No. S244148

IN THE

Supreme Court

OF THE STATE OF CALIFORNIA

ARAM BONNI, MD,

Plaintiff – Appellant

vs.

ST. JOSEPH HEALTH SYSTEM, et al.,

Defendants – Respondents.

After an Opinion by the Court of Appeal
Fourth Appellate District, Division Three
Case No. G052367

Appeal from a Judgment of the
Orange County Superior Court
Case no. 30-2014-00758655, Hon. Andrew P. Banks

APPLICATION OF THE CALIFORNIA MEDICAL ASSOCIATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF; *AMICUS CURIAE* BRIEF OF THE CALIFORNIA MEDICAL ASSOCIATION IN SUPPORT OF NO PARTIES

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Certificate of Interested Entities or Persons

Pursuant to California Rules of Court, rule 8.208, the undersigned, counsel for the California Medical Association, certifies that there are no disclosures to be made.

DATED: August 7, 2020

By: 

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APPLICATION OF THE CALIFORNIA MEDICAL ASSOCIATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF NO PARTIES

Pursuant to rule 8.520(f) of the California Rules of Court, the California Medical Association ("CMA") hereby requests leave to file the attached *amicus curiae* brief in support of no parties.

There are no persons or entities to be identified under rule 8.520(f)(4) of the California Rules of Court.

I. INTERESTS OF THE *AMICUS CURIAE* APPLICANT

CMA is a non-profit, incorporated professional physician association of approximately 50,000 members, most of whom practice medicine in all modes and specialties throughout California. CMA's primary purposes are "to promote the science and art of medicine, the care and well-being of patients, the protection of public health, and the betterment of the medical profession." CMA and its members share the objective of promoting high

quality, safe, and cost-effective health care for the people of California. CMA has a specialty section comprised of approximately one hundred organized medical staffs throughout California, known as the Organized Medical Staff Section ("OMSS"). CMA and OMSS are committed to the complementary goals of (1) safeguarding the ability of physicians to treat their patients effectively, free of arbitrary disruptions, and (2) preserving and strengthening the ability of organized medical staffs to be self-governing and independent in discharging their responsibilities to ensure high quality and safe medical care. To this end, CMA and OMSS advocate for hospital peer review systems that are effective, efficient, and fair.

II. PURPOSE OF THE *AMICUS CURIAE* BRIEF

CMA believes its proposed *amicus curiae* brief can assist the Court by bringing the expertise and experience of California's "house of medicine" to bear on the important issue raised in this case. The proper interpretation and application of the anti-SLAPP statute to retaliation claims arising out of hospital peer review will impact multiple parties in peer review proceedings with overlapping, albeit also competing interests. On the one hand, medical staffs and their medical executive committees are charged with primary responsibility to conduct peer review and impose discipline on physicians in an effective and consistent manner. On the other hand, physicians subject to peer review are entitled to fair and efficient procedures to protect their vested interests in hospital privileges. These fair procedure interests are directly threatened when peer review is conducted for retaliatory purposes in violation of state laws.

Perhaps unlike any other organization in California, CMA represents all these interests on behalf of its individual physician members and organized medical staffs that are OMSS members. CMA also has relevant insight on the issues in this case due to its unique role as the sponsor of (1)

Senate Bill no. 1211 (Stats. 1989, ch. 336), which codified the peer review standards collectively known as the Peer Review Law, Business and Professions Code sections 809 et seq., and (2) Assembly Bill no. 632 (Stats. 2007, ch. 683, §1), which established whistleblower retaliation protection for physicians in hospitals under Health and Safety Code section 1278.5.

CMA is a neutral party in this case, to the extent that it takes no position on the ultimate outcome for plaintiff Dr. Aram Bonni or for defendants St. Joseph Health System, its hospitals, and the medical staff physicians.

CMA's proposed *amicus brief* explores the history of peer review to reveal common, abiding strands, including a potential for abuse. As this Court has repeatedly acknowledged, borne by the anecdotal evidence and case opinions, California's hospital peer review system has been and continues to be a mechanism for targeting individual physicians for reasons having nothing to do with clinical competence. CMA pushes further to examine how and where retaliation can arise in the peer review system. Against such a backdrop, the *amicus brief* propounds a contextualized approach to applying the anti-SLAPP statute to the peer review system.

III. CONCLUSION

For the foregoing reasons, CMA respectfully requests that the Court accept and file the attached *amicus curiae* brief.

DATED: August 7, 2020

Respectfully,

CENTER FOR LEGAL AFFAIRS
CALIFORNIA MEDICAL ASS'N

ATHENE LAW, LLP

By: _____
LONG X. DO

Attorneys for the California Medical Association

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AMICUS CURIAE BRIEF OF THE CALIFORNIA MEDICAL ASSOCIATION IN SUPPORT OF NO PARTIES

I.
INTRODUCTION

It has been nearly a decade and a half since the Court established that hospital peer review in California can qualify for anti-SLAPP protection under Code of Civil Procedure section 425.16, subdivision (e)(2). *See Kibler v. N. Inyo Cty. Local Hosp. Dist*. (2006) 39 Cal. 4th 192, 200. While that may be a short period in the life of a legal doctrine, the *Kibler* ruling has engendered more than its fair share of controversy and confusion in the appellate and trial courts. Anti-SLAPP protection in peer review cases – i.e., early scrutiny and, in many cases, dismissal of retaliation or discrimination claims involving peer review bodies or peer review activities – has been applied inconsistently and unpredictably. While

such applications have well served the goals of the anti-SLAPP statute to protect hospitals, medical staffs, and physicians who participate in peer review, there also is an unmistakable body of cases that confirm the existence of anti-SLAPP abuse in the peer review context. Faced with one such case, a court recently lamented, "[h]ere, we consider an appeal that once again warrants criticism about such [anti-SLAPP] abuse, in a setting where defendant seeks to extend SLAPP where it has never gone before." *Central Valley Hospitalists v. Dignity Health* (2018) 19 Cal. App. 5th 203, 206.

