2013 IL App (2d) 120903-U
No. 2-12-0903
Order filed January 8, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

MICHAEL ROSENBERG, M.D.,	)	Appeal from the Circuit Court
	)	of Lake County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 11-CH-1761
	)	
ADVOCATE HEALTH AND HOSPITALS CORPORATION d/b/a ADVOCATE GOOD SHEPHERD HOSPITAL, GOVERNING COUNCIL OF ADVOCATE GOOD SHEPHERD HOSPITAL, and DOUGLAS TOMASIAN, M.D.,	)	Honorable
	)	Luis A. Berrones,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice Burke and Justice McLaren concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's grant of summary judgment in favor of defendants on counts I, II, and III of the third amended complaint was affirmed where defendants did not violate hospital bylaws, and there was no fundamental unfairness and no violation of state law in the procedures that led to the revocation of plaintiff's hospital privileges. The court vacated the stay of the trial court's order.

¶ 2 Plaintiff, Dr. Michael Rosenberg, appeals from an order of the circuit court of Lake County granting defendants', Advocate Good Shepherd Hospital's (hospital), the Governing Council of Advocate Good Shepherd Hospital's (Governing Council), and Dr. Douglas Tomasian's, motion for summary judgment, denying plaintiff's motion for partial summary judgment, and dismissing with prejudice counts I, II, and III of plaintiff's third amended complaint. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff is an interventional cardiologist whose privileges to perform procedures in the hospital's catheterization laboratory (cath lab) were revoked following a hearing before the hospital's Hearing Committee, an appeal before the appellate review body of the Governing Council, and a decision by the Governing Council affirming the revocation.

¶ 5 In July 2008, the hospital began a review of plaintiff's cath lab cases in response to an adverse action report (AAR) published in the National Practitioners Data Bank (NPDB). The NPDB is a source of information for hospitals, licensing boards, and other health care entities giving those institutions access to data regarding, among other things, adverse peer review actions against physicians' licenses and clinical privileges. As a result of the review of approximately 50 of plaintiff's cases, the hospital's cardiovascular peer review committee (CVPRC) sent four cases to Dr. Clifford Berger, an interventional cardiologist in Boston, for independent review. Dr. Berger found that one of the cases represented a deviation from the standard of care and that plaintiff may have treated the wrong lesion in a second case.

¶ 6 The hospital continued to review plaintiff's cath lab cases, and the CVPRC suggested to plaintiff that he engage in a proctoring plan, which plaintiff rejected. On March 17, 2010, the CVPRC recommended to the hospital that plaintiff be allowed to continue to operate under "the

usual privileges" of any other interventional cardiologist but that limitation of those privileges should be pursued "should there be recurrent issues."

¶ 7 On March 18, 2010, plaintiff performed a procedure in the cath lab that resulted in death (which was subsequently ruled no OFI—no opportunity for improvement—meaning there was no deviation from the standard of care). Pursuant to its bylaws, the hospital summarily suspended plaintiff's cath lab privileges. Thereafter, plaintiff and the hospital entered into a "settlement agreement," whereby the hospital agreed to terminate the suspension and further agreed not to report the incident to the NPDB. Under the terms of the agreement, plaintiff was required to consult with another physician before performing coronary interventions with a syntax category of 2 or 3.[1] The agreement also provided that the hospital would continue to review plaintiff's cath lab cases.

¶ 8 In May 2010, the CVPRC sent an additional five cases to Dr. Berger for independent review, and in June 2010, the CVPRC sent another case to Dr. Berger for review. On June 3, 2010, the CVPRC, in a letter to Dr. Mark Gross, president of the medical staff and chairman of the Medical Executive Committee (MEC), stated that the CVPRC agreed with the general findings of Dr. Berger's outside review, that there were technical concerns with regard to plaintiff's coronary interventions that could represent a danger to patients. The letter further stated that it was the unanimous consensus of the CVPRC that plaintiff's "performance of coronary procedures falls

[1]The hospital took the position that, due to a misunderstanding, plaintiff violated the agreement by performing a procedure without prior consultation. One of plaintiff's outside experts opined that the procedure did not fall within the mandated consultation and there was no breach of the agreement.

outside the acceptable standard of care for the [cath lab]." The letter recommended that the MEC take further action in accordance with the hospital's bylaws.

