

>> ALL RISE.

HEAR YE, HEAR YE, HEAR YE, THE SUPREME COURT OF FLORIDA IS NOW IN SESSION, ALL WHO HAVE CAUSE TO PLEAD, DRAW NEAR, GIVE ATTENTION AND YOU SHALL BE HEARD.

GOD BLESS THE UNITED STATES OF AMERICA AND THIS HONORABLE COURT AND THE GREAT STATE OF FLORIDA.

>> LADIES AND GENTLEMEN, SUPREME COURT OF FLORIDA, PLEASE BE SEATED.

>> GOOD MORNING AND WELCOME TO THE FLORIDA SUPREME COURT.

THE FIRST CASE ON OUR DOCKET THIS MORNING WILL BE ANIL DESAI VERSUS LAWNWOOD MEDICAL CENTER.

>> MY NAME IS PARIENTE 9 AND I REPRESENT ANIL DESAI.

>> COULD YOU SPEAK UP A LITTLE BIT?

>> I AM PARIENTE 9.

I RECOGNIZE ANIL DESAI AND ALSO REPRESENT DOCTOR BASIL KELLER IN A COMPANION CASE IN THE FOURTH DISTRICT COURT OF APPEAL IN THE EXERCISE OF COURT JURISDICTION. CASE COMES TO THIS COURT ON THE BASIS OF THE COURT'S CONFLICT AND JURISDICTION.

ANIL DESAI ASKED THE COURT NOT TO ALLOW THE COURT TO BE DEPRIVED OF HIS RIGHT TO SEEK JUDICIAL REVIEW FOR THE DENIAL AND TERMINATION OF MEDICAL STAFF PRIVILEGES, AND THE REGIONAL MEDICAL CENTER, BY VIRTUE OF THE UNILATERAL ADMINISTRATIVE PROCESS IMPOSED UPON HIM BY THE HOSPITAL TO WHICH HE NEITHER CONSENTED, AGREED IN ANY WAY OR WAS BOUND BY LEGISLATION AND MEDICAL STAFF BYLAWS AND OTHER COURTS IN THE STATE UNIFORMLY HELD A CONTRACT BETWEEN MEMBERS OF MEDICAL STAFF AND MEMBERSHIP WHEN EXECUTED BY BOTH PARTIES.

>> WHAT WAS THE JURISDICTION?

>> THIS DECISION OF THE FOURTH

DISTRICT COURT OF APPEALS
CONFLICTS WITH FLORIDA HIGH
SCHOOL VERSUS MELBOURNE
DECISION.

THIS COURT'S DECISION AND
LAWNWOOD REGIONAL MEDICAL
CENTER.

THOSE WERE THE FIRST TWO CASES
INVOLVING POSITION OF
ADMINISTRATIVE PROCESS AND
MEMBERS OF ASSOCIATIONS PURSUANT
TO THE BYLAWS OF THE
ORGANIZATIONS TO WHICH THEY WERE
VOLUNTARILY MEMBERS.

>> THOSE CONTACTS WERE NOT
ENTIRELY DIFFERENT.

>> DEFINITELY THE SENSE THEY
WERE DIFFERENT FACTS IN
DIFFERENT CONTEXTS BUT THE
PRINCIPLE WAS THE SAME.

THOSE MEMBERS AGREED TO BE BOUND
BY THOSE BYLAWS THAT PROVIDE
ADMINISTRATIVE PROCESSES THAT
WERE REQUIRED TO COMPLY FOR
JUDICIAL RELIEF.

THE HOSPITAL GOVERNANCE LAW
STRUCK DOWN AS UNCONSTITUTIONAL
BY THIS COURT AND AN IMPAIRMENT
OF MEDICAL STAFF BYLAWS.

SECTION 6 OF THAT LAW CONTAINED
AN ADMINISTRATIVE PROCESS WHICH
THE BOARD HAD CREATED AS PART OF
THAT STATUTE, FAR LESS
RESTRICTIVE THAN THE BOARD'S
FAIR HEARING AND APPELLATE
REVIEW PROCESS.

THAT WAS THE SUBJECT OF THIS
CASE.

IN BOTH CASES THIS IS NOTHING
MORE THAN PERMISSIBLE UNILATERAL
AMENDMENT OF THE MEDICAL STAFF
BYLAWS CONTRARY TO ITS TERMS AND
FLORIDA STATUTES AND CONTRARY TO
THE HOLDING IN THIS CASE THAT
THE FRAMEWORK ITSELF, GOVERNANCE
CREATED BY CHAPTER 395 OF THE
FLORIDA STATUTE AND MEDICAL
STAFF BYLAWS WAS COMPLETELY
INTERRUPTED AND DESTROYED AS A
RESULT OF THE ENACTMENT OF THAT

STATUTE.

IN THIS CASE THE BOARD'S UNILATERAL IMPOSITION AND CREATION OF SO-CALLED HE FAIR HEARING AND APPELLATE REVIEW PROCESS DOES EXACTLY THE SAME THING AS WAS PROHIBITED IN THE DECISION.

>> IF THAT ANSWERS THE QUESTION, YOUR HONOR.

>> IN THIS PARTICULAR CASE, ANIL DESAI WAS A LONGTIME MEMBER OF THE MEDICAL STAFF OF THE HOSPITAL PRACTICING PATHOLOGY. IN DECEMBER 2009, THE HOSPITAL TERMINATED HIS MEDICAL STAFF PRIVILEGES AND DENIED HIS REAPPOINTMENT AFTER THE CREDENTIALS COMMITTEE, MEDICAL EXECUTIVE COMMITTEE HAD GIVEN HIM FAVORABLE UNANIMOUS RECOMMENDATIONS.

