IN THE SUPREME COURT OF THE STATE OF NEVADA

RAJEEV S. KHAMAMKAR, M.D.,
Appellant,
vs.
SPECIALTY SURGICARE OF LAS VEGAS, L.P.; STAN FREEMAN, M.D.; AND KATHY KING, R.N.,
Respondents.

No. 88041

FILED

NOV 21 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER VACATING AND REMANDING

This is an appeal from a district court order granting summary judgment in a suit involving the suspension of a physician's clinical privileges. Eighth Judicial District Court, Clark County; Adriana Escobar, Judge. The district court erred in resolving the case based on respondents' motion to dismiss or for summary judgment without allowing discovery under NRCP 56(d). We therefore vacate and remand for further proceedings.

Facts and Procedural History

Appellant Rajeev Khamamkar, M.D., is a licensed anesthesiologist who has practiced in Nevada for decades at multiple medical centers. He held clinical privileges at respondent Specialty Surgicare of Las Vegas, L.P.,[1] an outpatient surgical center, from 1998 until 2020. When COVID-19 broke out, Specialty Surgicare began requiring health screenings for staff and patients. As part of those screening

[1]Pursuant to a stipulation of the parties, the district court entered an order substituting Specialty Surgicare in the place of HCA Healthcare, Inc., an entity that was initially identified as a respondent in this appeal. Accordingly, we direct the clerk of this court to revise the case participants list and caption on this matter to conform to this order.

procedures, a staff member would take the temperature of each person—including physicians—entering the facility.

In April 2020, Specialty Surgicare summarily suspended Dr. Khamamkar's privileges to practice at its facility. Its medical director, respondent Stan Freeman, M.D., notified Dr. Khamamkar of his suspension by letter dated April 28, 2020. As the basis for the suspension, Dr. Freeman's letter explained that "[o]n both April 23 and April 24 Surgery Center staff attempted to perform a temperature screening on you," which I "attempted to discuss" with you "but you did not return [my] telephone calls." The letter concluded that "your conduct presents an immediate risk of substantial harm to the health and safety of patients," warranting summary suspension, "effective immediately."

Dr. Khamamkar responded to Dr. Freeman by emailed letter on May 12, 2020. In his letter, Dr. Khamamkar stated that the suggestion in Dr. Freeman's letter that he refused to have his temperature taken was "false" and represented that he submitted to temperature testing on both April 23 and 24. He wrote that, while he had voiced concerns about temperatures being taken in an unsafe manner, staff had addressed his concerns and his temperature was taken both days.

But on May 4, 2020, roughly a week before Dr. Khamamkar sent his letter, Specialty Surgicare's medical executive committee (MEC) met, suspended his privileges indefinitely, and voted to recommend that his privileges be revoked. Dr. Freeman chaired the three-member MEC and respondent Kathy King, R.N., the facility's administrator, was the MEC's scribe and an ex officio member. The MEC's May 4 minutes report that its members found that Dr. Khamamkar "did not comply with the facility policies for screening of temperature and COVID related symptoms . . . on

two consecutive days, April 23rd and April 24th." On May 15, 2020, Dr. Freeman wrote Dr. Khamamkar to advise him of the MEC's decision and his right to request a hearing before an ad hoc hearing committee selected by the MEC. This letter states that the MEC based its decision on Dr. Khamamkar's "non-compliant and disruptive" disregard of Specialty Surgicare's policies and practices, citing not only the April 23 and 24 incidents but also two prior write-ups in 2019 involving his billing practices and disregard of the pharmacy lock-box policy.

Dr. Khamamkar retained counsel and requested an ad hoc committee hearing. Before the hearing, he asked that Specialty Surgicare produce documents and witnesses under its control that could shed light on the investigation and suspension decision. The hearing officer determined that, although Dr. Khamamkar could request that witnesses attend, the committee lacked subpoena power and he could not compel their attendance. As a result, Dr. Khamamkar only presented his own testimony. Specialty Surgicare presented witnesses against Dr. Khamamkar, whom his lawyer cross-examined.