This case presents an opportunity for the Court to mitigate much of the chaos over *Kibler*. The stakes are high for all parties and interests involved. The anti-SLAPP statute can be a powerful tool against abusive litigation tactics, including in litigation involving hospital peer review. Yet, as the Legislature and courts have recognized, hospital peer review is susceptible to manipulation and abuse and can lead to unfairly ending the careers of physicians who are victim to retaliation disguised as peer review. Patients too suffer when good doctors are taken out of practice by such sham peer review. *See* Bus. & Prof. Code §809(a)(4) (legislative declaration that "[p]eer review that is not conducted fairly results in harm to both patients and healing arts practitioners by limiting access to care"). Under the aegis of the anti-SLAPP statute, defendants who have engaged in sham peer review are further insulated from accountability while their victims often are effectively left shut out of the legal system.

On behalf of nearly 50,000 physician members throughout California and more than one hundred medical staff organizations – who stand on many different sides of the issues raised in this case – the California Medical Association ("CMA") offers the following observations, arguments, and analyses to help the Court navigate these tricky waters. As to the concrete dispute at hand, CMA is neutral and can take no position on

the final outcome whether the anti-SLAPP motion below was properly granted. However, CMA has strong feelings about the need to properly set the rules for how the anti-SLAPP statute can and should be applied to claims relating to adverse peer review decisions, particularly claims of discrimination or retaliation. Clarifying *Kibler* must take into account the current state of peer review in California, as well as the many ways in which peer review works and does not work.

As explained herein, there should be a bright line rule to determine how and to what extent anti-SLAPP protections apply to which stages of the peer review process. CMA believes that bright line rule can be found in *Kibler* itself from the attributes the Court identified that make peer review an official proceeding authorized by law. In sum, anti-SLAPP protection pursuant to Code of Civil Procedure section 425.16, subdivision (e)(2) should extend only to peer review proceedings and actions that are subject to the reporting and fair hearing rights of Business and Professions Code sections 805 and 809 *et seq.*, respectively. While it may be possible that certain other activities could qualify for anti-SLAPP protection under subdivision (e)(4), such cases should be rare because it is unlikely that individual peer review cases will meet the "public interest" requirement.

II.
INTERESTS OF *AMICUS CURIAE*

CMA is a non-profit, incorporated professional physician association of approximately 50,000 members, most of whom practice medicine in all modes and specialties throughout California. CMA's primary purposes are "to promote the science and art of medicine, the care and well-being of patients, the protection of public health, and the betterment of the medical profession." CMA and its members share the objective of promoting high quality, safe, and cost-effective health care for the people of California.

CMA has a specialty section comprised of approximately one hundred organized medical staffs throughout California, known as the Organized Medical Staff Section ("OMSS"). CMA and OMSS are committed to the complementary goals of (1) safeguarding the ability of physicians to treat their patients effectively, free of arbitrary disruptions, and (2) preserving and strengthening the ability of organized medical staffs to be self-governing and independent in discharging their responsibilities to ensure high quality and safe medical care. To this end, CMA and OMSS advocate for hospital peer review systems that are effective, efficient, and fair.

III.
CALIFORNIA HOSPITAL PEER REVIEW IN CONTEXT

A. Historical Development of Hospital Peer Review

Since its inception in the early 1900s, physician peer review in American hospitals has always been the subject of dual interests, often competing with one another, if not conflicting. As explained by Princeton historian Paul Starr, the dichotomy of interests in peer review is rooted in the distinct roles of hospital administrators and practicing physicians going back to the beginnings of hospitals. *See* Paul Starr, THE SOCIAL TRANSFORMATION OF AMERICAN MEDICINE (Basic Books, 2d ed. 2017).

Starr explained that pre-Civil War hospitals were almshouses supported by charitable sponsors to serve the poor, the insane, and other societal outcasts. *See id.* at 149-154. Most physicians who directly cared for hospital patients during this early period were uncompensated. *Id.* at 163. Working in hospitals provided training opportunities and a means to build a professional reputation and to grow a patient pool for private practices. *Id.* With advances starting in 1846 in medicine, anesthesia, and antiseptics,

care in hospitals became more common and safer, leading to evolvement of hospitals and the role of clinical professionals who practiced in them.

There were small groups of doctors in hospitals who held hospital appointments that allowed them near-total administrative and clinical control over the facilities. The term hospital "privileges" was originally applied to these elite stewards. Starr noted that physicians without hospital privileges resented the unjust control and arbitrary exclusions exerted by the "ring of monopolists." *Id.* at 166. Quoting a prominent physician who wrote in the Journal of the American Medical Association in 1902, Starr documented an early sentiment that persists today (and is reflected in current California law): "do not our [physician's] services justly entitle us to a voice in all professional questions in and out of the hospital, second to none?" *Id.* at 164.

In 1919, as part of a campaign to implement minimum hospital care standards, the then-newly formed American College of Surgeons created the system of hospital peer review that has continued to the present. *Id.* at 167. Under this system, physicians at hospitals belonged to a medical staff and were given hospital "privileges" that entitled them to admit and treat patients in the facility but were subject to being stripped away or restricted through the peer review system. *Id.*

Peer review in its earliest form was susceptible to manipulation. "Even if more doctors gained entry to a hospital in their community, they did not necessarily gain access on the same footing as other physicians or to hospitals of equivalent status and quality." *Id.* at 167. Starr observed that, although useful for better ensuring quality of care, the peer review system of granting or stripping away hospital privileges also facilitated exclusion of black doctors and other minorities "who threatened to rock the boat." *Id.* at 168. Hospital administrators and physician insiders could use the system to control access to the hospital, and thereby dictate who could or could not

benefit from practicing in the hospital. "In the early days," a hospital administrator is quoted by Starr, "we had competitive examinations, but we had to discontinue those. . . . [M]ore than likely the persons who did best on the written examinations would be Jewish." *Id.* at 168. Peer review accordingly could be used to perpetuate the "ring of monopolists" by those in authority – hospital administrators and physicians in privilege.

B. A Contemporary Examination of California's Peer Review System

A more contemporary evaluation of the California hospital peer review system was completed in 2008 with a state-commissioned study by Lumetra, a nonprofit healthcare consulting company, "Comprehensive Study of Peer Review in California" (July 31, 2008) available online at https://www.mbc.ca.gov/Download/Reports/peer-review.pdf (the "Lumetra Study"). The Legislature wanted a "comprehensive study of the peer review process as it is conducted by peer review bodies defined in paragraph (1) of subdivision (a) of Section 805, in order to evaluate the continuing validity of Section 805 and Sections 809 to 809.8, inclusive, [i.e., the fair hearing requirements] and their relevance to the conduct of peer review in California." Bus. & Prof. Code §805.2(a).