AT THAT TIME HE WAS INVITED TO A MEETING OF THE BOARD OF TRUSTEES AND THE TIMETABLE IS IMPORTANT. THE MEDICAL EXECUTIVE COMMITTEE MET THE EVENING OF DECEMBER 6TH AND ON DECEMBER 7TH, YOU SEE THAT THE NEXT MORNING, THE BOARD OF TRUSTEES MET AT 7:00 AM, THE LAWYERS PUT ON POWER POINT PRESENTATION WITH REGARD TO ANIL DESAI'S MEDICAL STAFF PRIVILEGES AND ANIL DESAI WAS PRESENT BUT NOT PERMITTED TO FULLY PARTICIPATE IN THE MEETING AND HAD ONLY BEEN INVITED TO THE MEETING THE WEEK BEFORE WITH NO NOTICE WHAT WAS GOING TO TAKE PLACE.

THE MORNING AFTER THE MEDICAL EXECUTIVE COMMITTEE UNANIMOUSLY APPROVED HIS MEDICAL STAFF PRIVILEGES.

HIS CREDENTIALING WAS DENIED TERMINATING HIS PRIVILEGES, TRUSTEES NOTIFIED HIM THE FOLLOWING DAY OR TWO AND FOR THE FIRST TIME PROVIDED HIM WITH BOARD OF TRUSTEES FAIR HEARING

AND APPELLATE REVIEW PROCEDURES.
ANIL DESAI NEVER CONSENTED TO BE
BOUND BY THOSE PROCEDURES.

A REVIEW OF APPLICATIONS HE
SUBMITTED --

>> LET ME ASK YOU THIS.
UNDER THE BYLAWS OF THE
HOSPITAL, YOU HAD THE DIFFERENT
MEDICAL STAFF, HAS ITS BYLAWS
AND GOVERNING BOARD HAS ITS
BYLAWS.

IS THAT CORRECT?

>> YES.

UNDER THOSE BYLAWS MEDICAL STAFF
BYLAWS AND STATUTE, 395.
MEDICAL STAFF, AND
PEER-REVIEWED.

IS THAT CORRECT?

>> YES.

>> DOES MEDICAL STAFF HAVE THE
OBLIGATION TO LAY OUT THE
PROCEDURES FOR THAT
PEER-REVIEWED.

WHO HAS THAT RIGHT?

>> LOOKING AT FLORIDA
ADMINISTRATIVE, TWO PROVISIONS
ARE APPLICABLE.

SECTION 2 DEALS WITH BYLAWS,
SECTION 3 DEALS WITH MEDICAL
STAFF BYLAWS, AND LEADERSHIP AND
MEDICAL STAFF MEMBERS AND BOARD
OF GOVERNORS IN THIS CASE.

A JOINT OBLIGATION OF THOSE
PARTIES TO COMPLY WITH CHAPTER
395 AND JOINT COMMISSION FOR
ACCREDITATION, WHAT IS CONTAINED
IN MEDICAL STAFF BYLAWS.

THE STATUTORY FRAMEWORK LAYS OUT
THE PURE REVIEW PROCESS, AND THE
MEDICAL STAFF IN CHAPTER, TO
CONDUCT PEER-REVIEWED, GIVEN THE
ULTIMATE AUTHORITY TO REVIEW AND
MADE DECISIONS BASED ON
RECOMMENDATIONS OF THE MEDICAL
EXECUTIVE COMMITTEE.

>> WHAT IS THAT GUIDED BY.

>> WHAT THE MEDICAL STAFF
RECOMMENDS.

WHAT ARE THEY GUIDED BY?

>> THE BYLAWS STATE, ON MATTERS

OF MEDICAL STAFF, THE BOARD SHALL NOT UNREASONABLY WITHHOLD ITS CONSENT AND RATIFICATION OF DECISIONS AND RECOMMENDATIONS OF MEDICAL STAFF.

THE MEDICAL EXECUTIVE COMMITTEE. THE BOARD OF GOVERNORS CAN EXECUTE IN ACCEPTING --

>> THE BOARD CAN LOOK AT, EVEN THOUGH YOU SAID THIS PERSON SHOULD BE RE-CREDENTIALLED, WE ARE LOOKING AT THIS AND HE FAILS AT THIS PARTICULAR AREA.

WHAT WAS THE PROBLEM WITH ANIL DESAI?

>> THE BOARD TOOK THE POSITION THERE WERE PROBLEMS WITH ANIL DESAI'S REVIEW, AND OTHER ISSUES WITH REGARD TO THE WORK THAT WAS PERFORMED.

THEY CREATED 9 ISSUES.

>> WERE THOSE THINGS ALSO LOOKED AT BY MEDICAL STAFF.

>> THE MEDICAL EXECUTIVE COMMITTEE AND BOTH BODIES FOUND THERE WAS NO MERIT TO THE ISSUES, THE BOARD BROUGHT THOSE ISSUES TO THE CREDENTIALING COMMITTEE DURING THE MEETING OF THE CREDENTIALING COMMITTEE, NOT THROUGH THE CORRECTIVE ACTION OF BYLAWS WHICH LAYS OUT A COMPLAINT AGAINST THE PHYSICIAN HOW THEY ARE TO BE BROUGHT TO ATTENTION OF THE MEDICAL STAFF FOR PROCESSING AND REVIEW.

>> ANIL DESAI CHALLENGED THE BASIS OF THE BOARD'S DECISION IN THE ADMINISTRATIVE HEARING PROVIDED FOR IN THAT PERIOD?

I DIDN'T MEAN TO INTERRUPT.

HE WAS NOT REQUIRED TO DO THAT BUT COULD HAVE?

IF HE CHOSE, THAT PROCESS, HE APPLIED FOR READMISSION IN SEPTEMBER 2009.

IS THAT CORRECT?

HE APPLIED FOR READMISSION IN SEPTEMBER?

>> HE SUBMITTED HIS APPLICATION

TO BE CREDENTIALING THE
TIMEFRAME IN SEPTEMBER.