At the hearing, Dr. Khamamkar disputed Specialty Surgicare's characterization of events. He testified that he lived with multiple, highly at-risk family members when the pandemic broke out. When Specialty Surgicare resumed elective surgeries in early April 2020, he was concerned about and objected to the risk of infection its method of taking temperatures posed. Specifically, Dr. Khamamkar objected to Specialty Surgicare taking temperatures using the same thermometer multiple times without disposable caps and, in his opinion, without adequately disinfecting the thermometer between uses. Thereafter, he asked to be screened via alternative, safer methods whenever he entered the center. Dr.

Khamamkar also testified to his belief that the suspension was in retaliation for raising health and safety concerns that could have jeopardized the center's ability to perform elective surgeries in the early months of the pandemic. And he also testified to the ill will that had arisen between him and respondents Dr. Freeman and King as a result of the billing and pharmacy lock-box disputes in 2019.

At the hearing, Specialty Surgicare acknowledged that, in fact, Dr. Khamamkar did submit to temperature testing on both April 23 and 24. However, its witnesses testified that Dr. Khamamkar's criticism of their temperature screening methods was unfounded and that on April 24 Dr. Khamamkar entered an area he should not have while waiting to have his temperature taken with a single-use testing strip. In addition to testimony, the hearing committee considered documents that were provided, including Dr. Khamamkar's peer review history and the variance reports for April 23 and 24. Dr. Khamamkar, however, insists the committee based its decision on information he never received.

After the hearing concluded, the hearing committee orally found that Dr. Khamamkar had "failed to cooperate with Specialty Surgery Center's efforts to COVID [sic]," and that "he left the pharmacy lockbox unattended, which was an issue, the engagement of false billing practices also, [and] acted in a rude and . . . unprofessional manner." Based on these findings, the hearing committee concluded that suspension was warranted, to last until Dr. Khamamkar completed courses on anger management and on proper billing and safety of controlled substance devices. The MEC adopted the hearing committee's recommendations, although they added a requirement that Dr. Khamamkar reapply for privileges after completing

the corrective actions. Dr. Khamamkar pursued an internal appeal to Specialty Surgicare's governing body, which evidently was denied.

Thereafter, Dr. Khamamkar sued respondents Specialty Surgicare, Dr. Freeman, and King. In his complaint, Dr. Khamamkar seeks both money damages and equitable relief. Specifically, he seeks a declaration that he was wrongfully suspended in violation of Specialty Surgicare's bylaws and federal law, and an order requiring that Specialty Surgicare withdraw "all derogatory information" it supplied to the National Provider Data Bank. Dr. Khamamkar alleges that because of his reported suspension he has been unable to obtain "any work as an anesthesiologist at any new surgery centers."

Respondents did not answer the complaint. Instead, they immediately filed a motion to dismiss or, in the alternative, for summary judgment, invoking the Health Care Quality Improvement Act (HCQIA), which conditionally shields peer review boards from liability for damages. *See* 11 U.S.C. § 11111(a)(1). Dr. Khamamkar opposed the motion on the merits; he also asked under NRCP 56(d) that the court deny the motion or defer consideration of it until he could conduct discovery into facts needed to meaningfully oppose it. The district court granted summary judgment in favor of respondents and denied Dr. Khamamkar's NRCP 56(d) request for discovery, finding that HCQIA immunity blocked all of Dr. Khamamkar's claims.

Dr. Khamamkar contests this decision on appeal, arguing HCQIA immunity does not bar his declaratory relief claim, summary judgment was improper because questions of fact remain regarding HCQIA immunity, and the district court improperly denied his NRCP 56(d) request.

Discussion

Summary judgment determinations are ordinarily reviewed in "a light most favorable to the nonmoving party." *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). But in HCQIA cases, it is presumed that the peer review action met the requirements for qualified immunity "unless the presumption is rebutted by a preponderance of the evidence." 11 U.S.C. § 11112(a). This creates an unusual summary judgment standard, in which the defendant is "entitled to summary judgment unless a reasonable trier of fact, viewing the facts in the light most favorable to [the plaintiff], could conclude that [the plaintiff has] shown by a preponderance of the evidence that [the defendant's] actions fail to satisfy at least one of the [HCQIA immunity statute's] provisions." *Clark v. Columbia/HCA Info. Servs., Inc.*, 117 Nev. 468, 476-77, 25 P.3d 215, 221 (2001).

