S224472

IN THE SUPREME COURT OF CALIFORNIA

JATINDER DHILLON,
Plaintiff and Respondent,

v.

JOHN MUIR HEALTH et al.,
Defendants and Appellants.

AFTER A DECISION BY THE COURT OF APPEAL, FIRST APPELLATE DISTRICT, DIVISION THREE
CASE NO. A143195

REPLY TO ANSWER TO PETITION FOR REVIEW

HORVITZ & LEVY LLP
*DAVID S. ETTINGER (BAR NO. 93800)
H. THOMAS WATSON (BAR NO. 160277)
15760 VENTURA BOULEVARD, 18TH FLOOR
ENCINO, CALIFORNIA 91436-3000
(818) 995-0800 • FAX: (818) 995-3157
dettinger@horvitzlevy.com
htwatson@horvitzlevy.com

DiCARO, COPPO & POPCKE
CARLO COPPO (BAR NO. 34226)
MICHAEL R. POPCKE (BAR NO. 122215)
SHELLEY A. CARDER (BAR NO. 137755)
2780 GATEWAY ROAD
CARLSBAD, CALIFORNIA 92009-1730
(760) 918-0500 • FAX: (760) 918-0008
carlo.coppo@dcp-law.com
michael.popcke@dcp-law.com
shelley.carder@dcp-law.com

HOOPER, LUNDY & BOOKMAN, PC
ROSS E. CAMPBELL (BAR NO. 75998)
575 MARKET STREET, SUITE 2300
SAN FRANCISCO, CALIFORNIA 94105
(415) 875-8492 • FAX: (415) 875-8519
rcampbell@health-law.com

ATTORNEYS FOR DEFENDANTS AND APPELLANTS
JOHN MUIR HEALTH, BOARD OF DIRECTORS OF JOHN MUIR HEALTH

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules of Court

IN THE SUPREME COURT OF CALIFORNIA

JATINDER DHILLON,
Plaintiff and Respondent,

v.

JOHN MUIR HEALTH et al.,
Defendants and Appellants.

REPLY TO ANSWER TO PETITION FOR REVIEW

Dr. Jatinder Dhillon's answer to the petition for review is shameless.

Because case law is unsettled whether the superior court's order and judgment partially granting and otherwise denying Dr. Dhillon's administrative mandamus petition are appealable, John Muir Health filed both a notice of appeal and a writ petition.

In the writ proceeding, Dr. Dhillon told the Court of Appeal to deny John Muir's petition because the superior court's order and judgment are appealable and John Muir thus had an adequate remedy at law. (Return to Petition for Peremptory Writ of Mandate 26-27, 43-44 (Return) [*John Muir Health v. Superior Court*, Court of Appeal case number A143256].) Among other things, he specifically said that, instead of the Court of Appeal undertaking writ review, "[t]he issues presented in [the] writ proceeding . . . should be

addressed on appeal, after full briefing and oral argument." (Return 26-27.) The Court of Appeal summarily denied the writ petition.

When John Muir petitioned for review of the summary denial, Dr. Dhillon continued to assert that appeal, not a writ petition, was the appropriate remedy, and he scoffed at John Muir's concern that it might never receive appellate review of the superior court's order and judgment. He assured this court that "whether *appellate review* is available is still pending with respect to the *notice of appeal* that [John Muir] also filed from the very same order/judgment from which its petition for mandate arose." (APFR 1 [*John Muir Health v. Superior Court*, Supreme Court case number S223382].) Review was denied.

Having successfully urged summary denial of John Muir's writ petition because John Muir should wait for its appeal, Dr. Dhillon now says that John Muir has no right to appeal.

Dr. Dhillon defends the Court of Appeal's dismissal of John Muir's appeal by telling this court that the superior court's order and judgment are *not* appealable. And, most remarkably, after having said that the issues raised in John Muir's writ petition "should be addressed on appeal, after full briefing and oral argument" (Return 27), he has the temerity to assert that, *in the summary denial of John Muir's writ petition*, John Muir "*has been* afforded appellate review" of the superior court's order and judgment (APFR 5; see also APFR 23). He also suggests that if John Muir wants more meaningful appellate review, it should disobey the superior court's order, be held in contempt, and seek review of the contempt order. (APFR 21.)

At times, "perhaps, . . . the life of the law is not logic, but expedience." (*Kisbey v. State of California* (1984) 36 Cal.3d 415, 418.) Dr. Dhillon's answer here, however, takes expediency to unacceptable heights.