>> TWO YEARS AFTER THE BOARD
ADOPTED ITS FAIR HEARING AND
APPELLATE REVIEW PROCEDURES?

>> TWO YEARS AFTER THE DATE OF
THAT PROCESS.

>> AND APPLYING, DIDN'T HE
UNDERTAKE AN AFFIRMATION IN
WHICH HE AGREED TO BE BOUND BY
THOSE PROCEDURES?

>> THAT APPLICATION PROCESS
REFERS TO HOSPITAL BYLAWS,
MEDICAL STAFF BYLAWS AND RULES
AND REGULATIONS OF THE MEDICAL
STAFF.

>> I THOUGHT YOU CONCEDED IN
BRIEFING THAT HE AGREED TO BE
BOUND, AT SOME OF THE POINT HE
PROTESTED.

>> WE DID NOT AGREE TO THAT OR
STIPULATE THAT HE WAS BOUND TO
THESE PROCEDURES AND THAT CASE,
TOTALLY DIFFERENT ARGUMENTS IN
OUR BRIEFS.

WE NEVER AGREED THESE PROCEDURES
WERE UPON ANIL DESAI AND IN
FURTHERANCE US -- IN FURTHER
ANSWERS TO YOUR QUESTION, THE
BOARD ATTEMPTED TO IMPOSE UPON
THEM HAS NO SAFEGUARDS, NO DUE
PROCESS.

>> I DON'T HAVE THE RECORD IN
FRONT OF ME BUT THE NOTES I HAD,
4031, THERE'S A DOCUMENT CALLED
AFRICANS UNDERTAKING AFFIRMATION
AND PROVIDES THE PROCEDURES IN
MEDICAL STAFF?

>> THAT HE DID.

THESE ARE NOT IN BYLAWS, THAT IS
THE JUST OF PART OF THE
ARGUMENT.

THE PROCEDURES WERE UNILATERALLY
CREATED BY THE BOARD.

THEY ARE NOT IN THE BYLAWS OF
THE MEDICAL STAFF, NOT IN THE
BYLAWS OF THE HOSPITAL, THEY ARE
NOT IN THE MEDICAL STAFF RULES
AND REGULATIONS.

THOSE ARE WHAT ANIL DESAI AGREED

TO BE BOUND BY.

THIS IS A STAND-ALONE DOCUMENT ENTITLED BOARD OF TRUSTEES FAIR HEARING AND APPELLATE REVIEW PROCEEDINGS.

>> DID YOU ESTABLISH THE FIRST TIME HE WAS AWARE OF THESE PROCEDURES WAS AFTER HE WAS DENIED -- WHAT YOU CALL IT? RECREDENTIALING BY THE BOARD. WHAT YOU SAID WAS AT THE TIME OF THE HEARING.

>> HE RECEIVED THIS PROCESS THE FIRST TIME AFTER THE DENIAL WAS RECREDENTIALING AND NEVER PROVIDED TO THE MEDICAL STAFF.

>> WE GET PAST JURISDICTION, FAIRNESS, WHAT WE WERE CONCERNED OF THAT BUT JUSTICE LAWSON ASKED YOU, WHY WOULDN'T THE ADMINISTRATIVE ROUTE BE A GOOD ROUTE EXHAUSTED AND THEN FILE YOUR LAWSUIT?

>> THIS PROCESS IS AT COMPLETE CONTROL OF THE BOARD OF TRUSTEES.

NO IMPROVEMENT FROM MEDICAL STAFF, THE VERY BEGINNING OF ACTION IN WHICH IT STATES THE CONDUCT OF HEARING WILL BE AT THE CHOICE OF THE TRUSTEES.

>> IT IS NOT LIKE GOING TO AN ADMINISTRATIVE HEARING THROUGH ADMINISTRATIVE JUDGE. WE ARE TALKING AN INTERNAL ADMINISTRATION.

>> IN STARK CONTRAST TO ARTICLE 8 OF THE MEDICAL STAFF WHICH WAS AGREED UPON.

>> IF HE WENT THROUGH THAT AND WAS DENIED, COULD HE FILE HIS LAWSUIT?

>> HE COULD HAVE WITH ANOTHER YEAR IN TERMS OF TIME. THOUSANDS OF DOLLARS IN ADDITIONAL EXPENSES AND THE OVERWHELMING CHANCES WOULD HAVE BEEN THE RESULT WOULD HAVE BEEN THE SAME IT WOULD COME TO COURT WITH ANOTHER DECISION AGAINST

HIM.

THIS PROCESS WAS DESIGNED NOT FOR THE BENEFIT OF THE PRACTITIONER BUT FOR THE BENEFIT OF THE GOVERNING BODY.

>> IN THE BYLAWS OF THE MEDICAL STAFF, IS THERE A PROCEDURE FOR THIS SITUATION WHEN A PHYSICIAN IS DENIED?

>> A BYLAW PROCEDURE WHEN THE MEDICAL EXECUTIVE COMMITTEE HAS TAKEN AN ADVERSE ACTION AGAINST A PRACTITIONER, WHICH MEANS DENIAL OF APPLICATION REAPPLICATION.

>> AND THE MEDICAL STAFF, AND --
>> WHAT ADDRESSES THAT, A JOINT CONFERENCE COMMITTEE, THE GOVERNING BOARD OR MEDICAL STAFF.

AND SAME BYLAWS THE COURT ADDRESSED IN THE PROCEDURAL CASE.

THEY DO NOT CONTAIN A FAIR HEARING OR NEW PROCEDURE, AND THEY HAVE A DISCUSSION ABOUT IT, UNDER A BYLAWS AS THEY WERE, BUT AFTER THE FIRST THIS IS COURT OF APPEAL DECISION, AND ONLY WITHIN WAS THIS PROCESS WE HEAR ABOUT CREATED.

