

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

SUNDAR NATARAJAN, M.D.,

Petitioner and Appellant,

vs.

DIGNITY HEALTH,

Respondent.

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

SUPPLEMENTAL BRIEF [C.R.C. 8.520(d)]

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I. INTRODUCTION

Respondent Dignity Health submits this Supplemental Brief pursuant to California Rules of Court, rule 8.520(d), to notify the Court of a pertinent decision issued after the briefing in this matter was completed: *Bichai v. Dignity Health* (2021) 61 Cal.App.5th 869, petn. for review pending, petn. filed April 13, 2021, No. S267602. We briefly address the *Bichai* decision below.

II. **BICHAI HOLDS THAT A MEDICAL STAFF AND A HOSPITAL ARE INDEPENDENT ACTORS.**

A key pillar of Sundar Natarajan, M.D.'s case is his assumption that the decisions to hire hearing officers for physician peer review at hospitals owned by Dignity Health are made by Dignity Health representatives acting on behalf of the hospital's corporate ownership. Therefore, according to Natarajan, the Hearing Officer in his case knew that if his work led to a successful result for the Dignity Health hospital, the Dignity Health corporation would be likely to hire him again for future hearing officer work at the same or different Dignity Health hospitals.

Dignity Health explained that the hiring decisions with respect to physician peer review hearing officers are made, not by the hospital, but by the medical staff. The recent decision in *Bichai* confirms that the difference between the hospital and the medical staff is real and has legal significance. In *Bichai*, the court held that a physician had no claim for liability against a hospital where the adverse peer review action of which the plaintiff complained—a denial of his reapplication for

membership to the medical staff—was not made by the hospital, but rather was made by the independent and self-governing medical staff.¹ The physician had not yet exhausted the administrative process that could have resulted in the hospital taking final action on the medical staff's recommendation, in accordance with the hospital's ultimate authority for everything that takes place at the hospital. (See *Bichai*, 61 Cal.App.5th at 162.) The court rejected the plaintiff/physician's attempt to make the hospital responsible for the acts of only the medical staff by conflating the two legally distinct and independent bodies. Thus, the court held, only the medical staff could be liable for the medical staff's acts, and a cause of action against a hospital does not accrue unless and until the hospital board takes action on recommendations made by a medical staff. (See *id.* at 163-164.)

As relevant to this case, *Bichai* drives home the point that the Medical Staff is legally distinct from the Hospital. Indeed, the *Bichai* court so held in the case of another Dignity Health-owned hospital. The evidence here showed—and the trial court specifically found in the Statement of Decision that Natarajan requested but never challenged—that the Medical Staff, not the Hospital, hired the Hearing Officer. (9-CT-2515:11-14, 20-23, 2516:7-10, 2517:18-22.) In this case, the Medical Staff had delegated the task of hiring the Hearing Officer to the Hospital, but the hiring decision was the act of the Medical Staff and could not be imputed to the Hospital to support Natarajan's theory of

¹ See Health & Saf. Code, §§ 2282, 2282.5; Cal. Code Regs., tit. 22, § 70701, subds. (a)(1)(D), (F).

bias by potential future work at other commonly owned hospitals with other medical staffs. Under *Bichai*, a hospital's involvement in carrying out tasks of the medical staff through delegation does not constitute an act of the hospital.

III. CONCLUSION

Dignity Health requests that the Court consider *Bichai* when deciding this case.

Dated: May 7, 2021

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CERTIFICATE OF WORD COUNT

Pursuant to California Rules of Court, rule 8.520(c), I certify that this Supplemental Brief contains 567 words, not including table of contents, table of authorities, the caption page, or this Certification page.

Dated: May 7, 2021

MANATT, PHELPS & PHILLIPS, LLP

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PROOF OF SERVICE

I, Brigitte 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, 17th Floor, Los Angeles, California 90067. On **May 7, 2021**, I served the within: **SUPPLEMENTAL BRIEF [C.R.C. 8.520(d)]** on the interested parties in this action addressed as follows:

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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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Date

/s/Joanna McCallum

Signature

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