¶ 9 Dr. Gross appointed a review committee, which submitted its report to the MEC on July 8, 2010, in which it concluded that plaintiff's performance of coronary procedures constituted a violation of the standard of care of the medical staff of the hospital. The MEC then recommended the revocation of plaintiff's cath lab privileges. On July 12, 2010, the MEC informed plaintiff of its recommendation in a notice it sent to plaintiff. The notice advised plaintiff that the MEC's recommendation was based upon, *inter alia*, Dr. Berger's report of May 14, 2010, "including the five (5) patient cases submitted for review which noted apparent deviations from the standard of care" and "Patient case #052072 reviewed by [CVPRC] and rated as an OFI [opportunity for improvement]." The review committee's report was attached to the notice. The notice also advised plaintiff of his right to seek a Fair Hearing pursuant to hospital bylaws.

¶ 10 The Fair Hearing was conducted on September 21, September 22, and October 27, 2010. After its conclusion, and after deliberation, the Hearing Committee found that the MEC produced sufficient clinical factual evidence in support of its recommended action, and that the recommended action was not unreasonable, arbitrary, capricious, or unjust; that the MEC's recommendation was made after reasonable investigation and in the reasonable belief that the action was warranted; and that the MEC conducted its process in accordance with the hospital bylaws. Plaintiff requested appellate review, and the appellate review body, consisting of three members of the Governing Council who were appointed by the Governing Council pursuant to article X, section 11.1 of the bylaws to hear plaintiff's appeal, made the following findings: (1) the hearing proceedings were conducted in substantial compliance with the Medical Staff Bylaws and without procedural

irregularities or errors that materially prejudiced plaintiff; and (2) the Hearing Committee's recommendations and the MEC's adverse recommendation were based on a reasonable effort to obtain the facts; were made to promote the quality of patient care; were supported by the record and were not unjust, arbitrary, unreasonable, or capricious. On April 12, 2011, the Governing Council revoked plaintiff's cath lab privileges.

¶ 11 Plaintiff filed suit in circuit court against the hospital, the Governing Council, and Dr. Tomasian. Dr. Tomasian was the chairman of the CVPRC, an interventional cardiologist, and what plaintiff described as an "economic competitor." The trial court entered a temporary restraining order (TRO) enjoining defendants from reporting the revocation of plaintiff's cath lab privileges to the NPDB. Plaintiff then filed an amended complaint, a second amended complaint, and a nine-count third amended complaint.

¶ 12 Count I of the third amended complaint alleged breach of contract. Count II alleged a violation of fundamental fairness. Count III alleged a violation of state law. Count IV alleged tortious interference with contract. Count V alleged tortious interference with prospective economic advantage. Counts VI, VII, and VIII alleged violations of the Illinois Antitrust Act. Count IX alleged defamation against Dr. Tomasian only.

¶ 13 Defendants and plaintiff filed cross-motions for summary judgment on counts I, II, and III of the third amended complaint, dealing only with whether a permanent injunction should be granted barring defendants from reporting to the NPDB. On August 10, 2012, the trial court granted defendants' motion for summary judgment, denied plaintiff's motion for partial summary judgment, and dismissed with prejudice counts I, II, and III of the third amended complaint. Plaintiff filed a timely notice of interlocutory appeal. We have jurisdiction over this appeal pursuant to Illinois Supreme Court Rule 307(a) (eff. Feb. 26. 2010), because the trial court's order had the effect of

dissolving the TRO and denying plaintiff's request for a permanent injunction. On plaintiff's motion, this court granted a stay of the trial court's order pending resolution of this appeal.

¶ 14 II. ANALYSIS

¶ 15 Plaintiff raises three issues. Plaintiff contends first that the trial court erred in granting summary judgment in favor of defendants because there were genuine issues of material fact as to whether defendants violated hospital bylaws; second, that the trial court erred in granting summary judgment in favor of defendants where there were genuine issues of material fact as to whether fundamental fairness in the hearing process was violated; and third, whether the hospital bylaws comply with state law.