>> WHAT HAPPENS PRIOR TO THE BOARD PASSING THIS PROCEDURE, WHAT HAPPENED IN THE SITUATION WHERE A DOCTOR WAS DENIED CREDENTIALING.

>> THERE IS NO ADMINISTERED OF PROCESS.

>> THE REBUTTAL TIME.

RICHARD.

>> MAY IT PLEASE THE COURT.

MY NAME IS TOM WARNER.

WITH ME TODAY IS DEAN MORANDI REPRESENTING HOSPITAL CORPORATION OF AMERICA IN THIS PARTICULAR CASE.

WE COVERED A LOT OF GROUND BUT I WOULD LIKE -- THE FIRST QUESTION IS DID THE MEDICAL STAFF AND ANIL DESAI AGREE TO BE BOUND BY

THESE PARTICULAR, THESE PARTICULAR PROCEDURES?
I WOULD POINT YOU INTERESTINGLY ENOUGH TO A PROVISION IN THE MEDICAL STAFF BYLAWS AND SECTION 2 UNDERTAKING AND IT SAYS EVERY APPLICATION FOR STAFF APPOINTMENT SHALL BE SIGNED BY THE APPLICANT AND CONTAIN THE APPLICANTS, QUOTE, SUBPARAGRAPH D, HE, SHE HAS RECEIVED AND READ A COPY OF SUCH HOSPITAL AND MEDICAL STAFF BYLAWS, RULES AND REGULATION IN FORCE AT HIS TIME OF APPLICATION AND HE AGREED TO BE BOUND BY THE TERMS THEREOF WITH ALL MATTERS RELATING, ALL MATTERS RELATING TO CONSIDERATION OF HIS APPLICATION WITH THAT REGARD AND GRANTED APPOINTED TO THE MEDICAL STAFF OR NOT AND EXPRESS PROVISION OF MEDICAL STAFF BYLAWS.

>> ARE YOU EQUATING HOSPITAL BYLAWS WITH BOARD BYLAWS?
THAT SAYS HOSPITAL BYLAWS AND MEDICAL STAFF BYLAWS.
YOU ARE EQUATING HOSPITAL BYLAWS WITH BOARD BYLAWS.

>> THAT IS WHAT IT SAYS,
HOSPITAL AND MEDICAL STAFF BYLAWS.
DIRECTLY IN THE UNDERTAKING THERE HAS BEEN DIRECT PROVISION, THAT YOU READ THEM WHEN YOU APPLY FOR A FOUR YOUR PRIVILEGE.

>> THAT WAS SIGNED BY ANIL DESAI?
WHAT IS THE DATE OF THAT?
>> I DON'T REMEMBER THE DATE BUT HE DID SIGN A DOCUMENT THAT WAS AN AFFIRMATION THAT HE DID. HE MADE A NOTATION BUT WHEN YOU LOOK AT THE NOTATION IS NOT HAVING ANYTHING TO DO WITH ISSUES IN THIS CASE, THE FORM WASN'T APPROVED BY MEDICAL STAFF, BUT THAT WAS THE FORM USED BY EVERYBODY AND WHEN HE SIGNED AND HE AGREED TO BE BOUND

AS HE STATED.

>> THAT WAS SEPTEMBER 2009
DOCUMENT, SEPTEMBER 2009
DOCUMENT?

>> THAT IS ABSOLUTELY THAT
WRITTEN IN WHAT HE SIGNED?
WAS IT ATTACHED TO THE BYLAWS?
WHAT I'M TRYING TO UNDERSTAND, I
REALIZE WE HAVE A RECORD TO
FIGURE THIS OUT BUT IT WAS A
STAND-ALONE PROCEDURE TO GIVE
THE HOSPITAL EXACTLY WHAT WAS
HELD TO BE UNCONSTITUTIONAL
WHICH WAS VIRTUAL CONTROL OVER
THE DECISION WHETHER TO
RECREREDENTIALING DOCTORS.

>> THIS IS NOTHING LIKE
STIEGLER.

IN THIS PARTICULAR CASE, THE
HOSPITALS PROVISIONS IN REGARD
TO THE APPELLATE REVIEW AND
ADMINISTRATIVE HEARING DOES NOT
CHANGE ONE WORD OF THE MEDICAL
STAFF BYLAWS, DOESN'T ADD
ANYTHING OR SUBTRACT ANYTHING,
DOESN'T DO ANYTHING OF SUBSTANCE
PROCEDURALLY OR OTHERWISE TO
RIGHT-CENTER MEDICAL STAFF
BYLAWS.

WHAT HAPPENS HERE IS IN THE ROLE
OF MEDICAL STAFF AND MEDICAL
STAFF BYLAWS IS TO EVALUATE A
PROCEDURE TO EVALUATE
APPLICATIONS FOR CREDENTIALS TO
THE HOSPITAL.

THE MEDICAL STAFF PROCESSES THAT
ALONG WITH THE FORMS AND
EVENTUALLY MAKE A RECOMMENDATION
TO THE BOARD OF GOVERNORS, THE
BOARD OF TRUSTEES AT THE
HOSPITAL, WHERE CREDENTIALS
SHOULD BE.

AT THAT POINT THE DECISION IS
THE HOSPITAL'S DECISION,
HOSPITAL BOARD'S DECISION AND
WHAT WE ARE SAYING HERE IS
ACCORDING TO THE LAW, FLORIDA
LAW, THE HOSPITAL IS REQUIRED AT
THAT POINT TO PROVIDE AN
ADMINISTRATIVE PROCESS AND

APPEAL, IF IN FACT THEY DENY THE PRIVILEGES.

THAT IN NO WAY CONFLICTS WITH ANYTHING, DOES NOT DETRACT FROM ANY RIGHTS, DOESN'T CHANGE ANYTHING WHATSOEVER.