Seeking to gain an understanding of peer review from as many perspectives as possible, Lumetra used multiple data collection methods, including document review, survey, focus groups, site visits, and key informant interviews. *See* Lumetra Study at 29. Among other things, Lumetra surveyed and received responses, documents, and data from 220 California hospitals. *See id.* at 55.

Lumetra found inconsistencies in how peer review bodies and hospitals define and conduct peer review, including defining events that trigger peer review, procedures that are followed after peer review, tracking

of peer review issues, and expertise of the non-physician support employees and the physician reviewers and chairs. *Id.* at 62. More specifically, Lumetra found that most peer review bodies are poor at tracking peer review cases over time. *Id.* at 64. Furthermore, Lumetra reported that "there are numerous ways to trigger the peer review process, including routine quality screens done at the medical department level or in various committees in the entity." *Id.* at 64. Once initiated, Lumetra found that "[t]here are many steps in the peer review process that allow variation." *Id.* at 52. For instance, the hospital policy defines what is reviewed, but typically a non-physician hospital staff/committee support employee is responsible for the initial review, maintenance of the quality, safety, risk, or credentialing processes and committees minutes, and tracking of events and physician behavior over time. *Id.*

Through interviews with peer review subjects and participants, Lumetra touched upon the perceived prevalence of retaliatory peer review. There was wide variation in responses, unsurprisingly with physicians who had been subjected to peer review reporting the strongest feelings that sham peer review was a problem. *See id.* at 94. Lumetra could not, however, completely dismiss these assertions. It observed, "[o]ne might speculate that these were just 'sour grapes' from physicians who had been caught practicing substandard medicine, but the vehemence with which these statements, phone calls, emails, and letters were made begs for further investigation and the question of whether at least some of these statements could be accurate." *Id.* at 95. There was other evidence of the prevalence of peer review being used for non-clinical purposes. A common charge to justify discipline against physicians is the potentially vague and broad disruptive behavior standard. This charge is often associated with accusations of retaliatory peer review, and Lumetra found that the most

common reason for referring a physician to peer review was disruptive behavior. *Id.* at 65.

Lumetra came to dire conclusions about the effectiveness and fairness of peer review in California:

> Peer review and 805 reporting provide a process to review medical care, identify substandard medical care, develop ways to improve physician practice, and report certain events to the MBC for further investigation. The findings of the peer review study demonstrate that these processes have failed in their purpose to ensure the quality and safety of medical care in California. Rather, they allow entities to conduct medical peer review in a clandestine manner, so it is unknown whether the reviews are fair, whether the medical care is judged without bias, or whether or not physician practice is improved.

Id. at 104. Ultimately, Lumetra concluded that "the present peer review system is broken for various reasons and is in need of a major fix, if the process is to truly serve the citizens of California." *Id.* at 1.

C. Judicial Recognition of the Potential for Peer Review Abuses

The conflicts and dynamics of early hospitals and peer review systems persist in some form or other today in California. This Court has repeatedly acknowledged and warned against the potential for peer review to be manipulated to exclude physicians for improper ends having nothing to do with quality of care. The Court has noted "[i]t is not inconceivable a [hospital] governing body would wish to remove a physician from a hospital staff for reasons having no bearing on quality of care." *Mileikowsky v. W. Hills Hosp. & Med. Ctr.* (2009) 45 Cal. 4th 1259, 1272. The Court also has observed, "[t]here is certainly the potential for a hospital's governing body to abuse the power of appointment in a way that would deprive a physician of a fair [peer review] hearing. . . . It might even do so because it wishes 'to remove a physician from a hospital staff for reasons having no bearing on quality of care.'" *El-Attar v. Hollywood*

Presbyterian Medical Center (2013) 56 Cal. 4th 976, 995 (citation omitted).

Friction and conflict between hospitals and physicians, which can boil over in the peer review system, are perhaps sometimes natural byproducts of the hospital environment. The Court has explained, "the goal of providing high standards of medical care requires that physicians be permitted to assert their views when they feel that treatment of patients is improper or that negligent hospital practices are being followed." *Rosner v. Eden Township Hosp. Dist.* (1962) 58 Cal. 2d 592, 598. "In asserting their views as to proper treatment and hospital practices," the Court further explained, "many physicians will become involved in a certain amount of dispute and friction." *Id.* Because such disputes are "common occurrences," the Court cautioned against the use of peer review to oust physicians who are competent but who may not fit into the hospital culture or overall operational scheme. *Id.* (observing there "is a danger that the requirement of temperamental suitability will be applied as a subterfuge where considerations having no relevance to fitness are present"). For this reason, the Court has noted that peer review is susceptible to the "danger of arbitrary and irrational application," and it warned against "the concomitant danger that [peer review] may be used as a subterfuge where considerations having no relevance to fitness are present." *Miller v. Eisenhower Med. Ctr.* (1980) 27 Cal. 3d 614, 629 (internal quotes and citation omitted).

Considering the history and development of peer review, the California Legislature and courts have articulated two equally important public policies. The California Legislature has declared that, "[t]o protect the health and welfare of the people of California, it is the policy of the State of California to exclude, through the peer review mechanism as provided for by California law, those healing arts practitioners who provide substandard care or who engage in professional misconduct. . . ." Bus. &

Prof. Code §809(a)(6). However, the Legislature also recognized that there is a real danger with peer review abuse and declared that "[p]eer review, fairly conducted, is essential to preserving the highest standards of medical practice," but "[p]eer review that is not conducted fairly results in harm to both patients and healing arts practitioners by limiting access to care." *Id.* at §809(a)(3)-(4). Melding these two concerns, the Legislature requires that a hospital "governing body and the medical staff shall act exclusively in the interest of maintaining and enhancing quality patient care." Bus. & Prof. Code §809.05(a). Consistent with the Legislative priorities, the Court has found that "[t]he primary purpose of the peer review process is to protect the health and welfare of the people of California . . . . [and] the interest of California's acute care facilities by providing a means of removing incompetent physicians from a hospital's staff." *Mileikowsky*, 45 Cal. 4th at 1267. "Another purpose, also if not equally important, is to protect competent practitioners from being barred from practice for arbitrary or discriminatory reasons." *Id.*

IV.
DISCUSSION

Peer review in hospitals is defined to be "the process by which a committee comprised of licensed medical personnel at a hospital 'evaluate[s] physicians applying for staff privileges, establish[es] standards and procedures for patient care, assess[es] the performance of physicians currently on staff,' and reviews other matters critical to the hospital's functioning." *Kibler, supra,* 39 Cal. 4th at 199 (quoting *Arnett v. Dal Cielo* (1996) 14 Cal. 4th 4, 10). Determining what stages of the peer review process are within the protections of the anti-SLAPP statute, the question before the Court, cannot be done without full consideration of the disarray that presently exists in anti-SLAPP decisions in the peer review context,

particularly as the law is used to examine and often thwart claims of retaliation by physicians who suffered adverse action on their privileges. No doubt, in many cases the application of anti-SLAPP protection serves its intended purpose of protecting hospitals, medical staffs, and physician participants in peer review from harassing, if not debilitating, litigation. However, there are examples where the application of anti-SLAPP protection is improper or misdirected, leading to unfair burdens on litigants who may be effectively shut off from access to legal recourse.

