

SEP 30 2014

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HAMID SAFARI, M.D. and MARK
FAHLEN, M.D.,

Plaintiffs - Appellants,

v.

KAISER FOUNDATION HEALTH
PLAN; et al.,

Defendants - Appellees.

No. 12-16245

D.C. No. 3:11-cv-05371-JSW

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Jeffrey S. White, District Judge, Presiding

Submitted September 12, 2014**
San Francisco, California

Before: BEA, IKUTA, and HURWITZ, Circuit Judges.

Plaintiffs appeal the district court's decision granting defendants' motions to dismiss under Federal Rule of Civil Procedure 12(b)(6). Plaintiffs bring an as-

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

applied challenge and a facial challenge under 42 U.S.C. § 1983 to the peer-review process that a California health care provider must conduct before revoking a doctor's privileges to practice medicine at the provider's facilities. Plaintiffs claim the peer-review process violates the Due Process Clause of the Fourteenth Amendment.

Both the plaintiffs' as-applied and facial challenges are foreclosed by *Pinhas v. Summit Health, Ltd.*, 894 F.2d 1024 (9th Cir. 1989). First, the peer-review process has not changed materially since *Pinhas* because California Business & Professions Code § 809, *et seq.* merely codified the common law that existed when *Pinhas* was decided. *See El-Attar v. Hollywood Presbyterian Med. Ctr.*, 301 P.3d 1146, 1151 (Cal. 2013) (“[T]he peer review statute, like the common law fair procedure doctrine that preceded it, establishes minimum protections for physicians subject to adverse action in the peer review system.” (internal quotations omitted)). *Pinhas*'s holding is therefore still valid. As a result, defendants were not state actors when they conducted peer review and revoked plaintiffs' privileges to practice medicine at defendants' facilities. *See Pinhas*, 894 F.2d at 1034.

Second, as *Pinas* remains valid, plaintiffs incorrectly named defendants, who are private parties, in a facial challenge to the peer-review statutes. *Id.* at 1034–35.

AFFIRMED.