Congress enacted the HCQIA "to provide for effective peer review and . . . qualified immunity for peer review participants." *Id.* at 476, 25 P.3d at 221. Qualified immunity applies "if the peer review action meets the due process requirements and the fairness standards set forth in 42 U.S.C. § 11112(a)." *Id.* HCQIA immunity attaches when the peer review action was taken:

> (1) in the reasonable belief that the action was in the furtherance of quality health care,
>
> (2) after a reasonable effort to ascertain the facts of the matter,
>
> (3) after adequate notice and hearing procedures were afforded to the physician involved or after such other procedures as are fair to the physician under the circumstances, and
>
> (4) in the reasonable belief that the action was warranted by the facts known after such

> reasonable effort to obtain facts and after meeting the requirement of paragraph (3).

42 U.S.C. 11112(a). Broad though HCQIA immunity is, "a plaintiff need only show that any one of these four standards was not met" to rebut the immunity presumption. *Kalan v. MedStar-Georgetown Med. Ctr., Inc.*, 253 A.3d 123, 128 (D.C. App. 2021) (quoting *Peper v. St. Mary's Hosp. & Med. Ctr.*, 207 P.3d 881, 887 (Colo. App. 2008)).

The district court granted summary judgment in favor of respondents because it concluded Dr. Khamamkar did not provide evidence to overcome HCQIA's immunity presumption. Without ruling on the merits of the respondents' immunity claim, we reverse and remand for two reasons. First, the immunity HCQIA extends to peer review actions applies to liability for money damages, not declaratory relief. 42 U.S.C. § 11111(a)(1). Second, Dr. Khamamkar was entitled to at least limited discovery before summary judgment was granted against him; the record was not "sufficiently developed" for judgment to be entered in respondents' favor as a matter of law. *See Meyer v. Sunrise Hosp.*, 117 Nev. 313, 322, 22 P.3d 1142, 1149 (2001) ("Whether [a defendant is] entitled to summary judgment because of immunity under HCQIA is a 'question of law for the court to decide *whenever the record is sufficiently developed.*'") (emphasis added) (quoting *Egan v. Athol Mem'l Hosp.*, 971 F. Supp. 37, 42 (D. Mass. 1997)).

HCQIA does not bar Dr. Khamamkar's declaratory relief claim

The district court applied HCQIA immunity to the declaratory relief claim. It is well settled that HCQIA only immunizes peer reviewers from money damage claims, not declaratory relief. *See* 42 U.S.C. § 11111(a)(1)(D) (noting that peer reviewers "shall not be liable *in damages*") (emphasis added); *Meyer*, 117 Nev. at 321 & n.4, 22 P.3d at 1148 & n.4 (explaining the HCQIA "essentially shield[s] the participants from liability

in damages" and "emphasiz[ing] that the immunity provided under the HCQIA is not absolute"); *Chudacoff v. Univ. Med. Ctr. of S. Nev.*, 609 F. Supp. 2d 1163, 1174 (D. Nev. 2009) (peer-review "HCQIA immunity is immunity from damages only") (internal quotation omitted). The district court therefore erred by applying HCQIA immunity to bar Dr. Khamamkar's request for declaratory relief.

Respondents contend that Dr. Khamamkar waived this issue, but the record belies this contention. In his opposition to the summary judgment motion, Dr. Khamamkar argued that HCQIA immunity applies only to monetary damages and "does not protect Defendants from injunctive or other equitable relief or actions that do not fall under this limited category [of money damages]." This issue was therefore preserved.

Summary judgment was premature on Dr. Khamamkar's other claims, and the district erred in denying his Rule 56(d) motion

No discovery occurred in this case, because respondents did not answer the complaint. Instead, they immediately filed a motion to dismiss or, in the alternative, for summary judgment, which the district court granted. With no discovery, it is unclear whether Dr. Khamamkar can rebut the HCQIA immunity that would otherwise bar his non-declaratory relief claims. The district court should have granted Dr. Khamamkar's Rule 56(d) motion seeking discovery bearing on the immunity issue before resolving the case on summary judgment. "Summary judgment is improper when a party seeks additional time to conduct discovery to compile facts to oppose the motion." *Aviation Ventures, Inc. v. Joan Morris, Inc.*, 121 Nev. 113, 118, 110 P.3d 59, 62 (2005). This is especially true where, as here, the party seeking discovery presents a properly supported NRCP 56(d) motion showing that its adversary controls access to the facts needed to oppose

summary judgment. *Choy v. Ameristar Casinos, Inc.*, 127 Nev. 870, 872, 265 P.3d 698, 700 (2011).