¶ 16 Preliminarily, we must address plaintiff's violation of Illinois Supreme Court Rule 341(h)(2) (eff. Jul. 1, 2008), which requires that the appellant's brief contain an introductory *paragraph* stating the nature of the action and of the judgment appealed from, whether the judgment is based upon the verdict of a jury, and whether any question is raised on the pleadings, and, if so, the nature of the question. Argument is not to be included in the introductory paragraph. *Artisan Design Build, Inc. v. Bilstrom*, 397 Ill. App. 3d 317, 321 (2009). In violation of the rule, the section of plaintiff's opening brief entitled "Nature of the Case" contains seven paragraphs and one footnote spanning three and three-quarters pages of contentious argument that is nearly a polemic. On the court's own motion, we strike this section of the brief and do not consider it. See *Artisan*, 397 Ill. App. 3d at 321 (striking argumentative introductory paragraph that was two pages long).

¶ 17 We turn now to the merits of plaintiff's issues.

¶ 18 We first consider our standard of review. Summary judgment is appropriate where the pleadings, depositions, admissions, and affidavits on file, when viewed in the light most favorable to the nonmoving party, show that there is no genuine issue of material fact and that the movant is

entitled to judgment as a matter of law. *Perez v. Sunbelt Rentals, Inc.*, 2012 IL App (2d) 110382, ¶ 7. We review *de novo* a grant of summary judgment. *Perez*, 2012 IL App (2d) 110382, ¶ 7. Here, the parties submitted the case to the trial court on cross-motions for summary judgment. Defendants assert that it is improper for plaintiff now to contend that there were genuine issues of material fact that should have precluded summary judgment. Where parties file cross-motions for summary judgment, they invite the court to decide the issues as questions of law, and entry of summary judgment for one party or the other may be proper. *Falcon Funding, LLC v. City of Elgin*, 399 Ill. App. 3d 142, 147 (2010). However, even where parties file cross-motions for summary judgment, the court is not obligated to grant summary judgment, because it is possible that neither party alleged facts, even if undisputed, that were sufficient to warrant judgment as a matter of law. *Falcon*, 399 Ill. App. 3d at 147.

¶ 19 It is imperative that we emphasize here what it is that we are to review. In *Adkins v. Sarah Bush Lincoln Health Center*, 129 Ill. 2d 497 (1989), our supreme court recognized the "rule of non-review" in cases involving private hospital staff privileges. *Adkins*, 129 Ill. 2d at 506. The rule of non-review holds that, as a matter of public policy, internal staffing decisions of private hospitals generally are not subject to judicial review. *Adkins*, 129 Ill. 2d at 506. An exception exists when the decision involves a revocation, suspension, or reduction of existing staff privileges. *Adkins*, 129 Ill. 2d at 506. In such cases, the hospital's action is subject to a limited judicial review to determine whether the decision made was in compliance with the hospital's bylaws. *Adkins*, 129 Ill. 2d at 506-07. Judicial reluctance to review a private hospital's internal staff decisions reflects the unwillingness of courts to substitute their judgment for the professional judgment of hospital officials with superior qualifications to consider and decide such matters. *Adkins*, 129 Ill. 2d at 507. Our limited review also reflects the fact that a private hospital's actions do not constitute state action

and, therefore, are not subject to scrutiny for compliance with due process protections. *Adkins*, 129 Ill. 2d at 509. However, a physician practicing in a private hospital has certain basic protections including notice and a fair hearing. *Adkins*, 129 Ill. 2d at 509-10.

¶ 20 A. Bylaws

¶ 21 Plaintiff contends that the hospital violated its bylaws in the following respects.

¶ 22 1. The Right to Cross-Examine Witnesses

¶ 23 Article X of the hospital's bylaws governs "corrective action," and spells out the procedures applicable to disciplinary actions the hospital may take against its medical staff. Sections 6.6.4 and 6.6.5 provide that the practitioner at the Fair Hearing shall have the right to rebut any witness or evidence and to introduce written evidence before, during, and at the close of the hearing. Plaintiff contends that these bylaws were violated when the Hearing Committee allowed the MEC to introduce a letter from its outside expert, Dr. Clifford Berger, in rebuttal and when the Hearing Committee refused to allow plaintiff's outside expert, Dr. Michael H. Salinger, to testify in surrebuttal.

