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IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF CALIFORNIA

ROBERT JABLONSKI, MD. **Plaintiff,** **v.** **SIERRA KINGS HEALTHCARE DISTRICT, et al.,** **Defendants.**	CV **F 06-1299 AWI GSA** **MEMORANDUM OPINION AND ORDER GRANTING PLAINTIFF'S MOTION TO VOID JUDGMENT PURSUANT TO F.R.C.P. 60 AND ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** **Doc. #'s 111, 111-3 and 67**

In this action by plaintiff Robert Jablonsky, M.D. ("Plaintiff") for damages pursuant to 42 U.S.C. § 1983 against defendant Sierra Kings Health Care District ("Defendant"), the court dismissed the action and ordered that judgment be entered in favor of Defendant on June 6, 2010. The court's order dismissing the action was based primarily on the lack of any response by Plaintiff to an order to show cause that was filed by the court on September 24, 2009. Currently before the court is Plaintiff's motion to set aside void judgment pursuant to Rule 60(b)(4) of the Federal Rules of Civil Procedure. Doc. # 111. Also before the court is Plaintiff's response to the court's order to show cause. Doc. # 111-3. For the reasons that follow the court's order dismissing the action and order directing entry of judgment in favor of Defendants will remain in effect.

Dockets.Justia.com

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The factual background of this action has been set forth in some detail in prior decisions of this court and need not be repeated in detail here. See Doc. #'s 11, 39 and 103. Briefly, Plaintiff is a physician and surgeon whose privileges to practice at defendant Sierra Kings District Hospital were summarily revoked or suspended in September 1997. Prior orders of the court have dismissed all state law claims that were previously adjudicated in state proceedings and have limited Plaintiff to a claim or claims arising from the procedural Due Process Clause of the Fourteenth Amendment. In its Order on Defendant's Motion for Summary Judgment, filed on September 24, 2009, (the "September 24 Order") the court found that Plaintiff's action turned on the issue of whether the procedures that had been provided by Defendant at the time of, or immediately following the summary suspension/revocation of privileges, were constitutionally sufficient for purposes of Fourteenth Amendment due process. The court found that the parties' failure to focus sufficiently on that issue prevented a final determination of Defendant's motion for summary judgment. Specifically, the court observed:

> Unfortunately, the parties' nearly exclusive focus on the delay in the completion of the administrative process has resulted in pleadings that lack any allegation or discussion of the process [that] was provided to Plaintiff, either by design or by happenstance, at the time of or immediately after the summary suspension. For purposes of the present discussion, the court will rely on its review of the information provided in Defendant's exhibits in support of its motion for summary judgment. It appears that for purposes of this preliminary discussion that the information the court can glean from the documents provided is sufficient to allow the court to make fairly accurate presumption[s] about the process that was provided initially. The court will leave it to the parties to dispute, modify or add to the factual basis of the motion for summary judgment or opposition thereto.

Doc. # 103 at 14:5-14.

The court's September 24 Order, after noting the absence of allegation or argument with regard to the procedures that were provided in the 30 days following the revocation/suspension of privileges, deduced what facts it could from the exhibits that were provided in support of Defendant's motion for summary judgment. The court concluded:

> The materials noted above show that the administrative process available to Plaintiff within the first thirty days after summary suspension of Plaintiff's medical staff privileges offered Plaintiff notice and the opportunity to respond,

> both in person and in writing, to both the general and specific charges against Plaintiff. In light of [Laudermill v. Cleveland Bd. Of Educ., 470 U.S. 532 (1985)], which held that basic notice and opportunity to respond meaningfully to charges is sufficient where more extensive post-deprivation procedures are provided and given the elements of formality that are not constitutionally mandated by the Due Process Clause of the Fourteenth Amendment as listed in [Yashon v. Hunt, 825 F.2d 1016 (6th Cir. 1987), the court finds that Plaintiff *may well* have been afforded the process that was due immediately post-deprivation.

Doc. # 103 at 16:8-16 (italics added).

