

University of Colorado Law School

Colorado Law Scholarly Commons

Colorado Supreme Court Records and Briefs Collection

6-12-1984

Ad Hoc Executive Committee of Medical Staff of Memorial Hospital v. Runyan

Follow this and additional works at: <https://scholar.law.colorado.edu/colorado-supreme-court-briefs>

Recommended Citation

"Ad Hoc Executive Committee of Medical Staff of Memorial Hospital v. Runyan" (1984). *Colorado Supreme Court Records and Briefs Collection*. 1990.

<https://scholar.law.colorado.edu/colorado-supreme-court-briefs/1990>

This Brief is brought to you for free and open access by Colorado Law Scholarly Commons. It has been accepted for inclusion in Colorado Supreme Court Records and Briefs Collection by an authorized administrator of Colorado Law Scholarly Commons. For more information, please contact rebecca.ciota@colorado.edu.

FILED IN THE
SUPREME COURT
OF THE STATE OF COLORADO

JUN 12 1984

COLORADO SUPREME COURT
Case No. 84SA10

David W. Brainerd

THE AD HOC EXECUTIVE COMMITTEE OF THE MEDICAL STAFF OF THE MEMORIAL HOSPITAL; DR. T SCOTT BRASSFIELD, DR. ELMER MONAHAN, and DR. LAWRENCE POST, individually and as members of the Ad Hoc Executive Committee of the Medical Staff of the Memorial Hospital; THE HEARING PANEL OF THE MEDICAL STAFF OF THE MEMORIAL HOSPITAL; DR. ANDRE HUFFMIRE, DR. ALLAN REISHUS, DR. THOMAS YOUNG, DR. GEORGE BOCK, individually and as members of the Hearing Panel of the Medical Staff of the Memorial Hospital; DR. DAVID JAMES, individually and as Chief of Staff of the Memorial Hospital; MARY LYNN JAMES and LORINDA K. TUCKER, as residents and taxpayers of Moffat County, Colorado.

Plaintiffs-Appellees,

v.

ROBERTA RUNYAN; JAMES E. SEVERSON; KEITH COUNTS; JOYCE LEANDER; NEIL McCANDLESS; BRUCE SEELEY and LOUISE MILLER as the BOARD OF TRUSTEES FOR THE CRAIG MEMORIAL HOSPITAL, a county hospital; THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF MOFFAT, STATE OF COLORADO; and DR. THOMAS TOLD,

Defendants-Appellants.

OPENING BRIEF OF APPELLANT
MEMORIAL HOSPITAL BOARD OF TRUSTEES

Donley K. Rees, No. 10662
Attorney for Defendant-
Appellant Memorial Hospital
Board of Trustees
439 Breeze Street, Suite 203
Craig, Colorado 81625
Telephone: (303) 824-3409

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	ii
ISSUES PRESENTED	1
STATEMENT OF THE CASE	1
SUMMARY OF ARGUMENT	3
ARGUMENT	4
I. The Trial Court lacked jurisdiction to review the Board of Trustee decision	4
II. The Executive Committee did not have standing to seek judicial review of the Board of Trustee decision.	5
III. The Trial Court erroneously held The Board was required to find the Hearing Committee's decision was arbitrary and capricious in order to reverse the Hearing Committee	6
CONCLUSION	8
CERTIFICATE OF MAILING	9

TABLE OF AUTHORITIES

STATUTES

Page

C.R.S. section 25-3-301.

4

C.R.S. section 25-3-302.

4

C.R.S. section 25-3-304.

4

C.R.S. section 12-43.5-101 et.seq.

4

CASES

Corper v. City and County of Denver, 552 P.2d 13 (1976)

7

Leonard v. Board of Directors, Colo.Ct.App., No. 81 C.A.
0428, Volume 7 Brief Times Reporter, Issue No. 43,
page 994, November 4, 1983

7

Snyder v. City of Lakewood, 542 P.2d 371 (1975)

5

ISSUES PRESENTED

1. Whether the Trial Court erred in ruling it had jurisdiction to review a Board of Trustees appellate review decision under C.R.C.P. 106(a)(4)?
2. Whether the Trial Court erred in ruling the Ad Hoc Executive Committee of the Medical Staff had standing to seek judicial review?
3. Whether the Trial Court erred in ruling the Board was required to find the Hearing Committee's decision was arbitrary and capricious in order to reverse the Hearing Committee.