A. THE APPLICATION OF ANTI-SLAPP PROTECTIONS TO PEER REVIEW CLAIMS HAS BEEN FRUSTRATING FOR ALL SIDES.

1. Anti-SLAPP Protection for Hospital Peer Review Was Originally Conceived to be Narrow in Scope.

The anti-SLAPP statute applies to any "cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue." Code Civ. Proc. §425.16(b)(1). Subdivision (e) defines the phrase "act in furtherance of a person's right of petition or free speech . . . in connection with a public issue" to include:

> (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law;
>
> (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law;
>
> (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest; and

(4) or any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

Kibler held that "hospital peer review proceedings constitute official proceedings authorized by law within the meaning of section 425.16, subdivision (e)(2)." *Id.* at 198.

Although peer review is conducted in private hospital settings, *Kibler* observed numerous specific attributes that make it an "official proceeding." First, "the Business and Professions Code sets out a comprehensive scheme that incorporates the peer review process into the overall process for the licensure of California physicians." *Id.* at 199. Second, "a hospital must report to the Medical Board of California (Medical Board), which licenses physicians, any hospital action that 'restricts or revokes a physician's staff privileges as a result of a determination by a peer review body.'" *Id.* at 200 (citations omitted). Third, "[a] hospital granting or renewing a physician's staff privileges must request a report from the Medical Board indicating whether the physician has at some other medical facility 'been denied staff privileges, been removed from a medical staff, or had his or her staff privileges restricted.'" *Id.* Finally, "[a] hospital's decisions resulting from peer review proceedings are subject to judicial review by administrative mandate." *Id.*

Before reaching its conclusion, the Court emphasized the important public policy reasons for extending the anti-SLAPP law to the hospital peer review context: "membership on a hospital's peer review committee is voluntary and unpaid, and many physicians are reluctant to join peer review committees so as to avoid sitting in judgment of their peers. To hold . . . that hospital peer review proceedings are not 'official proceeding[s] authorized by law'. . . would further discourage participation in peer review

by allowing disciplined physicians to file harassing lawsuits against hospitals and their peer review committee members rather than seeking judicial review of the committee's decision by the available means of a petition for administrative mandate." *Id.* at 201.

Application of the anti-SLAPP statute to peer review can well serve hospitals, medical staffs, and physicians who participate in the important functions of evaluating and enforcing compliance with quality standards in hospitals. Also true is that these players in the peer review system – hospitals, medical staffs, and peer review participants – can be obvious targets of disgruntled physicians who wish to exact retribution for adverse actions on their privileges. "Because these meritless lawsuits seek to deplete 'the defendant's energy' and drain 'his or her resources' [citation], the Legislature sought 'to prevent SLAPPs by ending them early and without great cost to the SLAPP target.'" *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal. 4th 53, 65. Nevertheless, *Kibler* did not cast a wide net of anti-SLAPP protection over every aspect of peer review, and for good reasons as explained below. To be sure, *Kibler* "did not address whether every aspect of a hospital peer review proceeding involves protected activity . . . . [and] does not stand for the proposition that disciplinary decisions reached in a peer review process, as opposed to statements in connection with that process, are protected." *Park v. Bd. of Trustees of California State Univ.* (2017) 2 Cal. 5th 1057, 1070.

2. Lower Courts Have Applied *Kibler* and Anti-SLAPP Protection Inconsistently to a Wide Range of Claims Related to Peer Review Activities and Actions.

Notwithstanding the limited scope of *Kibler*, lower appellate courts have inconsistently applied the anti-SLAPP statute to a wide range of legal claims both directly and tenuously connected to peer review proceedings.

An important limitation on the application of the anti-SLAPP statute

to peer review challenges was recognized in *Young v. Tri-City Healthcare Dist.* (2012) 210 Cal. App. 4th 35. There, a physician attacked the summary suspension of his medical staff privileges by the medical staff executive committee on the grounds that it was based on improper review of his records and carried out by unqualified committees, in violation of the medical staff bylaws. *Id.* at 44. Finding such a challenge not subject to the anti-SLAPP statute, the *Young* court explained, "even though a hospital peer review proceeding qualifies as an 'official proceeding' . . . we must still determine whether the basis of his claim arises out of 'any written or oral statement or writing made in connection with an issue under consideration' by the peer review proceeding." *Id.* at 58. Having observed that "[e]ven if a cause of action was 'triggered' by protected activity, it does not always arise from it," the court concluded the physician was "principally seeking judicial relief from actions of an administrative body that denied him a hearing to which he was otherwise entitled, and those actions are independent from any protected elements of the claims." *Id.* at 58-59. Taking policy considerations into account, the *Young* court noted that "[t]he anti-SLAPP statute should not be interpreted to impose an undue burden upon Young's right to petition for court review of administrative action that was in the nature of governance." *Id.* at 59.

Similarly, in *Smith v. Adventist Health System/West* (2010) 190 Cal. App. 4th 40, 53, a hospital summarily suspended a physician's privileges and later "screened out" the physician's reapplication for the medical staff, on the ground that he had not satisfied the waiting period after the prior suspension. The court determined that the "screening out" of his reapplication was not protected activity under the anti-SLAPP statute because it was not performed by the medical executive committee, and was therefore not a determination by a peer review committee. *Id.* at 62-63. The court further concluded that the act of screening out, performed by persons

other than the peer review committee, could not constitute an official proceeding because it was not made pursuant to procedures governed by the Business and Professions Code, it did not require a report to be made to the Medical Board of California, and it was not accompanied by the right to an administrative hearing and the right to have the results of that hearing judicially reviewed by administrative mandate. *Id.* at 64.