¶ 24 The MEC presented one outside expert, Dr. Berger, who testified in person and was present for extensive cross-examination. At the conclusion of the third and final day of the hearing, following the presentation of plaintiff's case, which had included the live testimony of Dr. Salinger, plaintiff raised the issue of a letter Dr. Berger had submitted responding to Dr. Salinger's testimony. The parties had apparently received Dr. Berger's letter that day. The Hearing Committee had not seen it. The Hearing Committee denied plaintiff's request for Dr. Salinger (who was present) to offer surrebuttal in live testimony. However, the Hearing Committee invited plaintiff to submit Dr. Salinger's surrebuttal in writing.

¶ 25 Plaintiff maintains that he was denied the right to cross-examine Dr. Berger's rebuttal, because he could not cross-examine the letter, and he argues that the error was compounded when the Hearing Committee denied him the opportunity to call Dr. Salinger, who had been allowed to remain in the hearing room during the entire proceedings, in surrebuttal. Section 6.1 of the bylaws provided that the hearing need not be strictly conducted in accordance with the rules of law relating to the examination of witnesses or presentation of evidence. While section 6.6.2 of the bylaws provided that the practitioner shall have the right to call, examine, and cross-examine witnesses, nothing in the bylaws required the presence of witnesses to be cross-examined. See *Rao v. St. Elizabeth's Hospital of the Hospital Sisters of the Third Order of St. Franicis*, 140 Ill. App. 3d 442, 459 (1986) (the absence of witnesses from the hearing whom the plaintiff could cross-examine was not a violation of hospital bylaws that provided for the right of cross-examination where the bylaws did not require the presence of witnesses in the first instance). Here, plaintiff's argument is disingenuous at best, because it leaves the reader with the false impression that the Hearing Committee considered Dr. Berger's letter without giving plaintiff an opportunity to refute the points Dr. Berger made in the letter. The record shows that plaintiff submitted Dr. Salinger's surrebuttal in writing, as suggested by the Hearing Committee. More important, the record shows that the Hearing Committee refused to consider Dr. Berger's letter in coming to its decision, because plaintiff asserted that "any such consideration would be impermissible." Consequently, the admission of Dr. Berger's letter did not violate the bylaws, nor could plaintiff have been prejudiced by its admission where the Hearing Committee did not consider it in reaching its decision.

¶ 26 2. Burden of Proof

¶ 27 Plaintiff next contends that the bylaws contain conflicting and improper burdens of proof. Section 5.3 provides:

> "A hearing committee is a peer review body that shall fairly and objectively hear witnesses, examine evidence[,] and view exhibits relating to the matter at issue and determine whether or not a violation of medical care standards, inappropriate conduct[,] or other circumstances has [*sic*] occurred that warrants the recommended adverse action."

Section 6.8 provides:

> "The MEC shall appoint one of its members or an active member in good standing of the Medical Staff to represent the MEC at the hearing. Either the MEC's representative or the MEC's legal counsel may present the facts supporting its adverse recommendation and examine the witnesses. The practitioner or his/her legal counsel may present the facts supporting his/her challenge to the adverse recommendation. The practitioner must show that the stated grounds for the adverse recommendation lack any factual basis or that such basis or, any action based thereof [*sic*], is unjust, arbitrary, unreasonable[,] or capricious."

Plaintiff contends that section 5.3 and section 6.8 present conflicting burdens of proof. Plaintiff further asserts that the trial court's finding that the two sections do not conflict was erroneous. However, this court does not give deference to the trial court's conclusion. Instead, we interpret the bylaws *de novo*. *Lo v. Provena Covenant Medical Center*, 342 Ill. App. 3d 975, 982 (2003).

¶ 28 We find no conflict. Section 5.3 does not articulate any burden of proof. Rather, it sets forth the Hearing Committee's duties. On the other hand, section 6.8 clearly articulates that the practitioner has the burden of proof to show that the stated grounds for the MEC's adverse recommendation lacks any factual basis or was unjust, arbitrary, unreasonable, or capricious. Plaintiff's argument, that the burden of proof imposed by section 6.8 is "inappropriate" inasmuch as it "sets forth an appellate review standard that assumes that the underlying facts have already been proven," is based on a misreading of section 6.8. The practitioner does not have the burden to show

that the Hearing Committee's decision (which has not yet been made) is erroneous; rather, the burden is to show that the MEC's recommended adverse action lacked a factual basis.

