

L A C M A Physician

MARCH 2, 1992

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TB in LA:

The beast rears its head once again

W. Haas

Bulletin Board

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Nominations now accepted for public health awards

The National Health Management Foundation (NHMF) in San Francisco, and the Healthtrac Foundation in Menlo Park are now accepting entries for their \$25,000 Health Education Award and \$50,000 Health Improvement Prize.

Those whose work has helped improve the public's health are eligible for these national awards, which recognize outstanding achievement in the field of health promotion and disease prevention.

The awards will focus on viable innovations by individuals and groups in the areas of health promotion research and education, community-based wellness programs, and new theoretical studies benefitting the nation's prevention efforts.

Nominations are due April 1; final deadline is May 15.

For more information, contact Harry Harrington at the National Health Management Foundation at (415) 445-5217.

LACMA members named to officer slate at St. John's

Saint John's Hospital and Health Center medical staff has elected four LACMA members to its 1992 officer slate.

Thomas L. Kun MD, an internist specializing in gastroenterology, is medical staff president. Dr. Kun is also an assistant clinical professor at the UCLA School of Medicine.

Gilbert J. Kuhn Jr. MD, an internist specializing in pulmonary diseases, is medical staff vice president; Ellie J.C. Goldstein MD, an internist specializing in infectious diseases, is secretary; and Amy Rosenman MD, a specialist in obstetrics and gynecology, is treasurer. ■

the Environment

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SATURDAY, MARCH 21, 1992
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SEMINAR TOPICS:

Passive Smoking
L. Robert Martin, M.D.

Vitamin Use and Abuse
H. Rex Greene, M.D.

Eating for Your Future...
So you'll have one
Mara Vitolins, Ph.D., MPH, RD

The Effect of the Sun
and Other Lights on
the Skin

Ronald L. Moy, M.D.

Sick Building Syndrome
and Air Pollution
Alan F. Rothfeld, M.D.

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Legal Counsel For The Physician



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HENRY R. FENTON

Physicians are entitled to fair procedure in medical staff disciplinary cases

A decision last June by the California Court of Appeal demonstrates that the California courts will not permit the denial, limitation, suspension or termination of medical staff privileges in the absence of fair procedure.

In the case of *Rosenblit v. Superior Court*, the Court of Appeal reversed a Superior Court decision that upheld the suspension of a physician's medical staff privileges at a hospital because the physician in question was denied fair procedure. The California Medical Association filed a friend of the court brief in support of the appeal of the physician.

At the outset, the court rejected the notion that the fairness of hospital administrative proceedings is a matter for the hospital to determine and that the courts should not interfere in such determinations. The Court of Appeal held that Superior Courts and Courts of Appeal should independently review the fairness of hospital review procedures involving the limitation of medical staff privileges.

Henry R. Fenton, an attorney in West Los Angeles, specializes in the representation of physicians.

The plaintiff, Paul Rosenblit MD, an endocrinologist, subscribed to a method for managing diabetes which was different from the approach used by his colleagues on staff at the hospital. After a bad result was obtained in one case, review by a medical staff committee of his practice ensued. This resulted in proctoring on all admissions and consultations. Several months later, adverse proctoring reports resulted in summary suspension of Dr. Rosenblit's staff privileges "due to poor clinical judgment and violation of medical staff bylaws regarding providing coverage for the care of patients when not available."

After Dr. Rosenblit's privileges were suspended and he was provided with a list of 30 charts, where it was alleged that there were problems involving diabetic management or clinical judgment, he requested a hearing under the medical staff bylaws.

Although Dr. Rosenblit was granted a hearing, he was denied the right to have an attorney represent him at the hearing and was denied the right to specific charges, including the specific acts or omissions for which he was being

accused. Additionally, the hospital's ultimate decision to permanently suspend Dr. Rosenblit's staff privileges was vague and conclusory, and he was not provided a sufficient opportunity to determine the potential bias of those physicians who sat in judgment upon him in the hearing committees.

The Court of Appeal expressed its outrage at the unfairness encountered by Dr. Rosenblit. As the court stated:

"[W]e are concerned with fair play and fair treatment; with a physician's right to practice his profession; with the public's right to a diversity of opinion among competent specialists and a variety of treatment options.

"The record demonstrates hospital was dedicated to removing Rosenblit rather than providing a physician with a fair opportunity to defend his treatment regimen. Hospital resisted fair treatment at every crucial step of the proceedings. Since Rosenblit was kept in the dark about the specific charges made against him, of his asserted opportunity to obtain copies of the

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ROBERT H. GANS, M.D., LL.B.

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Legal Line

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charts, and finally of the basis upon which the hearing panel decided the issues adversely to him, he was denied the basic right to a fair hearing. We agree...that such a charade did not serve the public interest."

Why is this case important?

■ It reiterates the entitlement of all physicians to fair procedure before medical staff privileges can be limited

■ It demonstrates that the courts are becoming more sophisticated in analyzing these claims.

The courts are beginning to recognize that in medicine, there are sometimes strong disagreements about methods of treatment where neither side can be said to be wrong and, therefore, disciplinary action is not always appropriate. In other instances, differences can result in the abuse of medical staff privileges under the guise of protecting the public health and welfare.

Too often, many physicians, when faced with corrective action under medical staff bylaws which could result in restriction or termination of privileges, do little, if anything, to resist the charges. The *Rosenblit* case reemphasizes that a physician who is wrongfully charged with offenses can mount an effective defense in the hearings to which he is entitled.

In this day and age, physicians faced with medical staff disciplinary proceedings must take them very seriously. There is more at stake than privileges at a particular hospital. Under the state and federal data bank reporting requirements, discipline at a single hospital can result in subsequent restriction of privileges at all other hospitals and of disciplinary charges before the Medical Board.

For this reason the *Rosenblit* case is a welcome addition to the panoply of procedural protections guaranteed to physicians under California law. ■