On the opposite end of *Young* and *Smith* sat *DeCambre v. Rady Children's Hospital-San Diego et al.* (2015) 235 Cal. App. 4th 1, *disapproved of in Park,* 2 Cal. 5th at 1070. There, a pediatric medical group and UCSD jointly employed a pediatric neurosurgeon, who had practice privileges at Rady Children's Hospital. Over the course of her employment, the employers received multiple complaints from coworkers and patients about the physician's behavioral problems and inability to communicate with others, and these problems had an effect on patient care. *Id.* at 8-9. The employers initiated multiple investigations that substantiated the complaints and tried to get the physician counseling and other informal remedial measures. *Id.* at 9-10. The medical staff at Rady Children's Hospital also received complaints and referred the physician to its well-being committee, which required the physician to enter a behavior monitoring agreement and imposed informal corrective activities with mentoring and counseling. *Id.* at 10. The medical staff did not, however, issue a formal accusation or otherwise take any peer review action to restrict or terminate the physician's hospital privileges. Rather, the physician's employers refused to renew her employment contract, effectively terminating her employment. *Id.* The physician subsequently sued for unlawful discrimination, wrongful employment termination and retaliation.

The *DeCambre* court held that the physician's lawsuit was subject to the anti-SLAPP statute, even though the physician was not challenging any adverse peer review action on her privileges. *Id.* at 15-16. It reasoned that

the employment termination was "the result of [the hospital's] peer review process" because the employers had consulted with the medical staff in deciding to terminate the physician's employment, and because of the involvement of the medical staff's well-being committee. *Id.* According to the court, it was enough that these medical staff committees fall within the definition of "peer review bodies," even though no formal peer review action was conducted and no adverse action was taken against the physician's hospital privileges. *Id.* at 16.

Equally broad in its application of the anti-SLAPP statute was *Nesson v. Northern Inyo County Local Hospital Dist.* (2012) 204 Cal. App. 4th 65, *disapproved of in Park*, 2 Cal. 5th at 1070. There, the court concluded an anti-SLAPP motion against the claims of a doctor who alleged discriminatory and retaliatory termination of privileges was properly granted. It reasoned simply that because *Kibler* held a hospital's peer review proceedings are official proceedings, every aspect of those proceedings, including the decision to impose discipline, is protected activity for anti-SLAPP purposes. *Id.* at 78–79, 82–84.

Numerous other appellate decisions have taken similarly disparate approaches to their application of *Kibler* and the anti-SLAPP statute to claims related to peer review activities. The following discussion serves to illustrate the historical erratic pattern, not to rely upon the holdings in the unpublished opinions.

In the first peer review appeal decided after *Kibler*, a physician asserted retaliation claims after he was twice placed on "probation" by the medical staff. *See O'Meara v. Palomar-Pomerado Health Sys.* (Cal. Ct. App., 4th App. Dist., Mar. 12, 2007) no. D043099, 2007 WL 731376. The "probation" did not involve any concrete adverse action or limitations on the physician's privileges or medical staff membership, and the physician was not entitled to challenge the probation through formal medical peer

review. *Id.* at *3. The *O'Meara* court reasoned, "[a]s in *Kibler*, Dr. O'Meara's claims arose from the disciplinary actions taken by the hospital's peer review committee, an 'official proceeding authorized by law.'" *Id.* at *9. According to the court, any type of disciplinary action against a physician at the hospital taken by a medical staff committee would qualify for anti-SLAPP protection because "peer review includes all levels of oversight from minor problems to ultimate staff dismissals." *Id.* As it were, *O'Meara* suggested that what matters for application of the anti-SLAPP statute is whether a peer review body is imposing discipline, not what type of discipline is imposed or the applicable processes. *See id.* at *9-*10 (rejecting arguments that anti-SLAPP applies only to peer review formal hearings mandated by statute or disciplinary action due to improper patient care).

In *Shaham v. Tenet HealthSystem QA, Inc.* (Cal. Ct. App., 2d App. Dist., Apr. 15, 2014) no. B246549, 2014 WL 1465882, *1-*2, a physician suffered summary suspension but ultimately prevailed in the peer review hearing and had his privileges restored. Suing for various libel, slander, and business tort claims, he alleged injuries due to false information and statements about his competence in the peer review proceeding being communicated to other physicians in the community, hospitals, patients, and other outsiders. *Id.* at *11-*12. All such claims, according to the *Shaham* court, were subject to the anti-SLAPP statute: "[b]ecause the subject of the allegedly defamatory statements to plaintiff's colleagues was plaintiff's peer review, these statements arguably were made 'in connection with' peer review within the meaning of section 425.16, subdivision (e)(2)." *Id.* at *11.

Most if not all hospitals in California conduct Root Cause Analysis meetings, which "is a process for identifying the factors that underlie a sentinel event, i.e., an unexpected event involving death or serious injury

that signals the need for immediate investigation and response." *Kaye v. Van Putten* (Cal. Ct. App., 5th App. Dist., Mar. 21, 2011) no. F058513, 2011 WL 955713, at *1. In *Kaye*, a plaintiff physician sued in tort for alleged damages caused by statements made during an RCA meeting. The physician argued the anti-SLAPP statute does not apply because the attributes of hospital peer review found in *Kibler* that makes it "official proceedings" are not present with RCAs: that is, (1) RCA meetings are conducted primarily by hospital administrators and nurses, rather than physician peers, (2) an RCA focuses primarily on systems and processes, not on individual performance and competence, and (3) there is no statutory review procedures from RCAs. *Id.* at *5-*6. The *Kaye* court disagreed, focusing on the broad statutory definition of "peer review" and "peer review bodies," which encompass RCAs and their activities.