>> UNDER WHAT AUTHORITIES, THE STATUTE OR SOMETHING, DOES THE BOARD HAVE A AUTHORITY TO PROMULGATE PROCEDURES FOR PEER-REVIEWED AND MEDICAL STAFF PRIVILEGES, THOSE KINDS OF ISSUES.

I THOUGHT THOSE WERE ISSUES LEFT TO THE MEDICAL STAFF.

WHAT STATUTE OR RULE GIVES THAT AUTHORITY TO THE BOARD?

>> CHAPTER 395 AND RULE OF FLORIDA ADMINISTERED OF CODE 59 A-3272.

THAT PARTICULAR RULE IS ENTITLED HOSPITAL LICENSURE AND GOVERNING BODY AND IT GOES THROUGH ALL THE VARIOUS POWERS AND DUTIES OF THE HOSPITAL BOARD TO ESSENTIALLY RUN THE HOSPITAL.

IN THAT PARTICULAR, THE GOVERNING BODY, IT HAS TO DO WITH THE GOVERNING BODY, ORGANIZING THE HOSPITAL UNDER WRITTEN LAWS, AND REGULATIONS TO STATE THE PURPOSE OF THE HOSPITAL, PROVIDE FOR OFFICERS, COORDINATED EXECUTIVE COMMITTEE, ESTABLISH POSITION OF CHIEF EXECUTIVE OFFICER, PROVIDE THE RESPONSIBILITY AND AUTHORITY AND ABILITY OF THE CHIEF EXECUTIVE. THE NEXT PROVISION IN THE SAME RULE PERTAINING TO THE POWERS AND DUTIES OF THE GOVERNING BOARD IS THE GOVERNING BOARD SHALL APPROVE THE BYLAWS AND REGULATIONS OF THE STAFF. PROVIDE FOR THE APPOINTMENT, REAPPOINTMENT, DISMISSAL OF MEMBERS OF THE ORGANIZED MEDICAL STAFF, AND PROVIDE A PROCEDURE FOR HEARING AND APPEALS ON ALL ACTIONS CONCERNING APPOINTMENT,

REAPPOINTMENT OR DISMISSAL.
SUBPARAGRAPH 4 G, THE SAME RULE
THAT HAS TO DO WITH POWERS AND
DUTIES OF HOSPITAL GOVERNING
BODY IT STATES THE GOVERNING
BODY SHALL ESTABLISH A PROCEDURE
FOR AN APPLICANT FOR PRIVILEGES
TO APPEAL AN ADVERSE DECISION
AND ESTABLISH THE TIMELINE,
TIME-LIMITED PERIOD FOR THE
FINAL DECISION.

CHAPTER 395 IMPOSES A DUTY ON
THE BOARD TO IMPLEMENT AND
APPEALS PROCESS IF THE BOARD
RULES UNFAVORABLY.

>> WITH THAT INPUT FROM THE
MEDICAL STAFF.

THAT IS REALLY THE ESSENCE OF
THIS.

IF YOU HAVE A GOVERNING BOARD
THAT IS AT ODDS WITH ITS MEDICAL
STAFF AND SOMEHOW ALONG -- SEEMS
TO HAVE BEEN INVOLVED IN A LOT
OF LITIGATION ON THIS ISSUE, THE
STAFF SHOULD HAVE INPUT IN WHAT
THE PURE REVIEW PROCEDURES WOULD
BE.

>> THE GOVERNING BOARD IS
ULTIMATELY RESPONSIBLE FOR WHAT
HAPPENED, HOW THE HOSPITAL IS
GOVERNED.

THERE ARE AREAS THE HOSPITAL AND
MEDICAL STAFF ARE PRESUMED TO
WORK TOGETHER ON THOSE AREAS.

>> WE ARE TALKING ABOUT THIS
TYPE OF SITUATION WHERE A DOCTOR
IS SAYING, I AM NOT LOOKING AT
ALL OF THIS, WHETHER IT WAS A
POLITICAL THING, THEY SAY IT WAS
A COMPETENT THING, CLEARLY THERE
ARE SITUATIONS WHERE STAFF MIGHT
PROTECT ITS OWN AND THEREFORE
YOU NEED AN OBJECTIVE REVIEW.

THE ONLY QUESTION I HAVE ON THAT
IS YOU ARE SAYING THOSE
PROCEDURES THAT EXIST, ARE THE
TYPICAL HOSPITAL PROCEDURES AND
THEY DON'T HAVE TO BE AGREED TO
BY MEDICAL STAFF?

TWO THINGS.

IS THIS A STANDARD TYPE OF REVIEW AND IS IT UNDERSTOOD THAT MEDICAL STAFF DOES NOT PARTICIPATE IN THE TYPE OF REVIEW PROCEDURE AGAIN?

>> THE ROLE OF THE MEDICAL STAFF AND MEDICAL STAFF BYLAWS IS IT PROVIDES A PROCESS AND CRITERIA FOR GRANTING OR DENYING PRIVILEGES AND THERE IS A WHOLE SECTION OF PROVISIONS THAT GO THROUGH THAT PROCEDURE AND HOW IT IS DONE.

IT CULMINATES WITH A RECOMMENDATION TO THE BOARD OF TRUSTEES WHETHER CREDENTIALS SHOULD BE GRANTED OR DENIED. AT THAT POINT, THE ROLE OF THE MEDICAL STAFF UNDER MEDICAL STAFF BYLAWS IS AT A END AND IT IS NOW THE BOARD'S DECISION ONE WAY OR THE OTHER TO GRANT PRIVILEGES.

THE LAW SAYS IN 395 AND FLORIDA ADMINISTERED OF CODE IF THE HOSPITAL AT THAT POINT DECIDES ADVERSELY AGAINST THE APPLICANTS, IT MUST PROVIDE FOR AN ADMINISTRATIVE PROCEEDING AND APPEAL IN ORDER TO GET THEM TO CHALLENGE IT.