¶ 29 Plaintiff further contends that placing the burden of proof on the practitioner is inconsistent with the Illinois Hospital Licensing Act (Act) (210 ILCS 85/1 *et seq.* (West 2010)). Section 10.4(b) of the Act provides:

> "All hospitals licensed under this Act, except county hospitals ***, shall comply with, and the medical staff bylaws of these hospitals shall include rules consistent with, the provisions of this Section in granting, limiting, renewing, or denying medical staff membership and clinical staff privileges." 210 ILCS 85/10.4(b) (West 2010).

Plaintiff argues that section 10.4(b)(2)(C) of the Act is inconsistent with section 6.8 of the hospital's bylaws. Section 10.4(b)(2)(C) provides, *inter alia*, "Upon the request of the medical staff member or the hospital governing board, the hearing panel shall make findings concerning the nature of each basis for any adverse decision recommended to and accepted by the hospital governing board." Plaintiff's argument lacks coherence, because there is no logical connectedness between the responsibility of a hearing committee to make factual findings and section 6.8 of the bylaws, which allocates the burden of proof. Put another way, fact-finding is a judicial, or quasi-judicial function, while the burden of going forward with evidence and the burden of proof are advocacy functions. One has nothing to do with the other.

¶ 30 3. Notice

¶ 31 Plaintiff next argues that the July 12, 2010, notice he received from the MEC violated section 3.3.2 of the bylaws, which requires a "concise statement of the charges, including the report of the Review Committee, a list of specific or representative charts being questioned, or other reasons or

subject matter considered in the decision to recommend corrective action." The July 12, 2010, notice sent to plaintiff provided as follows:

"Please be advised that after considering the Report of the Review Committee, dated July 8, 2010, the Medical Executive Committee has recommended the revocation of your interventional cardiovascular privileges in accordance with Article X, Section 2.6.8 of the Advocate Good Shepherd Hospital (AGSH) Medical Staff Bylaws ('Bylaws').

This recommendation was based upon information and data related to the Report of the Review Committee, which included the following:

1) Report of the External Reviewer, Clifford Berger, M.D., dated May 14, 2010, including the five (5) patient cases submitted for review which noted apparent deviations from the standard of care;

2) Patient Case #052072 reviewed by [CVPRC] and rated as an OFI;

3) Concerns regarding your medical judgment related to your exercise of interventional cardiovascular procedures;

4) Concerns of both the External Reviewer and the [CVPRC] with technical aspects of your coronary interventions;

5) The unanimous consensus of the [CVPRC] that your performance of coronary procedures falls outside the acceptable standard of care for the [cath lab];

6) An apparent error in judgment which resulted in a breach of paragraph 4(c) of Settlement Agreement, dated April 9, 2010 (misidentification of syntax category 2 or 3);

7) The information and opinions you submitted to the Review Committee related to the procedures described above; and

8) The Review Committee's conclusions that specific procedures you performed constituted a violation of the standard of care for the Medical Staff of AGSH.

I have enclosed a copy of the Review Committee Report for your review.

In accordance with Section 3.3.3 of the Bylaws, you have a right to submit a written request for a Fair Hearing within thirty (30) days. You must submit your written request for a hearing by Certified Mail or delivered in person to my attention, as Chair of the Medical Executive Committee.

Please let me know if you have any questions or concerns regarding this matter.

Sincerely,

Mark Gross, M.D."

¶ 32 Plaintiff argues that the notice was not "concise," because it referenced "dozens of pages of attached material" and set forth "generic" accusations so that he was required to "speculate as to what the MEC actually relied upon in making its accusations." He relies on *Gates v. Holy Cross Hospital*, 175 Ill. App. 3d 439 (1988), where the court held that the notice violated the hospital bylaws. *Gates* is distinguishable. In *Gates*, the hearing committee justified its suspension for acts or omissions that were not included in the notice of hearing. *Gates*, 175 Ill. App. 3d at 445. Here, paragraphs 1 and 2 of the notice were specific regarding the patient cases that were the subject of the recommended adverse action. Paragraphs 3 through 8, in accordance with the bylaw, set forth "other reasons or subject matter" the MEC considered in recommending its action. In addition, the invitation to voice questions or concerns about the notice opened the hospital to a request for a more definite statement if plaintiff felt that was appropriate. Moreover, plaintiff did not request a continuance of the Fair Hearing on the ground that he needed more time to prepare but went ahead with the hearing. In *Adkins*, notice was sufficient where the physician received a statement of

