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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF VENTURA**

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| ASHRAF NASHED, M.D.,<br><br>Plaintiff(s),<br><br>vs.<br><br>LOS ROBLES HOSPITAL & MEDICAL CENTER; LOS ROBLES HEALTH SYSTEM; LOS ROBLES HOSPITAL AND MEDICAL STAFF, INC. *dba* MEDICAL STAFF OF LOS ROBLES HOSPITAL AND MEDICAL CENTER; MEDICAL EXECUTIVE COMMITTEE OF LOS ROBLES HOSPITAL & MEDICAL CENTER; BOARD OF TRUSTEES OF LOS ROBLES HOSPITAL & MEDICAL CENTER; LOS ROBLES REGIONAL MEDICAL CENTER, *and* DOES 1 *through* 10, *inclusive*,<br><br>Defendant(s). | Case No.:<br><br>**COMPLAINT FOR DAMAGES**<br><br>**(1) Violation of Constitutional Due Process**<br><br>**(2) Violation of Right to Fair Procedure** |

## PARTIES

1. Plaintiff Ashraf Nashed, M.D. ("Plaintiff" or "Dr. Nashed") is a physician duly licensed in the State of California. He practices in the County of Ventura and other counties in California.

2. Plaintiff is informed and believes, and on the basis of such information and belief alleges, that Defendant Los Robles Hospital & Medical Center ("Los Robles") is located in Thousand Oaks in the County of Ventura, State of California. Dr. Nashed is informed and believes that the hospital is owned by Los Robles Health System (Los Robles and Los Robles Health System will collectively be referred to as "Hospital").

3. Plaintiff is informed and believes, and on the basis of such information and belief alleges, that Defendant Los Robles Hospital & Medical Staff d/b/a Medical Staff of Los Robles Hospital & Medical Center ("Medical Staff") is comprised of physicians authorized to practice at Hospital. The Medical Executive Committee of Medical Staff is authorized to oversee, investigate and make recommendations regarding Medical Staff, subject to final decision of the Board of Trustee of the Hospital.

4. Plaintiff does not presently know the true names and capacities of the Defendants sued herein as Does 1 through 10, inclusive. Plaintiff will seek leave of court to amend this complaint to allege said Defendants' true names and capacities as soon as Plaintiff ascertains their identities.

5. Plaintiff is informed and believes, and on the basis of such information and belief alleges, that all Defendants acted as agents of, or on behalf of, each other.

## UNDERLYING FACTS

6. Dr. Nashed is a well-credentialed and highly-respected interventional cardiologist. He has been Board Certified in Interventional Cardiology by the American Board of Internal Medicine/Interventional Cardiology since 2004 and by the American Board of Internal Medicine/Cardiovascular Disease since 2001.

7. In July 2000, Dr. Nashed joined the Medical Staff and began treating patients at the Hospital[1]. Since July 2000, Dr. Nashed regularly and timely applied for reappointment of his privileges[2].

Concurrent Action Against Defendants

8. In November 2014, Dr. Nashed timely applied for reappointment to the Medical Staff and specifically for certain cardiology privileges.

9. On or about March 31, 2015, Dr. Nashed was granted reappointment privileges, but not in full. Medical Staff issued a proposed decision, subject to Dr. Nashed's exhaustion of his applicable statutory right to challenge the proposed decision, restricting Dr. Nashed's request for some cardiology service privileges, which would result in him not being able to perform certain procedures.

10. After having been given notice and an opportunity to request a hearing,[3] Dr. Nashed requested a hearing to challenge the recommendation to deny him full privileges. The hearing on this matter commenced in February 2016 and concluded four months later in June of 2016. The hearing was held before an arbitrator.

11. On December 1, 2017, the arbitrator issued a decision upholding the recommended action to deny these specific cardiology privileges. Dr. Nashed appealed the decision, as required by the bylaws, to the Hospital Board of Trustees. After both sides briefed the appeal, and had oral argument, on March 20, 2019 the Board of Trustees issued a final decision in the matter affirming the arbitrator's ruling.

12. On June 14, 2019, Dr. Nashed filed a verified petition for writ of mandamus against the Defendants pursuant to California Civil Procedure Code section 1094.5. The writ petition

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[1] California law mandates a physician peer review process for the credentialing of physicians treating patients in hospitals.

[2] Hospital require physicians to be recredentialed generally every two years, a process that includes answer questions and updating the medical staff on any developments since the last reappointment or initial appointment. For example, whether malpractice actions, medical board actions, or other discipline has been implemented against the applicant since the last appointment period.

[3] California Bus. & Prof. Code section 809 *et seq.* mandate that a physician denied privileges in a manner in which a report is required, is entitled to notice and a hearing. The Medical Staff's internal Bylaws also require notice and a hearing.

challenges the Hospital and Medical Staff's denial of his privileges. This is currently pending before Ventura County Court with Case No. 56-2019-00529474.