The court's September 24 Order provisionally found that the facts available in the parties' pleadings at that time indicated that Plaintiff was probably provided constitutionally sufficient process immediately post-deprivation and that summary judgment was probably appropriate given the state of the facts. In the interest of a full opportunity for both parties to address the issue, the court offered Plaintiff an opportunity to further elaborate on the factual context in light of the court's tentative decision. The order was set forth in the form of an order to show cause that directed Plaintiff to either show that the pleading set forth in the First Amended Complaint was sufficient to state a claim for relief or to seek leave to amend. Any response to the court's September 24 Order was due not later than October 19, 2009.

On October 13, 2009, a notice was filed by Plaintiff concerning the initiation of bankruptcy proceedings by Defendant Sierra Kings. On October 21, 2009, a Notice of Filing of Bankruptcy was filed by Defendant Sierra-Kings. On June 7, 2010, the court issued an order dismissing the case with prejudice and ordered the entry of judgment in favor of Defendant. The clerk of the court entered judgment on the same day. The instant motion for relief from void judgment was filed on June 7, 2011.

LEGAL STANDARDS

Summary judgment is appropriate when it is demonstrated that there exists no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970); Poller v. Columbia Broadcast System, 368 U.S. 464, 467 (1962); Jung v. FMC Corp., 755 F.2d 708, 710 (9th Cir. 1985); Loehr v. Ventura County Community College Dist., 743 F.2d 1310, 1313 (9th

Cir. 1984).

> Under summary judgment practice, the moving party always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," which it believes demonstrate the absence of a genuine issue of material fact.

Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Although the party moving for summary judgment always has the initial responsibility of informing the court, the nature of the responsibility varies "depending on whether the legal issues are ones on which the movant or the non-movant would bear the burden of proof at trial." Cecala v. Newman, 532 F.Supp.2d 1118, 1132-1133 (D. Ariz. 2007). When the moving party has the burden of proof at trial, that party must carry its initial burden at summary judgment by presenting evidence affirmatively showing, for all essential elements of its case, that no reasonable jury could find for the non-moving party. United States v. Four Parcels of Real Property, 941 F.2d 1428, 1438 (11th Cir.1991) (en banc); Calderone v. United States, 799 F.2d 254, 259 (6th Cir. 1986); see also E.E.O.C. v. Union Independiente De La Autoridad De Acueductos Y Alcantarillados De Puerto Rico, 279 F.3d 49, 55 (1st Cir. 2002) (stating that if "party moving for summary judgment bears the burden of proof on an issue, he cannot prevail unless the evidence that he provides on that issue is conclusive.")

If the moving party meets its initial responsibility, the burden then shifts to the opposing party to establish that a genuine issue as to any material fact actually does exist. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986); First Nat'l Bank of Arizona v. Cities Serv. Co., 391 U.S. 253, 288-89 (1968); Ruffin v. County of Los Angeles, 607 F.2d 1276, 1280 (9th Cir. 1979). In attempting to establish the existence of this factual dispute, the opposing party may not rely upon the mere allegations or denials of its pleadings, but is required to tender evidence of specific facts in the form of affidavits, and/or admissible discovery material, in support of its contention that the dispute exists. Rule 56(e); Matsushita, 475 U.S. at 586 n.11; First Nat'l Bank, 391 U.S. at 289; Strong v. France, 474 F.2d 747, 749 (9th Cir. 1973). The opposing party must demonstrate that the fact in contention is material, i.e., a fact that might affect the outcome of the suit under the governing law, Anderson v. Liberty Lobby, Inc., 477 U.S.

242, 248 (1986); T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n, 809 F.2d 626, 630 (9th Cir. 1987), and that the dispute is genuine, i.e., the evidence is such that a reasonable jury could return a verdict for the nonmoving party, Anderson, 477 U.S. 248-49; Wool v. Tandem Computers, Inc., 818 F.2d 1433, 1436 (9th Cir. 1987).