charges accusing him of two "general" areas of deficiency in treatment. *Adkins*, 129 Ill. 2d at 515. The supreme court noted that the physician had received the charts the Executive Committee would consider during the hearing and that the physician testified for over 13 hours on issues raised in the charts. *Adkins*, 129 Ill. 2d at 515 ("This indicates that [the physician] knew what the charges were and that he was prepared to discuss the issues which might be raised"). Here, plaintiff demonstrated his preparedness in his knowledge of the charts discussed at the Fair Hearing and in his numerous colloquies with the witnesses presented.

¶ 33 4. "Additional Violations"

¶ 34 Plaintiff raises four additional issues with respect to alleged violations of the bylaws. Each issue is addressed in a terse paragraph of his brief without citation to authority. Arguments made without citation of supporting authority are deemed forfeited. *In re Marriage of Winters*, 160 Ill. App. 3d 277, 280 (1987). Nevertheless, we choose to review the issues raised.

¶ 35 a. Missing Exhibits

¶ 36 Plaintiff asserts that his defense before the Hearing Committee was hampered because approximately two months after the conclusion of the hearing, his counsel discovered that some of the exhibits he introduced at the fair hearing were "missing." Plaintiff concludes from this that there is no way to tell what was before the Hearing Committee when it made its decision. We disagree. The chairman of the Hearing Committee, Dr. Young, averred in an affidavit that all of the exhibits submitted by plaintiff were considered by the Hearing Committee. Likewise, the Hearing Committee Report, which was signed by each member of the Committee, stated that all of plaintiff's evidence was considered. The one document plaintiff specifies in particular in his brief, dealing with balloon inflation pressures, was not included in his list of evidence that was submitted prior to the Fair Hearing. The document in question was created at plaintiff's direction for the Fair Hearing and was

testified to by plaintiff during his testimony. Consequently, plaintiff's speculation that the document was not before the Hearing Committee is without merit.

¶ 37 b. Delay in Producing Documents

¶ 38 Plaintiff contends that he was prejudiced when he did not timely receive all the documents he requested. The only specific document he complains of is Dr. Berger's curriculum vitae, which he received on the eve on trial. In a conclusory statement, plaintiff says that the delay "denied [plaintiff] the ability to fully and properly prepare his cross-examination" of Dr. Berger. However, plaintiff does not flesh out his argument to tell us how his cross-examination was impaired.

¶ 39 c. Admission of the NPDB Report

¶ 40 Plaintiff maintains that the NPDB report was irrelevant to the issues before the Hearing Committee. We disagree. Section 6.9 of the bylaws provides that the Hearing Committee "shall be entitled to consider any pertinent material held by the Hospital, and all other information, which relates to the Practitioner's reapplication for membership and/or clinical privileges." Under the Health Care Quality Improvement Act of 1986 (HCQIA) (42 U.S.C.A. § 11101 *et seq.* (West 2010)), a hospital must report professional review action that adversely affects a physician's clinical privileges, and such actions are included in the NPDB, which may be accessed by entities to which a physician applies for membership or the privilege to practice. *Janes v. Centegra Health System*, 308 Ill. App. 3d 779, 787-88 (1999). A reportable professional review action is limited to an action based on competence or professional conduct of an individual physician. *Janes*, 308 Ill. App. 3d at 788. The NPDB report directly related to plaintiff's competence and his privilege to practice. The idea behind making the report accessible to other hospitals is because a prospective physician's competence is obviously of paramount importance and interest to an entity charged with patient care.

¶ 41 The report was also relevant to show why the hospital initiated a review of plaintiff's cath

lab procedures. The evidence showed that the report came to the attention of the hospital's credentials committee, which then requested a review of plaintiff's cath lab cases. Dr. Ann T. Warren, chair of the credentials committee, informed plaintiff by letter dated July 25, 2008, that the credentials committee had met to discuss plaintiff's cardiology privileges "in light of" the NPDB report. In responding to plaintiff's relevance objection at the beginning of the Fair Hearing, the hospital's attorney stated that the NPDB report was "what started the story." Significantly, the Hearing Committee report did not mention the NPDB report or indicate that the Hearing Committee considered it or gave it any weight. The Hearing Committee's findings related solely to the charges before it. Accordingly, we cannot conclude from the record that plaintiff was prejudiced by inclusion of the NPDB report.