3. Frustration with the Broad Application of *Kibler* and the Anti-SLAPP Statute to Peer Review Actions Boils Over.

In *Central Valley Hospitalists v. Dignity Health* (2018) 19 Cal. App. 5th 203, 206, *review denied* (Apr. 11, 2018), the court recognized that the anti-SLAPP statute has served its goal of providing a quick and inexpensive method for unmasking and dismissing unmeritorious cases, but "[a]t the same time, . . . the anti-SLAPP procedure is being misused—and abused." There, "a group of doctors, sued defendant hospital, alleging five causes of action essentially for unfair business practices and interference, a complaint that expressly alleged it was not based on any "wrongs or facts arising from any peer review activities." *Id.* Nevertheless, the defendant asserted all claims in the complaint were subject to the anti-SLAPP statute because, "[d]isregarding the express pleading, defendant . . . contend[ed] that while plaintiff did not state a claim, to the extent it could it had to be based on peer review—and thus on protected activity." *Id.* The court held

defendant's position was directly contrary to case law requiring anti-SLAPP analysis to focus on what is pled after accepting as true pleaded allegations in the operative complaint. *Id.* at 217. Finding defendants' arguments to be completely untenable, the court observed that the case before it represented an example of anti-SLAPP abuse. *See id.* at 221-222; *see also id.* at 206 ("[W]e consider an appeal that once again warrants criticism about such [anti-SLAPP] abuse, in a setting where defendant seeks to extend SLAPP where it has never gone before").

Central Valley Hospitalists referred to opinions earlier discussing anti-SLAPP abuses. *See id.* at 206. A lengthy discussion was presented in *Grewal v. Jammu* (2011) 191 Cal. App. 4th 977, 997–98, where the court noted "[t]he obvious example [of abuse] is found in the numerous cases that involve complaints that simply do not "arise from" protected activity, but generate anti-SLAPP motions nevertheless." *Id.* at 999. The *Grewal* court cited other judges who also expressed concern over anti-SLAPP abuse, including a dissenting opinion that asserted overbroad "application of section 425.16 will burden parties with meritorious claims and chill parties with nonfrivolous ones. . . . The cure has become the disease—SLAPP motions are now just the latest form of abusive litigation." *Navellier v. Sletten* (2002) 29 Cal. 4th 82, 96 (Brown, J., dissenting). In *Moore v. Shaw* (2004) 116 Cal. App.4th 182, 200, n.11 after rejecting an anti-SLAPP motion, the court observed: "We cannot help but observe the increasing frequency with which anti-SLAPP motions are brought, imposing an added burden on opposing parties as well as the courts. Finally, in *Moran v. Endres* (2006) 135 Cal. App. 4th 952, 955, the court stated, "Section 425.16 was enacted because the Legislature found that 'it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process.' Neither the public's nor defendant's right to participate was

advanced by this motion."

B. A BRIGHT LINE RULE IS NEEDED TO DICTATE WHICH STAGES OF HOSPITAL PEER REVIEW WILL BE SUBJECT TO ANTI-SLAPP PROTECTION.

Indicative of the historical and current problems with inconsistent, if not retaliatory, peer review, legal claims that challenge adverse actions on physician's privileges very often are crafted as discrimination or retaliation claims. The gist of these claims is that an adverse decision in the peer review process (e.g., the ultimate privilege-stripping decision, a decision to initiate an investigation leading to peer review, or the conduct of peer review hearings) was taken for retaliatory reasons. *See* Health & Safety Code §1278.5 (recognizing retaliation claim for adverse action taken against physician's privileges). Applying the anti-SLAPP statute to such claims has proven difficult, but two recent decisions by the Court have provided much-needed, albeit not complete, clarity.

1. The Clarity Provided by *Park* and *Wilson* is Not Complete for Discrimination and Retaliation Claims in the Peer Review Context.

In *Park v. Bd. of Trustees* (2017) 2 Cal. 5th 1057, the Court evaluated whether the anti-SLAPP statute applied to a university professor's claim that his employer's denial of tenure amounted to national origin discrimination. *Park* advised the need to be "attuned to and have taken care to respect the distinction between activities that form the basis for a claim and those that merely lead to the liability-creating activity or provide evidentiary support for the claim." *Id.* at 1064. Furthermore, "[c]ourts presented with suits alleging discriminatory actions have taken similar care not to treat such claims as arising from protected activity simply because the discriminatory animus might have been evidenced by

one or more communications by a defendant." *Id.* at 1065. In *Park*, the elements of the national origin discrimination claim depended only on the denial of tenure itself and whether the motive for that action was impermissible. While the tenure decision might have been communicated orally or in writing, that communication did not convert the lawsuit to one arising from such speech or protected activity for anti-SLAPP purposes. *Park* thus disapproved of *Nesson* and *DeCambre*, *supra*, to the extent they stood "for the proposition that disciplinary decisions reached in a peer review process, as opposed to statements in connection with that process, are protected." *Id.* at 1070.

Wilson v. Cable News Network, Inc. (2019) 7 Cal. 5th 871, picks up where *Park* left off to further evaluate how to apply the anti-SLAPP statute to discrimination and retaliation claims that are based upon improper motives underlying adverse actions by the defendant. The Court rejected the suggestion that a plaintiff's allegations of illicit motive by themselves operate as a bar to anti-SLAPP protection. *See id.* at 889. However, it cautioned, "[t]o be clear, we do not hold that a defendant's motives are categorically off-limits in determining whether an act qualifies as protected activity under the anti-SLAPP statute. We hold only that the plaintiff's allegations cannot be dispositive of the question." *Id.* at 889.

Retaliation and discrimination claims require proof of adverse actions by the defendant as well as improper motive underlying such actions. *See id.* at 886-87 ("[E]ven if a plaintiff's discrimination claim can be said to be based in part on the employer's purported wrongful motives, it is necessarily also based on the employer's alleged acts—that is, the various outward "manifestations" of the employer's alleged wrongful intent, such as failing to promote, giving unfavorable assignments, or firing"). To determine whether the anti-SLAPP statute applies, it is not enough to observe that the defendant's improper motive does not arise from

protected activity. *Wilson* clearly shunned such a categorical approach, noting it "would effectively immunize claims of discrimination or retaliation from anti-SLAPP scrutiny, even though the statutory text establishes no such immunity." *Id.* at 889. Rather, "for anti-SLAPP purposes discrimination and retaliation claims arise from the adverse actions allegedly taken, notwithstanding the plaintiff's allegation that the actions were taken for an improper purpose. If conduct that supplies a necessary element of a claim is protected, the defendant's burden at the first step of the anti-SLAPP analysis has been carried, regardless of any alleged motivations that supply other elements of the claim." *Id.* at 892.

One final useful lesson can be gleaned from *Wilson*'s evaluation whether a discrimination or retaliation claim arises out of protected activity that is "conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." Code Civ. Proc. §425.16(e)(4). Anti-SLAPP protection applies only to conduct that "bears a sufficiently substantial relationship to the organization's ability to speak on matters of public concern to qualify as conduct in furtherance of constitutional speech rights." *Id.* at 894.