IF YOU LOOK AT CHAPTER 395 IT MAKES SENSE.

BECAUSE THE WHOLE BASIS OF THIS INCLUDING WHAT YOU CALL COOPERATIVE GOVERNMENT AGREEMENT IS THESE MATTERS ARE SUPPOSED TO BE LEFT UP TO THE HOSPITALS AND MEDICAL STAFF, NOT IN COURT TO ARGUE ABOUT THE RIGHTS AND WRONGS OF IT.

YOU ARE RIGHT, ATTACHED TO THE COMPLAINT ARE VARIOUS DOCUMENTS WHICH OUTLINE THE HOSPITAL HAD SERIOUS CONCERNS ABOUT ANIL DESAI'S COMPETENCE INCLUDING HE WAS A PATH ALL JUST, A QUESTION OF MISDIAGNOSIS OF CANCER IN A PARTICULAR PACES, MISDIAGNOSIS OF LEUKEMIA, FAILURE TO

ADEQUATELY PRODUCE REPORTS SO THERE WAS A SERIOUS QUESTION AT LEAST IN THE BOARD OF TRUSTEES'S MINDS, WHETHER THEY SHOULD GRANT PRIVILEGES OR NOT BUT THE POINT IS ONCE THE MEDICAL STAFF MAKES ITS RECOMMENDATION, IT IS A BOARD DECISION AND THE BOARD DECISION IT IS THE BOARD THAT HAS TO PROVIDE A VEHICLE FOR THAT DOCTOR TO CHALLENGE IT.

>> LET ME ASK A QUESTION ABOUT THE PROCEDURE THAT WAS ADOPTED. IT IS MY UNDERSTANDING THAT THERE WOULD BE A HEARING BEFORE A NEUTRAL DECISION MAKER AND THAT DECISION-MAKER, ADOPTED BY THE BOARD, WOULD BE JOINTLY AGREED TO BY THE DOCTOR WHO IS CHALLENGING THE DECISION AND BY THE BOARD.

>> I WAS JUST GETTING TO THAT.

>> MY OTHER QUESTION, WE HAVEN'T COMPLAINED ABOUT THE PERSON WHO WOULD BE SELECTED BECAUSE IT WOULD BE A JOINT DECISION.

I DIDN'T SEE THAT THERE WAS ANY COMPLAINT ABOUT ANYTHING ABOUT THE PROCEDURE PROCESS THAT WOULD TEND TO MAKE IT UNFAIR.

THE ONLY COMPLAINT WAS WE SHOULD AGREE TO IT AND WE DIDN'T AGREE TO THE STRUCTURE.

IS THAT RIGHT?

>> THAT IS ABSOLUTELY CORRECT.

PAGE 8 AND 9 OF OUR OUTLINE SOME OF THE PROCEDURES, AS YOU CORRECTLY POINTED, THE AGGRIEVED PHYSICIAN IS ENTITLED TO A HEARING BEFORE A MUTUALLY EXECUTIVE BOWL ARBITER, HEARING OFFICER OR PANEL OF 3 INDIVIDUALS NOT IN COMPENSATION, COMPETITION WITH ANIL DESAI. FULL RIGHT TO CROSS-EXAMINE WITNESSES.

THERE HAS NEVER BEEN ANY CHALLENGE TO THE FACT THAT THIS IS SOMEHOW UNFAIR OR UNUSUAL. THE STANDARD OF REVIEW IS

WHETHER OR NOT THE BOARD'S
DECISION WAS UNREASONABLE OR
WITHOUT GOOD CAUSE, OR NOT
SUPPORTED BY THE EVIDENCE.
THIS VERY LIBERAL REVIEW
STANDARD FOR THE DOCTOR TO
CHALLENGE THE BOARD, IT HAD
GUARANTEES OF RIGHTS TO PRODUCE
WITNESSES, DOCUMENTS, TO HAVE A
FULL HEARING ON THESE MATTERS.
THERE IS NOTHING IN YOU TO
INDICATE THE PROCEDURES THAT
WERE ADOPTED WERE UNFAIR OR
TILTED AGAINST THE DOCTOR.
>> THIS IS UNRAVELS, SEEMS TO BE
COMING DOWN TO THE POINT OF
CONTENTION.
THE DOCTOR IS ASSERTING THAT THE
MEDICAL STAFF NEEDED TO APPROVE
THE PROCESS AT THE HOSPITAL'S
VIEW IS BASED UPON THE STATUTES
AND ADMINISTRATIVE RULES, THAT
IS NOT A REQUIREMENT.
IS THAT A FAIR STATEMENT WHAT
THE SPEED IS REALLY ABOUT?
>> THERE IS MORE TO IT, I WILL
ACCEPT WHAT YOU SAID.
>> WE ARE NOT FIGHTING ABOUT THE
FACTS OF THE CASE.
WE ARE TALKING ABOUT THE HEARING
PROCESS.
YOU RELY ON 395 AND THE
ADMINISTRATIVE RULES.
AND MY UNDERSTANDING THAT
CORRECTLY?
WHAT IS YOUR UNDERSTANDING OF
WHY THE DOCTOR IS SAYING THAT IS
A WRONG INTERPRETATION?
HOW WOULD YOU WORD WHAT THEIR
CHALLENGE REALLY IS HERE?
>> EVERYTHING HAS TO BE IN THE
MEDICAL STAFF BYLAWS AND OUR
POSITION IS ONCE THE MEDICAL
STAFF MAKES ITS RECOMMENDATION
TO THE BOARD UNDER MEDICAL STAFF
BYLAWS, IT'S ROLE IS AT A END.
AT THAT POINT, THE
RESPONSIBILITY AND DUTY OF THE
HOSPITAL BOARD TO MAKE THE FINAL
DECISION.