STATEMENT OF THE CASE

Defendant-Appellant Board of Trustees appeal an Order of the Moffat County District Court which reversed a decision of the Board of Trustees. The Board of Trustees voted to reverse a prior decision of the hospital Medical Staff which recommended suspension of Defendant-Appellant Dr. Told's staff privileges for 30 days. The Medical Staff suspended Dr. Told for making statements to a hospital patient.

On November 3, 1982 the Ad Hoc Executive Committee of the Medical Staff (hereinafter "Executive Committee") of the Memorial Hospital conducted an investigation culminating in a hearing. This Committee recommended disciplinary sanctions against Dr. Told for making unprofessional statements.

Dr. Told perfected an appeal to the Medical Staff Hearing Committee (hereinafter "Hearing Committee") of the Memorial Hospital. The Hearing Committee conducted a hearing on January 12, 1983. The Hearing Committee upheld the recommendations of the Executive Committee suspending Dr. Told's staff privileges for 30 days. The Hearing Committee also recommended that Dr. Told be assigned to associate staff status and undergo psychological counseling as a condition for reinstatement.

Dr. Told perfected an appeal of the Hearing Committee decision to the Board of Trustees. A hearing was held on March 15, 1983. The Board of Trustees voted 4-3 to reverse the decision of the Hearing Committee.

The Plaintiffs-Appellees, on April 12, 1983, filed a Complaint For Relief Pursuant to C.R.C.P. Rule 106(a)(4) in the Moffat County District Court. The Complaint alleged the Board of Trustees' decision was arbitrary, capricious, and an abuse of discretion. The Complaint prayed for reversal of the Board of Trustee decision. Dr. Told filed a Motion to Dismiss which was denied on October 18, 1983 in an Order of the Trial Court. After briefs were filed by the parties, the Trial Court entered its Order of December 21, 1983 vacating the decision of the Board of Trustees. This Order effectively re-instated the Hearing Committee recommendation of a 30 day suspension of Dr. Told's staff privileges.

STATEMENT OF FACTS

The Rule 106(a)(4) Complaint and this appeal raise issues of law. It is respectfully suggested that a Statement of Facts is not necessary to determine this appeal.

SUMMARY OF ARGUMENT

The Trial Court lacked jurisdiction to review the Board of Trustee decision. Rule 106(a)(4) confers upon the Trial Court's jurisdiction to review only "judicial" or "quasi-judicial" decisions. The Board of Trustees have ultimate authority and discretion to select staff members independent of any criteria. The Board of Trustee decision was not quasi-judicial and therefore not subject to review by a Trial Court under Rule 106(a)(4).

The Trial Court erred by ruling the Executive Committee had standing to appeal the Board of Trustee decision. There is no statutory appeal right and none created by the Hospital Bylaws and Rules and Regulations.

The Trial Court failed to recognize the Bylaw direction to the Board in appellate review cases. The Board can affirm, modify or reverse the Hearing Committee decision. The Board is not bound by the Hearing Committee decision unless the Board can find the Hearing Committee decision is arbitrary or capricious as the Trial Court ruled.

ARGUMENT

I. The Trial Court lacked jurisdiction to review the Board of Trustee decision.

The Memorial Hospital is a county hospital created by C.R.S. 25-3-301. The Board of Trustees are appointed by the County Commissioners to manage the hospital. C.R.S. 25-3-302 allows the Board to adopt bylaws, rules and regulations to guide the hospital and the Board. C.R.S. 25-3-304 authorizes the Board to "hire, retain and remove agents and employees, including administrative, nursing and professional personnel. . . ."

The statutes also create peer review committees as the Trial Court noted, C.R.S. 12-435-101, et.seq. However the peer review committee can only recommend discipline of a physician to the Board of Trustees. The ultimate authority on staff privileges and discipline is with the Board of Trustees.

The Bylaws and Rules and Regulations of the Memorial Hospital (hereinafter "the Bylaws") do not contain any limitation on the Board's powers to review a physician. Bylaw Article X, Section 6(I) specifically provides:

"(the) Board may affirm, modify or reverse the adverse decision or action, or in its discretion, may refer the matter back to the Hearing Committee for further review and recommendation. . . ."

The Bylaws do not provide a standard of proof which the Board must follow when setting in an appellate capacity reviewing staff recommendations. The Bylaws do impose a burden of proof in

proceedings before the Hearing Committee.

It is now apparent that neither statutes nor Bylaws restrict the Board's authority when the Board acts in an appellate review capacity. There are no criteria established by law which the Board must apply to the facts of each review.