2. Hearkening to *Kibler*'s Narrow Approach Is Warranted.

Applying *Park* and *Wilson* to retaliation claims in the peer review context presents new challenges. "[T]o carry its burden at the first step [of anti-SLAPP analysis], the defendant in a discrimination suit must show that *the complained-of adverse action*, in and of itself, is an act in furtherance of its speech or petitioning rights." *Wilson*, 7 Cal. 5th at 890 (emphasis added). Because employment decisions and actions are not protected activities under the anti-SLAPP statute (*Park*, 2 Cal. 5th at 1060), the Court in *Wilson* posited that "[c]ases that fit that description are the exception, not

the rule." In other words, *Wilson* minimized the concern that anti-SLAPP motions will become a routine feature of the litigation of discrimination or retaliation claims. Discrimination and retaliation claims arising out of peer review, however, are not like employment cases because, after *Kibler*, peer review in and of itself is an official proceeding authorized by law. Peer review discrimination and retaliation claims are those "exception" cases, and there is potential that anti-SLAPP motions will become the norm in this area.

Health and Safety Code section 1278.5 provides the cause of action for physicians to seek redress for alleged retaliation in the form of adverse action on their hospital privileges. The statute provides that "[n]o health care facility shall discriminate or retaliate, in any manner, against any . . . member of the medical staff . . . because that person has . . . . [p]resented a grievance, complaint, or report to the facility, to an entity or agency responsible for accrediting or evaluating the facility, or the medical staff of the facility, or to any other governmental entity." Health & Safety Code §1278.5(b)(1)(A). As applicable to a member of the medical staff, "discriminatory treatment" includes "any unfavorable changes in . . . the . . . privileges of [such] member." *Id.* at §1278.5(d)(2). A necessary element of a claim of retaliatory peer review therefore includes an adverse peer review decision on the plaintiff physician's hospital privileges.

Unlike the tenure decision underlying the national origin discrimination claim in *Park*, it appears that the adverse peer review decision itself is an element of a 1278.5 retaliation claim, rather than merely evidence of retaliation. However, *Park* expressly disapproved *Nesson* and *DeCambre* to the extent they stood "for the proposition that disciplinary decisions reached in a peer review process, as opposed to statements in connection with that process, are protected." *Id.* at 1070. There must be some other limiting factor to avoid the undesirable result that

all peer review retaliation claims become subject to anti-SLAPP motions. The Legislature could not have envisioned such a scenario of imposing on the complaining plaintiff the higher evidentiary burden of surviving anti-SLAPP motions in every case of retaliation; on the contrary, section 1278.5 creates a rebuttable presumption affecting the burden of producing evidence that retaliation occurred if adverse action is taken within 120 days of protected activity. *See* Health & Safety Code §1278.5(d)(1). The Court already has rejected procedural hurdles that "would very seriously compromise the legislative purpose to encourage and protect whistleblowers" by "flatly contradict[ing]" the rebuttable presumption in section 1278.5. *Fahlen v. Sutter Central Valley Hosps.* (2014) 58 Cal. 4th 655, 678. As in *Fahlen* when the Court held section 1278.5 retaliation claims are not subject to an administrative exhaustion requirement, the Court here too should avoid applying the anti-SLAPP statute in a way that would frustrate or contradict the substantive protections of section 1278.5.

There is an apparent tension that is resolvable. "Peer review proceedings are not just potential instruments of retaliation. They can also be the instrument by which alarms about patient care can be aired." *Armin v. Riverside Cmty. Hosp.* (2016) 5 Cal. App. 5th 810, 835-36. Indeed, in enacting peer review procedural protections, the Legislature recognized both that "[p]eer review, fairly conducted, is essential to preserving the highest standards of medical practice" and "[p]eer review that is not conducted fairly results in harm to both patients and healing arts practitioners by limiting access to care." Bus. & Prof. Code §809(a)(3) and (4). A well-defined and clear application of anti-SLAPP protection to peer review can serve these twin purposes and ultimately protect patients. *Kibler*, the case that originated anti-SLAPP application to peer review proceedings, provides the key.

Kibler determined that peer review proceedings can be an "official proceeding authorized by law" such that the anti-SLAPP statute would apply to protect "any written or oral statement or writing made in connection with an issue under consideration or review by" that official proceeding. *Kibler* did not hold that every aspect of peer review proceedings qualify for anti-SLAPP protection. Nor did the Court hold that peer review by nature is an official proceeding. *Kibler* turns on a limited set of attributes about peer review proceedings that convert otherwise private activities in hospitals to official proceedings authorized by law. These attributes should inform application of the anti-SLAPP statute as well.

3. Anti-SLAPP Protection Should Apply Only to Peer Review Proceedings Falling Within the Scope of Business and Professions Code §805 Reporting and §809 Fair Hearing Requirements.

One set of attributes about peer review making it an official proceeding is that the Legislature has recognized peer review to serve an important public interest. *See Kibler*, 39 Cal. 4th at 199. "To this end, the Business and Professions Code sets out a comprehensive scheme that incorporates the peer review process into the overall process for the licensure of California physicians." *Id.* That comprehensive scheme includes the right to seek judicial review by administrative mandate of adverse peer review decisions. The right of judicial review, as well as other statutory fair hearing rights, are triggered whenever a physician is the "subject of a final proposed action of a peer review body for which a report is required to be filed under Section 805" of the Business and Professions Code. *See* Bus. & Prof. Code §§809 et seq. Section 805 reports are required under the following scenarios:

- A licentiate's application for staff privileges or membership is denied or rejected for a medical disciplinary cause or reason;

- A licentiate's membership, staff privileges, or employment is terminated or revoked for a medical disciplinary cause or reason;

- Restrictions are imposed, or voluntarily accepted, on staff privileges, membership, or employment for a cumulative total of 30 days or more for any 12-month period, for a medical disciplinary cause or reason;

- If a licentiate takes any of the following actions after receiving notice of a pending investigation initiated for a medical disciplinary cause or reason or after receiving notice that his or her application for membership or staff privileges is denied or will be denied for a medical disciplinary cause or reason:

  – Resigns or takes a leave of absence from membership, staff privileges, or employment;

  – Withdraws or abandons his or her application for staff privileges or membership; or

  – Withdraws or abandons his or her request for renewal of staff privileges or membership;

- Following the imposition of summary suspension of staff privileges, membership, or employment, if the summary suspension remains in effect for a period in excess of 14 days.

