

1 THE HONORABLE JOHN C. COUGHENOUR

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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 ALI J. NAINI,

CASE NO. C19-0886-JCC

10 Plaintiff,

ORDER

11 v.

12 KING COUNTY PUBLIC HOSPITAL
13 DISTRICT NO. 2 d/b/a EVERGREEN
HOSPITAL MEDICAL CENTER *et al.*,

14 Defendants.
15

16 This matter comes before the Court on Defendant King County Public Hospital District
17 No. 2's ("Evergreen") motion for a temporary restraining order and to vacate a preliminary
18 injunction (Dkt. No. 86). Having considered the parties' briefing and the relevant record, the
19 Court VACATES the King County Superior Court's preliminary injunction (Dkt. No. 16-3) and
20 DENIES Evergreen's request for a temporary restraining order for the reasons explained herein.

21 **I. BACKGROUND**

22 On October 25, 2017, Plaintiff filed the original complaint in this case in King County
23 Superior Court. (*See* Dkt. No. 11-1.) In that complaint, Plaintiff alleged that Defendants had
24 threatened to revoke his hospital privileges if he did not complete a competency assessment at
25 the University of California in San Diego. (*Id.* at 3.) Plaintiff argued that this threat violated his
26 constitutional and contractual due process rights. (*See id.* at 26–28.) He therefore requested that

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1 the Superior Court enjoin Defendants from revoking his hospital privileges using § 16.4-8 of
2 Evergreen’s bylaws, (*see id.*), which states that failure to timely complete a Focused Professional
3 Practice Examination-Concern period (“FPPE”) shall be deemed a voluntary resignation, (*see id.*
4 at 4). In response to Plaintiff’s complaint, Defendants agreed to withdraw, “without prejudice,”
5 the FPPE requiring Plaintiff to complete the competency assessment. (*See* Dkt. No. 12-8 at 8.)

6 Over the next year, the parties engaged in protracted discovery disputes and submitted
7 dueling summary judgment motions. (*See, e.g.*, Dkt. Nos. 12-6, 13-10, 13-23, 14-16, 14-18.)
8 During this time period, Plaintiff’s central claim was that Defendants continued to threaten to use
9 § 16.4-8 to revoke his privileges. (*See, e.g.*, Dkt. Nos. 13-8 at 3–5, 14-16 at 3.) Defendants’
10 primary response was that Plaintiff’s privileges were not yet threatened and that Plaintiff’s
11 lawsuit was premature. (*See, e.g.*, Dkt. No. 14-18 at 2.) In an attempt to render Plaintiff’s lawsuit
12 moot, Defendants even offered to stipulate that they would not use § 16.4-8 against Plaintiff.
13 (*See* Dkt. No. 14-21 at 1.)

14 The nature of the case dramatically changed on January 15, 2019, when Dr. James
15 O’Callaghan, the president of Evergreen’s medical staff, informed Plaintiff that his privileges
16 had been suspended. (*See* Dkt. No. 28 at 36.) In response to Dr. O’Callaghan’s announcement,
17 Plaintiff asked the Superior Court to “enter a preliminary injunction prohibiting any interference
18 with his exercise of privileges at EvergreenHealth.” (Dkt. No. 14-26 at 26.) Although Plaintiff
19 requested a broadly worded injunction, Plaintiff aimed his motion at undoing Defendants’ recent
20 decision, which Plaintiff argued had denied him his constitutional and contractual rights to due
21 process. (*See id.* at 16–17.)

22 The Superior Court agreed with Plaintiff that Defendants had likely denied him due
23 process and violated Evergreen’s bylaws when Defendants suspended his privileges. (Dkt. No.
24 16-13 at 4.) The Superior Court therefore vacated Plaintiff’s suspension and issued a preliminary
25 injunction. (*Id.* at 4–6.) The Superior Court’s order was, however, somewhat inconsistent. On the
26 one hand, the Superior Court stated, “Evergreen Health may initiate a new process, with notice

1 and opportunity to be heard, with respect to [Plaintiff's] application to renew his privileges.” (*Id.*
2 at 6.) On the other hand, the Superior Court broadly enjoined Defendants from “[t]aking any
3 action that prevents, prohibits, or interferes with plaintiff’s exercise of privileges and
4 prerogatives as an active staff member of the EvergreenHealth Medical Center.” (*Id.* at 4.)

