERIAL SHOULD BE STRICKEN**

Natarajan’s detailed factual and evidentiary argument regarding the merits of the charges against him is improper and should be stricken from the Amicus Answer. In the alternative, the Court should not consider that material. This matter presents no issue regarding whether the JRC findings against Natarajan were supported by substantial evidence. The factual detail regarding the investigation of Natarajan, including whether it was driven by the Medical Staff or the Hospital is, as Natarajan concedes, “not directly relevant to the question of

whether Dr. Natarajan received a fair hearing.” (Amicus Answer, p. 38.) It is far too late for Natarajan to argue about the evidence underlying the charges and the JRC’s related findings. He knowingly eschewed such argument administratively and in the lower courts.

Natarajan has no legitimate explanation for including this material in his Amicus Answer. Natarajan ostensibly included his evidentiary presentation in the Amicus Answer as a response to amici’s arguments that the Medical Staff, not the Hospital, was responsible for the peer review in this case. He explains that the evidentiary presentation in the Amicus Answer is:

relevant to disprove the [California Hospital Association’s] contention that medical staffs always conduct peer review proceedings wholly independently from the hospital administration. They are also relevant to disprove the contention of Dignity Amici that due process for physicians is not necessary because hospitals, hospital systems and medical staffs always function as protectors of the public health when conducting peer review. The facts described in this section also show how the theoretical legal separation of a medical staff and hospital administration can become an illusion in practice.

(Amicus Answer, p. 38.)

But these are not new issues raised for the first time by amici. The suggestion that the Hospital was involved in the selection of the hearing officer in Natarajan’s case is the basis for his central contention that the hearing officer had a prospect of future work at Dignity Health hospitals that created a financial

conflict of interest. Dignity Health's briefing explained that the Medical Staff, not the Hospital, was responsible for the selection of the hearing officer. (See Dignity Health's Answer Brief, pp. 22-23, 74-76.) Natarajan cannot now challenge findings he chose not to challenge in the record of this case, through the back door of responding to amici who make general observations about similar matters.

Natarajan also argued to the JRC that Hospital administrators pressured the medical staff to take action against him, as he argues in the Amicus Answer. However, the JRC specifically found there was "no persuasive evidence in support of Dr. Natarajan's suggestion that Medical Staff leaders were pressured to initiate the investigation or reach adverse conclusions in the investigative process for reasons other than concern for efficient and high quality patient care at the Medical Center." (PAR09430-09431, fn. 8.)

Moreover, Natarajan's belated evidentiary presentation Natarajan is further improper in that it is entirely one-sided. The rule is clear that an appellant who wishes to argue that the decision on review was not supported by substantial evidence has a specific obligation in his or her opening brief. The appellant is required to set forth the "version of events most favorable to [respondent]. . . . [D]oing so is part of their fundamental obligation to this court, and a prerequisite to our consideration of

their challenge.” (*Schmidlin v. City of Palo Alto* (2007) 157 Cal.App.4th 728, 738.) “A party who challenges the sufficiency of the evidence to support a finding must set forth, discuss, and analyze all the evidence on that point, both favorable and unfavorable.” (*Doe v. Roman Catholic Archbishop of Cashel & Emly* (2009) 177 Cal.App.4th 209, 218.) Where an appellant “failed in his obligations concerning the discussion and analysis of a substantial evidence issue, we deem the issue waived.” (*Ibid.*)

This rule applies in appeals from administrative mandamus decisions:

[O]n appeal from a judgment denying a petition for writ of administrative mandate, the focus is on the *trial court’s* findings and whether there is substantial evidence to support those findings, and the trial court’s judgment is presumed correct. As in all appeals, the appellant has [the] burden to show, through analysis and citation to the record, that no substantial evidence supports the court’s findings. . . . [W]hen the substantial evidence standard of review applies, the appellant is required to demonstrate that there is no substantial evidence to support the challenged findings. . . . A recitation of only [the appellant’s] evidence is not the demonstration contemplated under the above rule. Accordingly, [when appellants] contend [that] some particular issue of fact is not sustained, they are required to set forth in their brief *all* the material evidence on the point and *not merely their own evidence*. Unless this is done the error assigned is deemed to be waived.



(*Shenouda v. Veterinary Med. Bd.* (2018) 27 Cal.App.5th 500, 513-514 [citations and internal quotation marks omitted; emphasis in original].)

Natarajan’s evidentiary discussion utterly fails to meet this standard. The presentation (again, of an issue that had been waived multiple times) is entirely one-sided and does not set forth, discuss, or analyze the evidence that was favorable to the Hospital’s decision. That is the very same substantial evidence that Natarajan did not challenge and that had caused him earlier to “*concede[] that the record contains substantial evidence* which supports the factual findings and conclusions of the hearing committee.” (PAR00185 [emphasis added].)

Given that any substantial evidence argument is waived and that the factual recitation is concededly irrelevant to the only issue before this Court, the main effect of the factual presentation is either to try to resurrect a forsaken argument or to prejudice the Court against Dignity Health by describing the facts in the most negative light without the possibility of a response or counter-argument. This is improper and contrary to the established standards for factual discussion in a substantial evidence case.

### III. CONCLUSION

For these reasons, Dignity Health requests that the Court strike the material or, at a minimum, not consider it.

MANATT, PHELPS & PHILLIPS, LLP

Dated: January 21, 2021

By: /s/Barry S. Landsberg  
*Attorneys for Respondent*  
DIGNITY HEALTH

**PROOF OF SERVICE**

I, Brigette Scoggins, declare as follows:

I am employed in Los Angeles County, Los Angeles, California. I am over the age of eighteen years and not a party to this action. My business address is Manatt, Phelps & Phillips, LLP, 2049 Century Park East, Suite 1700, Los Angeles, California 90067. On **January 21, 2021**, I served the within: **RESPONDENT’S MOTION TO STRIKE MATERIAL IN APPELLANT’S ANSWER TO BRIEFS OF AMICI CURIAE** on the interested parties in this action addressed as follows:

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- (BY ELECTRONIC SERVICE)** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission via the Court's Electronic Filing System (EFS) operated by TrueFiling.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on **January 21, 2021**, at Culver City, California.

/s/ Brigette Scoggins

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Brigette Scoggins

**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**

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3. I served by email a copy of the following document(s) indicated below:

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MOTION	Motion to Strike
OPPOSITION	Opposition to Natarajan 4th MJN

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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.

1/21/2021

Date

/s/Joanna McCallum



Signature

McCallum, Joanna (187093)

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Last Name, First Name (PNum)

Manatt Phelps & Phillips LLP

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Law Firm