The Present Action

13. As Dr. Nashed was challenging his wrongful denial of full privileges, Los Robles continued to seek to restrict Dr. Nashed's privileges at the Hospital. Not content to have denied him the ability to perform full services, the Hospital now sought to restrict all his privileges.

14. Dr. Nashed is a highly trained cardiologist, who can perform both interventional cardiology procedures and also some interventional vascular procedures. His skill and dedication, rather than being admired by his peers, actually made him a target for their anti-competitive behavior. The vascular surgeons at the Hospital were unhappy with him performing services that took business away from them. This put a target on Dr. Nashed's back.

15. Because he still maintained all privileges at the Hospital other than the specific privileges denied after his reappointment in 2016, Dr. Nashed continued to provide services at the Hospital and regularly and timely sought reappointment. In or about April of 2019, Dr. Nashed sought reappointment at the Hospital.

16. As the reappointment application was continuing to go through the internal process, on August 8, 2019, Dr. Nashed's counsel sent a letter to the Medical Staff notifying them of a recent partial summary suspension at Adventist Health Simi Valley ("AHSV"), which was rescinded within approximately 3 months. Dr. Nashed made it clear to the Hospital and Medical Staff that he was challenging the AHSV action.

17. On August 20, 2019, Dr. Nashed was notified by the Medical Staff that his application for reappointment was "incomplete" and he had 30 days to make it complete or his reappointment application would be terminated[4]. The Medical Staff required that Dr. Nashed provide a large amount of documentation, much of which he did not have in his possession all of which related to the AHSV action. This letter set a deadline for September 17, 2019.

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[4] It is suspicious, and likely motivated by retaliation, that the Hospital and Medical Staff took such an aggressive approach against Dr. Nashed only 2 months after he filed his writ petition against them challenging the prior action.

18. Dr. Nashed did not receive the letter right away. In fact, it took several days for Dr. Nashed to receive the letter, which contained no tracking information in it. The deadline of September 17, 2019 was both arbitrary, in that it was less than the 30 days that are required by the Medical Staff Bylaws and also invalid since, after mail time, it afforded Dr. Nashed less than 30 days from the date of receipt.

19. Despite this, Dr. Nashed immediately sought to gather the documents and respond to the Medical Staff. Dr. Nashed spoke with the medical staff coordinator at AHSV and instructed her that she should send all the documents requested directly to the Hospital and Medical Staff. He was assured by her that this would occur. Dr. Nashed, who wanted to make sure his application was complete also reached out directly to the Medical Staff office about getting the documents himself and providing them to the Medical Staff. After speaking with two people, SM and MM, Dr. Nashed was told the records had to come from AHSV and not from him. Thus, it was disingenuous for the Medical Staff to demand that Dr. Nashed provide documents that were both not in his possession and not expected to come from him.

20. On September 17, 2019, Dr. Nashed sent to the Medical Staff all the documents in Dr. Nashed's possession at that time. 2 days later on September 19, 2019, Dr. Nashed, through his counsel, sent a letter to the Medical Staff's counsel notifying him that AHSV refused to turn over the requested records and that Dr. Nashed did not possess those materials being requested. Included in that letter, was a copy of Dr. Nashed's letter to AHSV concerning the summary suspension and his request for a hearing to contest those charges. Both of these correspondences were within 30 days of receipt of the August 20, 2019 letter.

21. On September 27, 2019, Dr. Nashed hand delivered a detailed explanation of what occurred at AHSV, including an explanation as to his mistaken believe that the information had been sent by AHSV to Los Robles. In that same letter, pursuant to Section 4.7 of the Medical Staff Bylaws, Dr. Nashed stated that good cause existed to provide him an extension on the deadline to provide the requested documents. Dr. Nashed once again reiterated that he was not provided the information requested from AHSV.

22. As of September 27, the Medical Staff had all the information it needed to adjudicate Dr. Nashed's application. Nonetheless, the Medical Staff refused to consider his application.

23. On that same day, September 27, a Friday, the Medical Staff, through counsel, sent Dr. Nashed a letter presuming without basis that "all of the other documents [except Dr. Nashed's explanation] appear to have been available and could have been provided to the Medical Staff well before September 19, 2019..." The Medical Staff's response was in bad faith for two reasons. First, there is absolutely no factual basis for the Medical Staff to have concluded that Dr. Nashed did in fact have these records in his possession. Second, September 19, 2019 was till within the 30 days from the date of the August 20 letter, and was certainly within 30 days of Dr. Nashed's receipt of the August 30th letter, which was not received by Dr. Nashed until approximately 7-10 days later, which means it was timely under the bylaws.