>> UNDER THE PROCEDURES THAT ARE ESTABLISHED.

>> THE MEDICAL STAFF BYLAWS, THE FINAL DECISION, AND ONCE YOU GET TO THAT POINT, THE MEDICAL STAFF'S ROLE IS AT A END, THE BOARD MAKES A DECISION, REQUIRED BY LAW, PROVIDING AN ADMINISTRATIVE PROCESS TO CHALLENGE THE DECISION TO THE DOCTOR.

>> THIS IS NOT LIKE SEEGER AT ALL.

>> IN THIS PARTICULAR CASE, IN WRITING OR OTHERWISE, IT ELIMINATES CHANGES, DELETES ANY PROVISION, ANY OF THESE PROCESSES, NOTHING BY IMPLICATION REPEALS OR CHANGES ANYTHING IN MEDICAL STAFF BYLAWS.

THEY ARE INTACT, IN STIEGLER, STIEGLER WAS A COMPREHENSIVE LAW THAT COVERED VIRTUALLY EVERY ASPECT OF THE RELATIONSHIP BETWEEN HOSPITAL AND MEDICAL STAFF AND GAVE THE HOSPITAL ALMOST ABSOLUTE POWER TO DELETE THINGS, CHANGE THINGS, IGNORE THINGS, WHATEVER THEY WANTED. FOR INSTANCE, SECTION 1 IN 5 PROVIDE THE HOSPITAL WITH A COMPLETE OVERRIDE OF ANY MEDICAL STAFF BYLAWS IN THE EVENT OF A CONFLICT WITH DIALOGUES.

THE OVERRIDE EXTENDS NOT JUST APPEAR REVIEW BUT BYLAWS AND MEDICAL STAFF PRIVILEGES, QUALITY ASSURANCE AND CONTRACTS FOR HOSPITAL-BASED SERVICES AND THE RIGHT TO UNILATERALLY AMEND MEDICAL STAFF BYLAWS, SOMETHING THAT YOU CANNOT HAVE ENACTMENT. THE RIGHTS GRANTED THROUGH SECTIONS 1 AND 5 RELATING TO HOSPITAL-BASED SERVICES ARE A SIGNIFICANT FEATURE OF HOSPITAL GOVERNANCE LAW.

I COULD GO ON AND ON AND ON. IN READING FROM THE OPINION IN

STIEGLER ON PAGE 516 IT GOES ON FOR ANOTHER PAGE, THE MULTITUDE OF AREAS OF SUBSTANCE THE HOSPITAL GOVERNANCE LAW ALLOW THE HOSPITAL ABSOLUTE CONTROL. IT HAS NOTHING TO DO WITH WHAT WE ARE DOING HERE.

WE HAVEN'T CHANGED ONE WORD OF THE MEDICAL STAFF BYLAWS OR DONE ANYTHING TO SUBSTANTIVELY OR PROCEDURALLY, IT IS A DUTY UNDER THE STATUTE, TO PROVIDE THIS AVENUE, THE ADMINISTRATIVE REMEDY.

>> WASN'T THE ISSUE THE LEGAL ISSUE DECIDED IN STIEGLER, WHETHER THE SPECIAL LAW PROVIDED A PRIVILEGE TO A PRIVATE CORPORATION IN VIOLATION OF THE FLORIDA CONSTITUTION?

>> YES, YOU GET DOWN TO THE BARE-BONES, STIEGLER, THE ISSUE WAS THE CONSTITUTIONALITY OF A SPECIAL LAW THAT WAS FOUND TO PROVIDE A SPECIAL PRIVILEGE TO ONE CORPORATION OUT OF ALL THE CORPORATIONS OUT THERE IN THE STATE OF FLORIDA.

ONE CORPORATION HAD THIS ABSOLUTE POWER TO DO WHAT IT WANTED.

IN THIS PARTICULAR CASE, THE FLORIDA STATUTES AND FLORIDA ADMINISTRATIVE CODE STATE THAT ALL HOSPITALS MUST PROVIDE AN ADMINISTRATIVE REVIEW PROCESS.

>> I HAVE ONE OTHER COMMENT. I WILL NOT HAVE MUCH TIME FOR IT.

THE NCAA CASE, ARE NOTHING LIKE THIS CASE.

IN THOSE CASES THEY DO -- THE RULES OF THAT PARTICULAR ORGANIZATION.

IN BOTH OF THOSE CASES, STUDENT-ATHLETE, A STUDENT ATHLETE IN COLLEGE DECLARED INELIGIBLE BY THE NCAA AND FLORIDA HIGH SCHOOL ACTIVITIES ASSOCIATION AND THOSE STUDENTS

SUED IN COURT TO TRY TO GET THEIR ELIGIBILITY BACK AND THEIR CASES WERE DISMISSED, THERE WAS NEVER AN ADMINISTRATIVE REMEDY AVAILABLE BY THE NCAA AND FLORIDA HIGH SCHOOL ACTIVITIES ASSOCIATION.

THEY WERE THROWN OUT OF COURT FOR NOT PURSUING THEIR ADMINISTRATIVE REMEDIES. THEY WERE NOT MEMBERS OF THE ORGANIZATION.

THEY WERE HIGH SCHOOL ATHLETES PARTICIPATING IN A CERTAIN PROPOSITION.

IF YOU ARE GOING TO PARTICIPATE YOU MUST PLAY BY THE RULE AND ABIDE BY THE RULES.

THANK YOU.

>> I WILL GIVE YOU AN ADDITIONAL MINUTE.

IN ADDITION TO THE MINUTES.

>> I WILL BE QUICK.