We recognize that Congress "intended the HCQIA to permit defendants . . . to file motions to resolve the issues concerning immunity from monetary liability as early as possible in the litigation process" and a court may therefore decide HCQIA immunity "whenever the record in a particular case becomes sufficiently developed." *Bryan v. James E. Holmes Reg'l Med. Ctr.*, 33 F.3d 1318, 1332 (11th Cir. 1994). However, determining whether HCQIA immunity applies is a fact-intensive inquiry and the plaintiff's burden of proving noncompliance by a preponderance of the evidence "implies some opportunity [for a physician] to discover relevant evidence." *Brader v. Allegheny Gen. Hosp.*, 64 F.3d 869, 879 (3d Cir. 1995); *accord Kalan*, 253 A.3d at 130 (stating that "the requirement that a plaintiff rebut the presumption of damages immunity under the HCQIA by showing that a hospital has failed to satisfy one or more of the four standards set forth in § 11112(a) [requires] a fact-intensive assessment of the 'reasonable[ness] of a hospital's actions and the 'adequa[cy] of its procedures 'under the circumstances,' 42 U.S.C. § 11112(a)(1)-(4), which likely will require discovery and development of the record"). Indeed, this court has recognized the appropriateness of allowing discovery before resolving a claim of HCQIA immunity on a motion for summary judgment. *See Meyer*, 117 Nev. at 320-21, 22 P.3d at 1148 (affirming summary judgment for the hospital based on HCQIA immunity but noting that the district court had denied the hospital's motion to dismiss and allowed a year of discovery before it decided the case on summary judgment).

The discovery Dr. Khamamkar seeks may rebut one or more of the four HCQIA immunity standards. Dr. Khamamkar maintains that his

objection to Specialty Surgicare's temperature screenings concerned their insufficiency and the health threat they posed. He avers that Dr. Freeman suspended him and instigated the peer review action for the purpose of retaliating against him for raising those concerns and that the reports of him avoiding temperature screenings are, at best, exaggerated and, at worst, false. Pointing to Dr. Freeman's membership on the MEC and his and the MEC's role throughout the proceedings, Dr. Khamamkar questions whether the investigation was reasonable and whether the true facts were known and shared with the reviewers by Dr. Freeman and nurse King. He contends the billing and lockbox issues were resolved in 2019 and dredged up once it became clear that he had his temperature taken on April 23 and 24. He also contends that the billing issue did not qualify for HCQIA immunity in any event, *see* 42 U.S.C. § 11151(9) (providing that there is no "professional review action" for purposes of immunity if the "action is primarily based on" the "physician's fees"), a contention respondents dispute. In respondents' view, the prior incidents demonstrate a history of disruptive behavior that itself supports qualified immunity. *See Straznicky v. Desert Springs Hosp.*, 642 F. Supp. 2d 1238, 1247-48 (D. Nev. 2009); *Sternberg v. Nanticoke Mem'l Hosp., Inc.*, 15 A.3d 1225, 1233 (Del. 2011). But without discovery, we cannot fairly evaluate whether the peer review process was objectively unreasonable. Rendering Dr. Khamamkar's theory of the case more plausible is his allegation that he was treated differently from other doctors in regard to the COVID-19 screening rules and his submission of a sworn declaration from another Specialty Surgicare employee attesting to this disparate treatment.