In the endeavor to establish the existence of a factual dispute, the opposing party need not establish a material issue of fact conclusively in its favor. It is sufficient that "the claimed factual dispute be shown to require a jury or judge to resolve the parties' differing versions of the truth at trial." First Nat'l Bank, 391 U.S. at 290; T.W. Elec. Serv., 809 F.2d at 631. Thus, the "purpose of summary judgment is to 'pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial.'" Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e) advisory committee's note on 1963 amendments); International Union of Bricklayers v. Martin Jaska, Inc., 752 F.2d 1401, 1405 (9th Cir. 1985).

In resolving the summary judgment motion, the court examines the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any. Rule 56(c); Poller, 368 U.S. at 468; SEC v. Seaboard Corp., 677 F.2d 1301, 1305-06 (9th Cir. 1982). The evidence of the opposing party is to be believed, Anderson, 477 U.S. at 255, and all reasonable inferences that may be drawn from the facts placed before the court must be drawn in favor of the opposing party, Matsushita, 475 U.S. at 587 (citing United States v. Diebold, Inc., 369 U.S. 654, 655 (1962)(per curiam); Abramson v. University of Hawaii, 594 F.2d 202, 208 (9th Cir. 1979). Nevertheless, inferences are not drawn out of the air, and it is the opposing party's obligation to produce a factual predicate from which the inference may be drawn. Richards v. Nielsen Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985), aff'd, 810 F.2d 898, 902 (9th Cir. 1987).

DISCUSSION

I. Motion for Relief from Void Judgment

Rule 60(b)(4) sets forth bases for relief from final judgment. Among the grounds for such relief is the situation in which judgment is void because the court lacked authority to enter

judgment at the time it did. Plaintiff also contends that he was prevented from filing a response to the order to show cause because such response was prohibited by the stay imposed automatically pursuant to 11 U.S.C. § 362(d) upon Defendant's filing of bankruptcy on October 8, 2009. Plaintiff alleges the bankruptcy stay was not lifted until February 20, 2011, and that the court's entry of judgment in favor of Defendant during the period the stay was in force was void. Plaintiff requests that the court relieve him of the judgment against him and accept the Document at docket number 111-3 as Plaintiff's response to the court's order to show cause.

Defendant opposes Plaintiff's motion for relief primarily on the grounds of latches, waiver and estoppel. In addition, Defendant contends Plaintiff's motion is untimely in that the motion for relief was filed more than four months after the bankruptcy court lifted the automatic stay.

While the court tends to agree with Defendant that Plaintiff was dilatory in filing the instant motion for relief, the court also agrees that this action has aged sufficiently and that the time has arrived to bring the case to a close leaving the fewest issues in play should either party wish to pursue appeal. Because the court will, for the reasons discussed *infra*, determine that there remain no material issue of fact to be resolved and that summary judgment is therefore appropriate, the court will grant Plaintiff's motion for relief from void judgment and will proceed to a determination of the viability of Plaintiff's claims against Defendant on the merits based on Plaintiff's proposed response to the court's order to show cause.

II. Plaintiff's Response to the Order to Show Cause and Defendant's Motion for Summary Judgment

The crux of Plaintiff's response to the court's order to show cause is the contention that Plaintiff's position as a medical staff provider with patient care responsibilities entitled Plaintiff to an evidentiary hearing immediately following the summary suspension/revocation of privileges to determine the nature and duration of the emergent situation that gave rise to the summary suspension. Plaintiff contends that his First Amended Complaint ("FAC") adequately sets forth both facts and legal contentions to support a claim of constitutional deprivation.

Plaintiff's argument recognizes that the constitutional dimensions of his Fourteenth Amendment due process claim are defined and delimited by the Supreme Court's holding in Laudermill v. Cleveland Bd. of Edu., 470 U.S. 532 (1985). Plaintiff correctly notes that the Laudermill court held:

> We conclude that all the process that is due is provided by a pretermination opportunity to respond, coupled with post termination administrative procedures as provided by the [State] statute.