WITH REGARD TO THE APPELLATE REVIEW PROCEDURE, IF YOU LOOK AT THE PROCESS IT DOES NOT PROVIDE FOR THE CHOICE OF AN ARBITRATOR. IT PROVIDES THAT THE BOARD SHALL DETERMINE WHETHER AN ARBITRATOR MUTUALLY ACCEPTABLE TO THE INDIVIDUAL AND THE TRUSTEES, HEARING OFFICER APPOINTED BY THE TRUSTEES, INDIVIDUALS APPOINTED BY THE TRUSTEES SHALL PRESIDE. THE BOARD MAKES THE CHOICE AS TO WHO WILL PRESIDE AND THE PARTIES CAN AGREE, THE BOARD TAKES THE OF THE TWO ALTERNATIVES AND CONTROLS WHO WILL HEAR THEM. IN REVIEWING THIS PROCESS IT CHANGES THE BURDEN OF PROOF.

A PHYSICIAN UNDER THESE PROCESSES GOES THROUGH FAVORABLE PROCESS OF CREDENTIALS COMMITTEE AND MEDICAL EXECUTIVE COMMITTEE AND AFTER THE BOARD DECISION HE OR SHE HAS THE BURDEN OF PROOF TO SHOW WHY THE DECISION OF THE BOARD FOLLOWING THOSE TWO FAVORABLE RECOMMENDATIONS IS

INCORRECT.

>> UNDER 395 THE GOVERNING BOARD, IS THAT THE PROPER TERM? IS GIVEN THE AUTHORITY TO MAKE THESE KINDS OF APPEAL PROCEDURES.

WHAT IS YOUR INTERPRETATION OF THAT IN 395?

>> HE WAS REFERRING TO 59 A FROM 3.272.

>> HE WAS REFERRING TO WHAT?

>> FOR AN ADMINISTERED OF CODE

--

>> I THOUGHT YOU SAID CHAPTER 395.

>> 395 LAYS OUT THE REQUIREMENT FOR MEDICAL STAFF BYLAWS AND PROCEDURE TO CONTAIN THE PURE REVIEW PROCESS, THE CREDENTIALING PROCESS, PART OF THE CREDENTIALING PROCESS IS THE BOARD'S DECISION AND WHAT FOLLOWS.

THE MEDICAL STAFF'S ROLE DOESN'T END THERE.

IF IT DID THIS COURT WOULD NOT HAVE RULED AS IT DID IN STIEGLER WHEN IT FOUND SECTION 6 OF THE GOVERNMENT'S LAW WHICH PROVIDED A PROCEDURE SIMILAR TO THIS ONE, UNILATERALLY CREATED APPELLATE PROCESS THAT THE BOARD'S DECISION WAS AVERSE TO THE PRACTITIONER WAS A UNILATERAL AMENDMENT OF THE BYLAWS.

>> WHO HAS THE AUTHORITY UNDER 395, 59, WHETHER IT IS A RULE OR A STATUTE, WHO HAS THE ULTIMATE AUTHORITY TO MAKE PROCEDURES FOR REVIEW OF ANY DECISION?

>> IT IS A JOINT RESPONSIBILITY OF THE MEDICAL STAFF AND GOVERNING BODY.

>> IT CAN BE FOUND WHERE?

>> SECTION 59 A-3.272, SECTION 3 DEALING WITH WHAT IS CONTAINED AND WHAT IS TO BE CONTAINED IN MEDICAL STAFF BYLAWS AND IF YOU LOOK AT CHAPTER 359 AND 013 WHICH LAYS OUT THE DELEGATION OF

THE RESPONSIBILITY FOR
PEER-REVIEWED AS A CONDITION OF
LICENSURE AND CONTINUED
LICENSURE FOR A HOSPITAL AND
JOINT COMMISSION ACCREDITATION
AS THIS COURT HELD, THE MEDICAL
STAFF BYLAWS HAVE TO CONTAIN
THOSE PROCEDURES.

THIS WAS THE UNILATERALLY
CREATED PROCESS WITH NO
PARTICIPATION FROM THE MEDICAL
STAFF.

OF THE MEDICAL STAFF
PARTICIPATED THE PROCESS WOULD
BE MORE LIKE ARTICLE 8 OR
MEDICAL STAFF BYLAWS IN WHICH
MEMBERS OF THE MEDICAL STAFF
PARTICIPATE IN THE PROCESS.
THEY EACH NAME 7 MEMBERS OF THE
HEARING PANEL AND THOSE 14 NAMED
THE 15TH.

THE MEDICAL STAFF MEMBER
PARTICIPATE START TO FINISH AND
HEARING OFFICER, TRULY
INDEPENDENT HEARING OFFICER IS
APPOINTED.

OF THIS PROCESS HAD BEEN A
JOINTLY AGREED UPON PROCESS AND
FAIR PROCESS THAT IS WHAT IT
WOULD HAVE LOOKED LIKE AND IF
THIS PROCESS IS IMPOSED UPON A
PHYSICIAN WITHOUT THAT PHYSICIAN
CONSENTING AND I WILL REFER
JUSTICE LAWSON BACK TO THIS
APPLICATION, NOWHERE, AGREE TO
BE BOUND BY IS THERE A REFERENCE
TO A FAIR HEARING AND APPELLATE
REVIEW PROCEDURE OR ANY
PROCEDURE.

HE AGREED TO BE BOUND BY WHAT
THE HOSPITAL BYLAWS AND MEDICAL
STAFF BYLAWS AND RULES AND
REGULATIONS OF THE MEDICAL STAFF
AND DIRECTIVES OF THE MEDICAL
STAFF.

THE FAIR HERE AND APPELLATE
REVIEW PROCESS, NONE OF THOSE.
IN FACT IT EVEN STATES IN ITS
TEXT THAT WHEN IT IS
INCONSISTENT WITH HOSPITAL

BYLAWS THE PROVISIONS OF THE
FAIR HEARING AT APPELLATE REVIEW
PROCEDURE WILL CONTROL.
>> YOUR TIME HAS EXPIRED.
THANK YOU BOTH FOR YOUR
ARGUMENTS.