24. The Medical Staff refused to extend the time and instead stated that they could not extend the deadline to provide information beyond September 29, 2019, since that is the date of Dr. Nashed's privileges expiring if not reappointed sooner. The Medical Staff did have authority to either temporarily reappoint Dr. Nashed until his application could be finalized, or extend the deadline for his submission of his reappointment application. Considering he had had privileges since 2000, this was a reasonable step that the Hospital and Medical Staff could have taken.

25. Most shocking is that the Medical Staff's counsel indicated that nothing could be done to make a decision before September 29, a Sunday. The letter explained that there was no justification for calling an emergency Medical Staff meeting over the weekend, despite the dire consequences that Dr. Nashed would suffer as a result of terminating his application and the twenty years of service he had provided to the Hospital and Medical Staff.

26. Refusing to grant an extension and refusing to adjudicate his application, Dr. Nashed's reappointment application was terminated and he lost his privileges.

27. As a result of this action, Dr. Nashed has suffered significant financial harm as all of his business from the Hospital referrals is now lost, which consisted of more than 50% of his business prior to the termination.

## CAUSES OF ACTION

## FIRST CAUSE OF ACTION

(Violation of Due Process (42 U.S.C. § 1983)

against All Defendants and DOES 1-10)

28. Plaintiff realleges and incorporates by reference as set forth fully herein in all foregoing paragraphs of this complaint.

29. On or around September 29, 2019, Defendants terminated Dr. Nashed's application for reappointment thereby removing his medical staff privileges.

30. Dr. Nashed possessed both a property and a liberty due process interest in his medical staff position. Pursuant to the right of Due Process Clause of the Fourteenth Amendment to the United States Constitution, Dr. Nashed was entitled to notice and a timely hearing to challenge the termination of his medical staff membership and clinical privileges, prior to termination. Further, Dr. Nashed had a vested right to retain his credentials unless there was a valid substantive basis for terminating them.

31. Defendants' failure to provide Dr. Nashed with a pre-termination hearing has effectively denied him the opportunity to be heard at all, in violation of his procedural due process rights. This failure to provide Dr. Nashed with an adequate remedy excuses any requirement that he exhaust administrative remedies.

32. Defendants' failure to provide Dr. Nashed with the full complement of due process rights also excuses the requirement that he exhaust his administrative remedies prior to bringing this action by resulting in irreparable harm to Dr. Nashed.

33. As a result of Defendants' conduct, Dr. Nashed has suffered financial harm in lost revenue that continues to this day. In addition, he has suffered emotional distress as a result of the Defendants' wrongful conduct. Further, Dr. Nashed's patients at Los Robles were denied the opportunity to be treated by the preferred doctor, who is Dr. Nashed.

## SECOND CAUSE OF ACTION

(Violation of Fair Procedure

Against All Defendants and DOES 1-10)

34. Plaintiff realleges and incorporates by reference as set forth fully herein in all foregoing paragraphs of this complaint.

35. Pursuant to the common law right of fair procedure, Dr. Nashed was entitled to notice and hearing prior to any final action terminating his medical staff membership and clinical privileges. (*Anton v. San Antonio Community Hosp.* (1977) 19 Cal.3d 802, 818.) Further, pursuant to the common law right of fair procedure, Dr. Nashed had a vested right to retain his medical staff membership and clinical privileges unless there was a valid substantive basis for doing restricting them. (*Potvin v. Metropolitan Life Ins. Co.* (2000) 22 Cal.4th 1060, 1066.)

36. Defendants terminated Dr. Nashed's medical staff membership without providing him with notice and hearing, and without any valid substantive reason, in violation of his common law right to fair procedure.

37. Defendants failure to provide a hearing to Dr. Nashed excuses the requirement that he exhaust his administrative remedies prior to bringing this action, pursuant to *Westlake Community Hosp. v. Superior Court* (1976) 17 Cal.3d 465, 478.

38. As a result of Defendants' conduct, Dr. Nashed has suffered financial harm in lost revenue that continues to this day. In addition, he has suffered emotional distress as a result of the Defendants' wrongful conduct.

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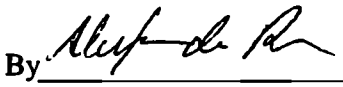
## PRAYER

WHEREFORE, Dr. Nashed prays for the following:

1. Compensatory damages, for economic injury and emotional distress suffered;
2. Punitive damages against the Hospital and Medical Staff;
3. Injunctive relief;
3. Reasonable attorneys' fees and costs;
4. Any such other relief deemed appropriate by the Court; and
5. Immediate reinstatement to the Medical Staff.

FENTON LAW GROUP, LLP

DATED: October 8, 2020

By 

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