Doc. # 111-3 at 3:14-16 (quoting Laudermill,470 U.S. 532 at 547). Plaintiff also recognizes that due process rights under the Fourteenth Amendment are not offended "where a State must act quickly, or where it would be impractical to provide predeprivation process," provided post-deprivation process is provided without undue delay. Gilbert v. Homar, 520 U.S. 924, 930 (1997). California Business And Professions Code § 809.5 defines the situations where summary termination/suspension of professional privileges is warranted by providing that summary suspension or restriction of privileges may be imposed "where the failure to take that action may result in an imminent danger to the health of *any individual*. Id. (italics added). As the court noted in its September 24 Order:

> Under California case authority, the question of whether due process requires pre-deprivation notice and opportunity to be heard turns on whether the purpose of the action is to avoid imminent danger to the health of any individual. See Sahlolbei v. Providence Healthcare, Inc., 112 Cal.App.4th 1137, 1148-1149 (4 Dist. 2004) (observing that the procedures set forth in Cal. Bus. & Prof. Code § 809.5 for summary suspension of medical staff privileges where the threat of patient harm is imminent is the exception to the general rule set forth in sections 809.1 - 809.4 that require pre-deprivation notice and hearing.)

Doc. # 103 at 10:19-25.

Plaintiff's response to the court's order to show cause consists primarily of an extended argument that, in sum, asserts that the interests of the physician in providing continuous patient care and the interests of the patients in being provided care by the physician of their choice impose a due process requirement upon Defendants. Plaintiff contends Defendant was required to provide evidentiary proof of an imminent threat to patient well being immediately following the imposition of the summary suspension/termination of privileges. Plaintiff contends that a

hospital imposing summary suspension/revocation of a physician's clinical privileges must meet "an exceptionally high standard" of proof in order to not run afoul of the physician's Fourteenth Amendment due process rights. Plaintiff contends that such a high standard cannot be met by a mere "meet and confer" session prior to suspension or revocation of staff privileges. Further, Plaintiff contends that the constitutional interests at stake require a speedy determination. As Plaintiff puts the issue:

> A simple determination of 'incompetence' by a majority vote of the medical staff cannot be constitutionally adequate to separate the physician from the patients until a hearing could be granted many weeks – if not months – later. Professional competence, including professional courtesy, is the subject of considerable deliberation. Imminent danger is not at all of that nature. There must be some additional factor – beyond mere professional incompetence or discourtesy – to warrant taking an action that will clearly deprive the physician of his right to practice medicine in the hospital without giving him a full opportunity to prove his competence. It is the proof of that additional factor – or the lack of proof thereof – that demands a hearing of some sort where the physician has the opportunity to challenge the allegation of "imminence" while it is still imminent and before the deprivation becomes irremediable.

Doc. # 111-3 at 10:4-14.

In analyzing Plaintiff's contention, the court begins by noting that the motivating factor in Defendant's suspension/revocation of Plaintiff's hospital privileges was the abrasive and disruptive nature of Plaintiff's behavior that lead to what Defendant characterizes as a breakdown in communications between Plaintiff and the hospital's staff and other physicians. In this regard, the court notes that the idea of professional competence or incompetence is broad. In the context of patient care in the extraordinarily complex setting of a hospital, it is obvious that "competence" is multi-dimensional. It includes not only medical knowledge and skill, but also a basic knowledge of the workings and needs of the institution and the ability to constructively interact with other healthcare providers in an institutional setting. Further, the court notes that, contrary to Plaintiff's contention, there is no requirement that there be an imminent threat to the physician's patient or patients or to any *identifiable* patient. The court finds that the term "any patient" as used in section 809.5 incorporates patients in the abstract as well as any identifiable patient. Thus, summary suspension would be warranted where a physician's behavior is

sufficiently disruptive as to potentially jeopardize the flow of care to any patient anywhere in the hospital at any time.