¶ 42 d. The Settlement Agreement

¶ 43 Plaintiff's final argument regarding the bylaws is that the settlement agreement included all of his cath lab cases from 2008 through 2010 and precluded the Hearing Committee from considering those cases at the fair hearing. Plaintiff relies on sections 13.3 and 13.4 of the bylaws. Section 13.3 provides:

> "Upon the Governing Council's declaration that it has made a final decision regarding the matter, that decision is final. The Hospital's President shall send a written notice of the final decision to the Practitioner, copying the Practitioner's Chair, the MEC's Chair, the Medical Staff's President[,] and the Governing Council's President. Such notices shall be sent by Certified Mail or Personal Delivery."

Section 13.4 provides:

> "In the case of a summary suspension, unless the Practitioner agreed in writing otherwise, the final decision of the Governing Council must be made within thirty (30) days after his/her suspension."

In the instant case, we fail to see the applicability of either section 13.3 or section 13.4. The events that precipitated the settlement agreement were the March 18, 2010, death in the cath lab and the resulting summary suspension of plaintiff's cath lab privileges. Under the terms of the settlement agreement, the hospital agreed to terminate the suspension, agreed not to report the incident to the NPDB, and agreed to release only limited information about the incident should anyone inquire. For his part, plaintiff agreed, for a period of 90 days, not to be on the emergency department interventional call roster and to consult with an interventional cardiologist or cardiovascular surgeon, and to document such consultation, in cases involving coronary intervention with a syntax category of 2 or 3 prior to proceeding with the intervention for those 90 days. Paragraph 4(a) of the settlement agreement informed plaintiff that the hospital would continue its review of plaintiff's cases and would, if appropriate, seek outside review. Thus, not only did the settlement agreement not include all of the cases under review up to the date of the agreement, but plaintiff specifically was notified, and agreed, that the hospital would continue its review and that the results of the outside reviewer "shall" be considered by the CVPRC, which "shall" then make a recommendation to the MEC.

¶ 44 Accordingly, for the foregoing reasons, we conclude that the hospital did not violate any of its bylaws in conducting the Fair Hearing.

¶ 45 B. Fundamental Fairness

¶ 46 Plaintiff contends that the Fair Hearing violated fundamental fairness because the result the Hearing Committee reached was incorrect. Plaintiff argues that "any disciplinary decision reached on the basis of incorrect findings, even where they resulted from a procedurally appropriate process,

per se [*sic*] demonstrates" unfairness as described by our supreme court in *Adkins*. We do not read *Adkins* so broadly. We cannot accept plaintiff's invitation to review the Hearing Committee's or the Governing Council's decision regarding staff privileges, because, as plaintiff himself acknowledges, this court cannot "decide the medicine."

¶ 47 In *Adkins*, our supreme court held that a court is justified in reviewing a private hospital's actions, even where the bylaws are followed, *if* actual unfairness on the part of the hospital, its committees, or individual members of the committees is demonstrated in the record. *Adkins*, 129 Ill. 2d at 514. Thus, we look at whether the procedures followed demonstrated actual unfairness. "Courts must not attempt to take on the escutcheon of Caduceus.[2]" *Sosa v. Board of Managers of Val Verde Memorial Hospital*, 437 F.2d 173, 177 (5th Cir. 1971).

¶ 48 Specifically, plaintiff argues that unfairness occurred because Dr. Tomasian, plaintiff's economic rival, "deceptively" informed "investigators and medical staff" that plaintiff demonstrated a "pattern" of substandard practice. The record shows that Dr. Tomasian, an interventional cardiologist, was the chairman of the CVPRC and the director of the cath lab. In conjunction with Dr. Leo Kelly, Dr. Tomasian chose Dr. Berger to perform the outside review of plaintiff's cath lab cases. Dr. Tomasian trained as a fellow under Dr. Berger and had spoken to Dr. Berger several times about cases in the seven or eight years preceding the investigation into plaintiff's cath lab procedures. Although plaintiff does not cite to a page in the record where Dr. Tomasian spoke of