5 This broadly-worded injunction gave rise to the present issue. On October 31, 2019,
6 Plaintiff received a patient with a traumatic brain injury. (Dkt. No. 92 at 2.) Over the next few
7 days, Plaintiff and other doctors treated the patient, but he ultimately died due to severe post-
8 surgery swelling. (*See generally* Dkt. Nos. 87, 92.) Due to concerns over Plaintiff’s treatment of
9 the patient, Evergreen wishes to invoke Article 16 of its bylaws and suspend Plaintiff’s
10 privileges pending an investigation. (*See* Dkt. No. 86 at 4–5.) But Evergreen is unable to invoke
11 Article 16 because of the Superior Court’s broadly worded injunction. (*See* Dkt. No. 16-13 at 4.)
12 Evergreen therefore asks the Court to vacate the Superior Court’s preliminary injunction or, in
13 the alternative, to issue a temporary restraining order barring Plaintiff from exercising his
14 privileges for 20 days. (*See* Dkt. No. 86 at 10.)

15 **II. DISCUSSION**

16 **A. Plaintiff’s Request to Vacate**

17 Federal law governs the rules for modifying a preliminary injunction entered by a state
18 court prior to removal. *See Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck*
19 *Drivers Local No. 70*, 415 U.S. 423, 437 (1974); *Pantoja v. Countrywide Home Loans, Inc.*, 640
20 F. Supp. 2d 1177, 1183 n.5 (N.D. Cal. 2009). Those rules give a district court “wide discretion”
21 to modify an injunction in the face of changed circumstances or new facts.¹ *See A&M Records,*

22 ¹ Plaintiff asserts that a “party seeking modification or dissolution of an injunction bears the
23 burden of establishing that a *significant* change in facts or law warrants revision or dissolution of
24 the injunction.” (Dkt. No. 91 at 12) (emphasis in original) (quoting *Sharp v. Weston*, 233 F.3d
25 1166, 1170 (9th Cir. 2000)). But Plaintiff erroneously refers to the more stringent standard for
26 revising or dissolving a permanent injunction. *See, e.g., Sharp*, 233 F.3d at 1170; *Bellevue*
Manor Assocs. v. United States, 165 F.3d 1249, 1255 (9th Cir. 1999). A more flexible standard
applies to preliminary injunctions. *See Dore & Assocs. Contracting, Inc. v. Am. Druggists’ Ins.*
Co., 54 B.R. 353, 360 (Bankr. W.D. Wis. 1985). That standard reflects a district court’s

1 *Inc. v. Napster, Inc.*, 284 F.3d 1091, 1098 (9th Cir. 2002) (quoting *Sys. Fed’n No. 91 v. Wright*,
2 364 U.S. 642, 647–48 (1961)).

3 When the Superior Court issued the preliminary injunction in this case, its primary
4 concern was about the process—or lack thereof—that Defendants afforded Plaintiff prior to
5 suspending his privileges. (*See* Dkt. Nos. 32-1 at 63) (“In other words, I’m not foreclosing the
6 administrative process from starting again, and being done properly.”). Those circumstances
7 justified immediate action to undo the suspension and preserve the status quo. But they did not
8 justify prohibiting Evergreen from ever suspending Plaintiff’s privileges regardless of the
9 situation. Indeed, the Superior Court acknowledged as much: it allowed Evergreen to “initiate a
10 new process . . . with respect to [Plaintiff’s] application to renew his privileges” so long as
11 Evergreen gave Plaintiff notice and an opportunity to be heard. (Dkt. No. 16-13 at 6.)