Plaintiff's argument is notable for two features. First, it is devoid of any reference to legal authority other than cases already cited by the court for the propositions set forth by the court in its September 24 Order. Second, Plaintiff, lacking any legal authority for the "exceptionally high standard" he is trying to assert, frames the facts of this case using the concepts of "competence," "proof," "imminence" and the "identifiable patient." While Plaintiff's arguments are rhetorically well crafted, they are legally unconvincing. While one normally associates the term "competence" with care of identifiable patients and the susceptibility of incompetence to proof, such is not the case here. Fundamentally, Plaintiff was determined by his peers to be rude and abrasive to the point of disruptiveness. Absent some form of cross-cultural misunderstanding, it can generally be said that a person is intolerably and disruptively rude and abrasive when the persons on the receiving end of his communications collectively determine that he is. When the individuals who have been on the receiving end of the individual's communications determine that the individual's rudeness and/or disruptive behavior has reached a level that potentially compromises care of *any patient*, that conclusion is generally not susceptible to argument to the contrary.

Significantly, Plaintiff asserts that "[t]he only 'option' offered to [Plaintiff] at the due process' meeting was to admit the incompetence and apologize to the hospital staff for being unkind to them." Doc. # 111-3 at 6:6-8. While Plaintiff brushes this meeting off as woefully inadequate to "even scratch the service of the harm it potentially caused [Plaintiff] and his patients," Doc. # 111-3 at 6:8-9, the court finds that what apparently transpired at the meeting goes straight to the heart of the concern that Defendant had with Plaintiff. Given the nature of the conflict between Plaintiff and Defendant, the opportunity for Plaintiff to acknowledge the inappropriate nature of his interactions with the medical staff and to resolve to improve was all that Defendant could logically offer. At that point Plaintiff had the choice to accept the offer to improve his interactions with the medical staff, an offer he did not take, or to embark on a

foreseeably long and logically questionable effort to prove that what others had found was abusive and disruptive behavior was, in fact, not disruptive.

Plaintiff's claim for relief for infringement of his Fourteenth Amendment rights fails for two reasons. First, Plaintiff has not and cannot successfully argue under the facts of this case that he was entitled to an evidentiary hearing to prove or disprove the imminence of harm to any identifiable patient. To the extent Plaintiff asserts prejudice to himself and to his patients from Defendant's actions, that prejudice is contemplated by section 809.5. Pursuant to Laudermill, and section 809.5, a physician whose hospital staff privileges are summarily suspended or revoked is entitled to notice and the opportunity to be heard directly after the summary action so long as an evidentiary hearing is provided in due course. Plaintiff has provided no legal authority whatsoever for the proposition that a hospital imposing summary restrictions on physician practice must meet some elevated standard of proof to show imminence or the lack thereof based on danger to any identifiable patient.

Second, and perhaps more convincing, the due process requirements of the Fourteenth Amendment are intended, *inter alia*, to safeguard against the erroneous deprivation of the plaintiff's property interest in medical staff privileges. See Mathews v. Eldridge, 424 U.S. 319, 334 (1976) (listing the factors that give rise to due process concerns in the employment setting). What is not compensable under the Fourteenth Amendment is the remote potential that the deprivation of the property interest could possibly have been erroneous. Plaintiff has tried his state law claims in prior actions in state court and has failed to prevail on any of them. In other words, Defendant has essentially vindicated its actions in summarily terminating or suspending Plaintiff's medical staff privileges in state court. It would be contrary to the purposes of Fourteenth Amendment jurisprudence to provide reward for the mere potentiality that the termination of privileges could have been imposed erroneously when state court proceedings indicate that there was no error.

The court finds that there remains no issue of material fact as to Plaintiff's claims against Defendant. Summary judgment will therefore be granted in favor of Defendant.

THEREFORE, it is hereby ORDERED that:

1. Plaintiff's motion for relief from void judgment pursuant to Rule 60(b)(4) of the Federal Rules of Civil Procedure is hereby GRANTED. Judgment entered by this court on June 7, 2010, is hereby VACATED.
2. The document submitted by Plaintiff at Document 111-3 is hereby accepted by the court as Plaintiff's response to the court's September 24 Order.
3. Defendants Motion for summary Judgment filed on June 1, 2009, is hereby GRANTED. The Clerk of the Court shall RE-ENTER JUDGMENT in favor of Defendant.
4. The Clerk of the Court shall CLOSE THE CASE.

IT IS SO ORDERED.

Dated: July 14, 2011

CHIEF UNITED STATES DISTRICT JUDGE