[2]The caduceus is one of the symbols of a physician: two serpents criss-crossed around a staff topped by a round knob and flanked by wings. Webster's Third New International Dictionary 312 (1993).

a pattern[3], we located two such incidents in our review of the record. Dr. Tomasian sent a letter to Dr. Gross on June 3, 2010, in which Dr. Tomasian stated, "there is a pattern of general approach, as well as technical aspects of concern with regard to coronary intervention," and the June 29, 2010, minutes of the MEC show that Dr. Tomasian used the word "pattern" in an interview the MEC conducted of Dr. Tomasian by telephone. The minutes relate that the following occurred during that interview:

> "The Committee asked [Dr. Tomasian] whether [plaintiff's] problems related to attitude, technical issues[,] or the selection of cases which are too complex. Dr. Tomasian advised that [plaintiff's] practice issues had generally not occurred with respect to other operators at the hospital. Many of the practice issues appear to be a recurrent pattern, related to [plaintiff's] approach and lack of appropriate care."

The record demonstrates that Dr. Tomasian was not alone in describing plaintiff's problems as a pattern. Dr. Berger described "patterns" in his testimony; and Dr. Gross described a "pattern of judgment lapses." Consequently, we cannot conclude that Dr. Tomasian was being deceptive in his letter or the interview.

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[3]Strict adherence to the requirement of citing relevant pages of the record is necessary to expedite and facilitate the administration of justice. *Prairie Rivers Network v. Illinois Pollution Control Board*, 335 Ill. App. 3d 391, 408 (2002). Arguments that fail to comply with the requirements set forth in Illinois Supreme Court Rule 341(h)(7) (eff. Jul. 1, 2008), do not merit consideration on appeal. *Prairie Rivers*, 335 Ill. App. 3d at 408. We are overlooking plaintiff's failure to adhere to the Rule in the interest of justice. However, counsel is on notice that we may not be so lenient in the future.

¶ 49 C. Whether the Hospital's Bylaws Violate the Illinois Hospital Licensing Act

¶ 50 Plaintiff's final contention is that the bylaws violate the Act's mandate that the hearing committee be independent. Section 10.4(C) of the Act provides, *inter alia*, that "[t]he hearing panel shall have independent authority to recommend action to the hospital governing board." 210 ILCS 85/10.4 (C) (West 2010). Section 7.4 of article X of the hospital's bylaws provides:

> "Within thirty (30) calendar days after receipt of the report of the Hearing Committee ***, the MEC shall consider the report and either affirm, modify[,] or reverse the MEC's original, proposed recommendation in the matter."

Section 7.4.3 provides:

> "If the Hearing Committee's recommendation agrees with the MEC's original, adverse recommendation, the MEC shall affirm its original adverse recommendation. Following such affirmation, the MEC shall forward its written adverse recommendation, the Hearing Committee's report[,] and other related materials to the Governing Council. The MEC's Chair shall send a written notice of the adverse recommendation to the Practitioner in accordance with Section 7.E copying the Practitioner's Department Chair, the Medical Staff President[,] and the Hospital President."

¶ 51 Plaintiff urges that, because the bylaws require the Hearing Committee's report to be sent to the MEC rather than directly to the Governing Council, the Hearing Committee's independence was compromised. We disagree. First, nothing in the Act prohibits the procedure employed by the hospital's bylaws. Second, the bylaws do not permit the MEC to alter or reverse the Hearing Committee's report and decision. Third, by giving the MEC the discretion to reverse its own, original adverse recommendation in light of the Hearing Committee's report, the bylaws add a layer of protection for the practitioner. If the MEC becomes convinced that its original adverse

recommendation was wrong, it can right the wrong at that stage without the necessity of another hearing before the Governing Council.

¶ 52 Here, the MEC affirmed its original, adverse recommendation and forwarded the Hearing Committee's report, without edits or alterations, to the Governing Council. Dr. Young, chairman of the Hearing Committee, confirmed in his affidavit in support of defendant's motion for summary judgment, that the committee was independent and that no outside pressure from any source was brought to bear on the Hearing Committee's decision. Accordingly, we conclude that the bylaws do not violate the Act.

¶ 53 III. CONCLUSION

¶ 54 For the foregoing reasons, the judgment of the circuit court of Lake County is affirmed, and this court's stay of the trial court's order is vacated.

¶ 55 Affirmed.