Bus. & Prof. Code §805(b), (c), (e). "Medical disciplinary cause or reason" means that "aspect of a licentiate's competence or professional conduct that is reasonably likely to be detrimental to patient safety or to the delivery of patient care." *Id.* at §805(a)(6).

Construing anti-SLAPP application as coterminous with the scope of statutory fair hearing and reporting obligations of section 805 and 809 provides a level of certainty that is needed in this area of law. As illustrated above, appellate courts have inconsistently applied *Kibler* to a wide variety of peer review actions and non-peer review actions that are somehow related to or conducted by peer review bodies. There is ample case law

interpreting and construing sections 805 and 809, so appellate courts would have a well of guidance to assist them.

Non-disciplinary proceedings, such as referrals to well-being committees that address behavioral and substance abuse issues, do not trigger section 805 reporting or 809 fair hearing rights. Such proceedings therefore would not be subject to anti-SLAPP scrutiny. To be sure, although medical staffs and hospitals may engage in a variety of functions having to do with quality of care or clinician competency (such as root cause analysis meetings or well-being committee functions), only those functions that feed into the "comprehensive scheme that incorporates the peer review process into the overall process for the licensure of California physicians" should be subject to the anti-SLAPP statute.

There is little doubt that this clear, albeit narrow, rule for applying anti-SLAPP protections could subject some hospitals and medical staffs to retaliation claims who are engaged in broad quality assurance/control activities. Some of these retaliation claims could lack substantial merit and in effect subject the defendants to undue litigation burdens. However, individual physicians are spared. *See Armin*, *supra*, 5 Cal. App. 5th at 832 ("section 1278.5 does not allow individual doctors to be sued"). The concern that depriving physicians of anti-SLAPP protection would deter them from participating in peer review is unfounded.

As to hospitals and medical staffs, there are structural protections that could serve to minimize the abuse of section 1278.5 retaliation claims. "The common law legal dynamics of retaliation statutes require a prima facie showing of a causal connection between an adverse action and the complaint that allegedly engendered the retaliation." *Id.* at 830. "Absent such a showing, the retaliation claim is unviable." *Id.*

Furthermore, even if the plaintiff makes a prima facie showing of a causal connection, "that merely shifts the case into the classic McDonnell

Douglas burden-of-proof ping pong." *Id.* "In that back and forth burden-shifting, the hospital would have the opportunity to demonstrate the reason for the initiation of its peer review proceedings was perfectly legitimate." *Id.* "All that is hardly an interference with the peer review process as long as . . . the hospital's peer review action is legitimate in the first place, i.e., not itself retaliatory." *Id.*

4. Other Stages of the Peer Review Process Could Qualify for Anti-SLAPP Protection as Conduct in Furtherance of Legitimate Peer Review Proceedings.

Under subdivision (e)(2), anti-SLAPP protections would only apply to "a final proposed action of a peer review body" because such actions trigger section 809 fair hearing requirements. "[T]he 'final proposed action' shall be the final decision or recommendation of the peer review body after informal investigatory activity or prehearing meetings, if any." Bus. & Prof. Code §809.1(a) (emphasis added). Accordingly, earlier stages of the peer review process, such as a decision to initiate charges or an investigation, should not be entitled to anti-SLAPP protection under subdivision (e)(2). Other collateral proceedings also would not qualify, such as non-disciplinary well-being committee proceedings or employer actions that take into account peer review findings.

Earlier stages of peer review may nevertheless qualify for anti-SLAPP protection as "other conduct in furtherance of the exercise of the constitutional right of petition or the constitution right of free speech in connection with a public issue or an issue of public interest." Code Civ. Proc. §425.16(e)(4). Though individual facts and scenarios will dictate whether subdivision (e)(4) has application, there are some general rules that would apply. To qualify, the "conduct in furtherance" must not only refer to an issue of public interest, but also the conduct must have "contributed to public discussion or resolution of the issue." *Wilson*, 7 Cal. 5th at 900. Thus

it would not be enough for section (e)(4) that any conduct associated with peer review meets the public interest requirement of subdivision (e)(4) because the Legislature has recognized the purpose of peer review to be the protection of patients. *See Wilson*, 7 Cal. 5th at 902 ("for anti-SLAPP purposes, as courts have long recognized, "'[t]he part is not synonymous with the greater whole'") (quoting *Commonwealth Energy Corp. v. Investor Data Exchange, Inc.* (2003) 110 Cal. App. 4th 26, 34). As *Wilson* illustrated, there must be a "substantial relationship" between a defendant's non-protected conduct and the anti-SLAPP protected activity connected to a public issue. *See id.* at 894.

V.
CONCLUSION

Unlike retaliation claims in most other areas, claims of retaliatory peer review present very difficult, but not intractable, challenges for application of the anti-SLAPP statute. There are competing policy goals that serve to protect all sides touched by peer review – hospitals, medical staffs, peer review participants, physicians who stand to lose their privileges (and potentially their livelihoods), and patients, certainly not least of all. Each one of these interests deserves equal consideration and could stand to be harmed either by abusive anti-SLAPP motions or under-extended application of the important protections created under the anti-SLAPP statute. On behalf of California's House of Medicine, which encompasses multiple interests at stake here, CMA urges the Court to establish a clear and definitive rule that at least could operate to minimize

inconsistencies in how courts apply the anti-SLAPP statute to retaliation claims in peer review. The Court's ruling in this case can have a significant positive impact on a peer review system that is in dire straits.

DATED: August 7, 2020.

Respectfully,

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(Cal. R. of Ct., rule 8.520(c))

The text of this brief consists of 8,587 words, exclusive of the cover page, tables, application, signature block, and this certification, as counted by the Microsoft Word word-processing computer application used to generate the brief.

DATED: August 7, 2020

Long X. Do

Attorney for Amicus Curiae the California Medical Association

PROOF OF SERVICE

Bonni v. St. Joseph Health System, no. S244148

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VIA U.S. MAIL Honorable Andrew P. Banks [Ret.] Honorable Melissa McCormick Orange County Superior Court Central Justice Center, Dept. C13 700 Civic Center Drive West Santa Ana, CA 92701	Case no. 30-2014-00758655

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