The indisputable fact is that if John Muir's appeal is not reinstated, there will never be appellate review of the superior court's decision requiring John Muir to initiate a Judicial Review Committee (JRC) proceeding, a highly time-consuming and expensive process that is inappropriate — and that is required by neither statute nor hospital bylaws — to review the minor corrective action taken against Dr. Dhillon by the John Muir medical staffs.[1] If the dispute about the minor corrective action ever returns to the superior court, by way of an entirely new administrative mandamus petition, it will be after the JRC proceeding has already been conducted and it will be pointless to then adjudicate whether the JRC proceeding should have occurred.

---

[1] If allowed to brief the merits, John Muir would establish that, as relevant here, John Muir's bylaws required a JRC proceeding only if Dr. Dhillon's clinical privileges had been suspended "for a medical disciplinary cause or reason, as defined in Business and Professions Code Section 805 " (2 AA 246-247) and that the brief suspension of Dr. Dhillon's clinical privileges was not "for medical disciplinary cause or reason." Rather, Dr. Dhillon's 14-day suspension was occasioned by his refusal to attend an anger management class. Recently, another Court of Appeal opinion explained that not all adverse peer review actions against a physician — in that case, the plaintiff physician's employment was terminated — are taken for a "medical disciplinary cause or reason." (*Decambre v. Rady Children's Hospital-San Diego* (Mar. 11, 2015, D063462) __ Cal.App.4th __ [2015 WL 1069440, at p. *8].)

Moreover, Dr. Dhillon's answer is wrong on the merits, even considering it in isolation and without reference to his filings before this court and the Court of Appeal in the writ proceeding.

Dr. Dhillon asserts that John Muir has presented no grounds for review. John Muir established two.

First, a specific ground for review is "[f]or the purpose of transferring the matter to the Court of Appeal for such proceedings as the Supreme Court may order." (Cal. Rules of Court, rule 8.500(b)(4).) This court has previously relied on that ground when a Court of Appeal erroneously dismissed an appeal as taken from a nonappealable order. (*California Assn. of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 8 (*California Assn. of Psychology Providers*) [review granted, matter transferred with directions to vacate dismissal of appeal and to hear appeal on its merits].)

Dr. Dhillon's attempt to distinguish *California Assn. of Psychology Providers* is meritless. Dr. Dhillon claims this court there remanded the matter to the Court of Appeal only after this court "assessed and determined the substantive issues on the merits." (APFR 18.) Not true.

Before *any* appellate court had decided the substantive merits of that case, the Court of Appeal dismissed the appeal as having been taken from a nonappealable order. (*California Assn. of Psychology Providers, supra*, 51 Cal.3d at p. 8.) This court "granted review and retransferred, directing the Court of Appeal to vacate its dismissal and to hear the appeal on its merits." (*Ibid.*) Later — after the Court of Appeal heard the appeal on the merits as directed, and after this court *again* granted review (but that time to address the merits) — this court explained why it had previously

granted review and retransferred: the Court of Appeal had wrongly dismissed the appeal because the superior court's judgment "[left] no issue to be determined except the fact of compliance with its terms" and was thus appealable. (*Id.* at p. 9.)

Second, review here is "necessary to secure uniformity of decision [and] to settle an important question of law." (Cal. Rules of Court, rule 8.500(b)(1).) The circumstances in which a party may appeal from a superior court order or judgment deciding an administrative mandate petition is important not just to John Muir, nor even only to hospitals statewide who are frequently involved in disputes about physicians' staff privileges, but also to litigants who are seeking judicial review of all types of administrative proceedings. Additionally, the particular question of law here is unsettled because the Courts of Appeal are divided on whether a superior court decision that remands for further administrative proceedings is appealable.

Dr. Dhillon tries to wish away the conflict in the case law by ipse dixit. He claims "the cases confirm that such remand orders are not appealable." (APFR 11.) In fact, as explained in the petition for review, only *some* cases hold those orders are not appealable (*Gillis v. Dental Bd. of California* (2012) 206 Cal.App.4th 311, 318; *Village Trailer Park, Inc. v. Santa Monica Rent Control Bd.* (2002) 101 Cal.App.4th 1133, 1139-1140; *Board of Dental Examiners v. Superior Court* (1998) 66 Cal.App.4th 1424, 1430 (*Sedler*)), but *others hold just the opposite* (*Quintanar v. County of Riverside* (2014) 230 Cal.App.4th 1226, 1232; *Carson Gardens, L.L.C. v. City of Carson Mobilehome Park Rental Review Bd.* (2006) 135 Cal.App.4th 856; *City of Carmel-by-the-Sea v. Board of*

Supervisors (1982) 137 Cal.App.3d 964, 970-971; *Carroll v. Civil Service Commission* (1970) 11 Cal.App.3d 727, 730, 733). That is one reason why review is warranted: to resolve this conflict.

Moreover, cases that hold remand orders *are* appealable are more consistent with the general appealability rule and the rationale for the rule. A superior court decision on a petition for writ of mandate is appealable if it "disposed of all issues in the action." (*Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 699.) Just because one of the issues is "disposed of" by ordering an administrative body — but not the superior court — to take further action is no reason to preclude an appeal.