Respondents argue, and the district court held, that the discovery Dr. Khamamkar sought is irrelevant, because allegations that a

disciplinary action was motivated by retaliation, personal dislike, or other subjective bias do not establish that the action was not "in the furtherance of quality health care." 42 U.S.C. 11112(a)(1). Alone, these subjective motives are insufficient to rebut HCQIA immunity. *Meyer*, 117 Nev. at 323, 22 P.3d at 1149. Nevertheless, the immunity presumption is rebuttable, not absolute. If the totality of the evidence shows that the initiation of a peer review disciplinary process was "objectively unreasonable," *Clark*, 117 Nev. at 478, 25 P.3d at 222, then a plaintiff may overcome HCQIA immunity.

In *Clark*, for example, this court recognized that retaliatory suspensions may overcome HCQIA immunity. There, the facts showed that the doctor reported "perceived improper hospital conduct to the appropriate outside agencies, or whistleblowing" and that the hospital's motive for thereafter revoking the doctor's privileges was to retaliate for the doctor's whistleblowing activity, not to further quality health care. *Id.* at 478-79, 25 P.3d at 222-23. Importantly, the fact that there was "one instance of an objective basis for discipline" did not "permit a hospital to claim immunity under § 11112(a)(1)" in such a situation "since we review a peer review board's decision under the totality of circumstances." *Id.* at 479-80, 25 P.3d at 223. While Dr. Khamamkar did not report his concerns about Specialty Surgicare's temperature screening protocols to outside authorities, making *Clark* distinguishable, its recognition that subjective motivations may be considered in assessing the totality of circumstances is nonetheless instructive.

Other jurisdictions have recognized that a showing of bias plus evidence of manufactured or exaggerated charges, economic motivation, or retaliation by an individual in a position to influence the disciplinary

proceeding may rebut the HCQIA presumption. *See, e.g., Egan v. Athol Mem'l Hosp.*, 971 F. Supp. 37, 44 (D. Mass. 1997), *aff'd*, 134 F.3d 361 (1st Cir. 1998) (noting that, "had the review committee consciously joined with members of the hospital staff to manufacture or exaggerate incidents or had anyone been economically motivated to conspire to restrain plaintiff's practice, defendants would be unreasonable to believe their conduct constituted a legitimate peer review"); *Brown v. Presbyterian Healthcare Servs.*, 101 F.3d 1324, 1335 (10th Cir. 1996) (affirming denial of HCQIA immunity where an individual who influenced the disciplinary proceeding exhibited discrimination, bias, and economic motivation and the objective facts did not support the charges); *Freilich v. Upper Chesapeake Health Sys., Inc.*, 33 A.3d 932, 941-42 (Md. App. 2011) (observing that HCQIA immunity is a "totality of the circumstances inquiry" and that "retaliatory animus" could have "prevented the defendant from making a reasonable effort to obtain the facts or supplanted the required reasonable belief that the professional review was . . . in the furtherance of quality of healthcare"); *see also Meyer*, 117 Nev. at 325 n.5, 22 P.3d at 1151 n.5 (affirming summary judgment over doctor's argument that the hospital disciplined the doctor to avoid liability or a COBRA investigation, not to further quality health care, but noting that "there will be instances where the subjective motives of the peer review committee will be relevant in determining HCQIA immunity" and citing examples).

Dr. Khamamkar's attorney submitted a 17-page affidavit in support of his NRCP 56(d) request for the opportunity to take discovery before opposing respondents' motion to dismiss or for summary judgment. The affidavit detailed facts Dr. Khamamkar needed discovery to obtain. Without discovery, Dr. Khamamkar would have no way to access facts

indicating his dismissal was a sham or due to retaliation, as those facts are under Specialty Surgicare's control. And, those facts Dr. Khamamkar seeks to discover according to that affidavit and his opening brief, if true, may rebut HCQIA immunity presumption under the narrow rule that *Meyer* and *Clark* recognize. Under NRCP 56(d), further discovery is appropriate before resolving respondents' claims to HCQIA immunity.

Accordingly, we

ORDER the judgment of the district court VACATED AND REMAND this matter to the district court for proceedings consistent with this order.

_____, C.J.
Herndon

_____, J.
Pickering

_____, J.
Parraguirre

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Bell

_____, J.
Stiglich

_____, J.
Cadish

_____, J.
Lee

cc: Hon. Adriana Escobar, District Judge
Kristine M. Kuzemka, Settlement Judge
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Eighth District Court Clerk