12 The present circumstances are far different than those faced by the Superior Court.
13 Evergreen is not attempting to summarily revoke Plaintiff’s privileges by invoking § 16.4-8. Nor
14 is Evergreen refusing to renew Plaintiff’s privileges without giving Plaintiff an opportunity to be
15 heard. Instead, Evergreen wants to use §§ 16.2 or 16.3 to suspend Plaintiff’s privileges pending
16 an investigation into the recent death of a 20-year old boy who Plaintiff treated. (*See* Dkt. No. 86
17 at 4–6.) Those provisions are designed to address situations that are far different than those that
18 the Superior Court considered. (*See* Dkt. No. 12-8 at 129–31.) In addition, those provisions
19 provide substantially more process than what Evergreen afforded Plaintiff when it decided to not
20 renew his privileges in January 2019. (*See id.* at 124–131, 135–55.) For example, if a suspension
21 pursuant to §§ 16.2 or 16.3 lasts longer than 14 days, then the suspended practitioner is entitled
22 to a hearing under Article 17 of the bylaws. (*Id.* at 129–31.) Article 17, in turn, entitles the
23 practitioner to representation by counsel, requires prehearing disclosure of witnesses and
24 materials, gives the practitioner the right to call and examine witnesses, and allows the
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26 “inherent authority to modify a preliminary injunction in consideration of new facts.” *See A&M
Records, Inc. v. Napster, Inc.*, 284 F.3d 1091, 1098 (9th Cir. 2002).

1 practitioner to appeal the hearing officer or committee's decision to Evergreen's Board of
2 Commissioners. (*See id.* at 135–55.)

3 Given these different circumstances, the Court concludes that the Superior Court's
4 preliminary injunction should be vacated so that Evergreen can follow its bylaws while
5 investigating the death of Plaintiff's patient. The Superior Court could not have predicted that
6 one of Plaintiff's patients might die in contested circumstances. It is therefore unlikely that the
7 Superior Court intended to constrain Evergreen's ability to exercise its professional judgment
8 and invoke §§ 16.2 or 16.3. What the Superior Court did intend was to ensure that Evergreen
9 would afford Plaintiff due process if the hospital sought to revoke Plaintiff's privileges in the
10 future. (*See* Dkt. Nos. 16-13 at 6, 32-1 at 63.) The procedures set forth in §§ 16.2 and 16.3
11 appear to comply with the spirit of the Superior Court's preliminary injunction because they
12 afford Plaintiff at least a modicum of process. (*See* Dkt. No. 12-8 at 124–131, 135–55.)

13 Of course, Plaintiff is free to challenge Evergreen's attempt to use Article 16 or any
14 ultimate decision that Evergreen makes regarding Plaintiff's privileges. However, it is
15 appropriate for Plaintiff, not Defendants, to bear the burden of showing that any action
16 Evergreen takes violates Plaintiff's legal or equitable rights. *See Earth Island Inst. v. Carlton*,
17 626 F.3d 462, 469 (9th Cir. 2010). Absent the existing preliminary injunction, which was
18 designed to address entirely different circumstances, Plaintiff would bear that burden.

19 **B. Plaintiff's Request for an Injunction**

20 Given the Court's conclusion that the Superior Court's preliminary injunction should be
21 vacated, it is unnecessary for the Court to issue an order enjoining Plaintiff from practicing
22 medicine at Evergreen. The better approach is for the Court to allow Evergreen to decide
23 whether it wishes to suspend Plaintiff's privileges pursuant to §§ 16.2 or 16.3 of its bylaws.

24 **III. CONCLUSION**

25 For the foregoing reasons, the Court VACATES the Superior Court's preliminary
26 injunction (Dkt. No. 16-3) and DENIES Evergreen's request for a temporary restraining order

1 (Dkt. No. 86).

2 DATED this 12th day of November 2019.

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5  A handwritten signature in black ink, reading "John C. Coughenour". The signature is written in a cursive style with a large initial "J". A horizontal line is drawn below the signature.

6 John C. Coughenour
7 UNITED STATES DISTRICT JUDGE
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