It is completely faithful to the one-final-judgment rule to allow John Muir to appeal here. The superior court has issued a final judgment and has not reserved jurisdiction in any way. There is nothing more for that court to do in this case. (See *California Assn. of Psychology Providers, supra*, 51 Cal.3d at p. 9 ["A judgment that leaves no issue to be determined except the fact of compliance with its terms is appealable"].)

Finally, as discussed in the petition for review, appellate jurisdiction is alternatively proper under the collateral order doctrine. (*Muller v. Fresno Community Hospital & Medical Center* (2009) 172 Cal.App.4th 887, 898.) There is not a word about this in Dr. Dhillon's answer.

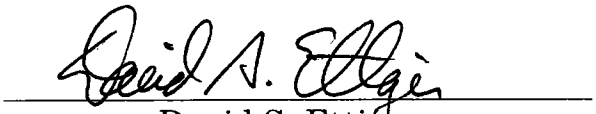
CONCLUSION

If the trial court's judgment and order requiring John Muir to initiate its JRC hearing procedure are not reviewed on appeal now, they never will be. Of course, that is the whole point of Dr. Dhillon's strategy of taking irreconcilable positions in the writ proceeding and in this appeal.

For the reasons explained above and in the petition for review, this court should grant review and — either with or without an opinion — transfer the case to the Court of Appeal with directions to vacate the dismissal of the appeal and to hear the appeal on its merits.

March 23, 2015

HORVITZ & LEVY LLP
DAVID S. ETTINGER
H. THOMAS WATSON
DiCARO, COPPO & POPCKE
CARLO COPPO
MICHAEL R. POPCKE
SHELLEY A. CARDER
HOOPER, LUNDY & BOOKMAN, PC
ROSS E. CAMPBELL

By: 
David S. Ettinger

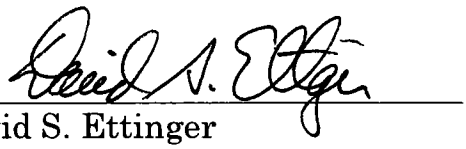
Attorneys for Defendants and Appellants
JOHN MUIR HEALTH,
BOARD OF DIRECTORS OF
JOHN MUIR HEALTH

CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, rule 8.504(d)(1).)

The text of this petition consists of 1,581 words as counted by the Microsoft Word version 2010 word processing program used to generate the petition.

Dated: March 23, 2015



David S. Ettinger

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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 Los Angeles, State of California. My business address is 15760 Ventura Boulevard, 18th Floor, Encino, California 91436-3000.

On March 23, 2015, I served true copies of the following document(s) described as **REPLY TO ANSWER TO PETITION FOR REVIEW** on the interested parties in this action as follows:

Carla V. Minnard
The Minnard Law Firm
4100 Redwood Road, Suite 145
Oakland, CA 94619
Telephone: (415) 215-4115
Facsimile: (415) 358-5588
carlaminnard@minnardlaw.com

Attorneys for Plaintiff and Respondent
Jatinder Dhillon

Sharon J. Arkin
The Arkin Law Firm
225 S. Olive Street, Suite 102
Los Angeles, CA 90012
Telephone: (541) 469-2892
Facsimile: (866) 571-5676
E-mail: sarkin@arkinlawfirm.com

Attorneys for Plaintiff and Respondent
Jatinder Dhillon

Carlo Coppo
Michael R. Popcke
Shelley A. Carder
DiCaro, Coppo & Popcke
2780 Gateway Road
Carlsbad, CA 92009-1730
Telephone: (760) 918-0500
Facsimile: (760) 918-0008
Email: carlo.coppo@dcp-law.com
michael.popcke@dcp-law.com
shelley.carder@dcp-law.com

Attorneys for Defendants and Appellants
John Muir Health and Board of Directors of John Muir Health

Ross E. Campbell
Hooper, Lundy & Bookman, PC
575 Market Street, Suite 2300
San Francisco, CA 94105
Telephone: (415) 875-8492
Facsimile: (415) 875-8519
Email: rcampbell@health-law.com

Attorneys for Defendants and Appellants
John Muir Health and Board of Directors of John Muir Health

Hon. Laurel S. Brady
Contra Costa County Superior Court
725 Court Street, Dept. 31
Martinez, CA 94553-1233

Case No. MSN13-1353

Office of the Clerk
Court of Appeal
First Appellate District
Division Three
350 McAllister Street
San Francisco, CA 94102

Case No. A143256

(Service copy Via TrueFiling)

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Horvitz & Levy LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

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

Executed on March 23, 2015, at Encino, California.

Victoria Beebe