Rule 106(a)(4) C.R.C.P. grants Trial Court's jurisdiction only where an inferior tribunal in exercising judicial or quasi-judicial functions has exceeded its jurisdiction or abused its discretion and there is no other remedy. The central question upon which jurisdiction turns is: what is a quasi-judicial function? In Snyder v. City of Lakewood, 542P.2d371(1975) this Court ruled that agency action is quasi-judicial when the action is authorized by a state or local law which forces the agency to "make a determination by applying the facts of a specific case to certain criteria established by law."

In the case at bar the Board of Trustees had facts to apply but no criteria established by statute or Bylaw. Therefore the Board of Trustees were not exercising a quasi-judicial function and the Trial Court lacked Rule 106(a)(4) jurisdiction. The District Court's decision that it had jurisdiction must be reversed.

II. The Trial Court erroneously ruled the Ad Hoc Executive Committee had standing to seek judicial review.

The Trial Court ruled that of the named Plaintiffs only the

Executive Committee had standing by virtue of its status as a party in the prior proceedings.

The Executive Committee does not exist as a legal entity in the statutes nor do our statutes create an appeal privilege in the Executive Committee. In a disciplinary action the Executive Committee is to investigate, prosecute and determine requests for corrective action. The Bylaws do not direct the Executive Committee to prosecute judicial review of Board of Trustee decision.

Absent statutory or Bylaw authority to seek judicial review the Trial Court erred in ruling the Executive Committee had standing; participation in prior hearings is simply insufficient to convey standing.

The decision of the Trial Court must be reversed.

III. The Trial Court erroneously held the Board was required to find the Hearing Committee's decision was arbitrary and capricious in order to reverse the Hearing Committee.

The Trial Court found the Hearing Committee had made certain findings of fact concerning Dr. Told. The Trial Court then reasoned that the Board, in order to reverse the Hearing Committee, must make contrary findings of fact. In other words, only if the Board could find the Hearing Committee's findings were arbitrary, unreasonable or capricious could the Board reverse the

Hearing Committee decision.

This decision of the Trial Court ignored both administrative law and the hospital Bylaws.

This Court in Corper v. City and County of Denver, 552 P.2d 13 (1976) ruled that a Trial Court exercising jurisdiction in Rule 106(a)(4) cases may overturn a decision only if the decision is not supported by any competent evidence. The Plaintiff was assigned the burden of proving the decision was arbitrary and capricious. Decisions of administrative boards are presumed to be regular and valid unless a Plaintiff carries his burden. Leonard v. Board of Directors, Colo.Ct.App., No. 81C.A.0428, Volume 7 Brief Times Reporter, Issue No. 43, page 994, November 4, 1983.

The Plaintiff failed to prove the Board of Trustee decision reversing the Hearing Committee was not supported by any evidence. The Board did not have the burden to prove its decision was supported by competent evidence. The Trial Court erroneously assigned to the Board the burden of proof by finding that only if the Hearing Committee decision was arbitrary, unreasonable or capricious could that decision be reversed.

The Trial Court makes the above ruling by finding that the Bylaws require the Hearing Committee to make a written report of its findings and recommendations. While the Bylaws do require written findings by the Hearing Committee, those Bylaws do not


require written findings of the Board. The Board, setting in an appellate review capacity is charged by the Bylaws to "affirm, modify or reverse the adverse decision or action. . ." Bylaws Article X, section 6(I). The Bylaws do not provide the Board any standards or criteria to apply in making its decision to affirm, modify or reverse. The Trial Court creates a standard in its ruling which is not present in the Bylaws.

If the Board must affirm the Hearing Committee in every instance except those where the Board could find the Hearing Committee decision was arbitrary, unreasonable or capricious the Bylaw power to "affirm, modify or reverse" becomes meaningless. The Trial Court ruling eliminates the discretion vested in the Board and eliminates the power to "affirm, modify or reverse" given by Hospital Bylaw. For this reason, the Trial Court decision is erroneous and must be reversed.

CONCLUSION

For all of the foregoing reasons, the District Court erred in vacating the decision of the Board of Trustees. The District Court's decision must be reversed and the decision of the Board of Trustees reinstated.

Respectfully Submitted


Donley K. Rees 10662
439 Breeze Street, Suite 203
Craig, Colorado 81625
303-824-3409
Attorney for Defendant-Appellant
Board of Trustees

CERTIFICATE OF MAILING

This is to certify that a true and correct copy of the above and foregoing Opening Brief of Appellant Board of Trustees has been served upon the following counsel by depositing the same properly addressed and postage prepaid in the United States Mail this 11th day of June, 1984.

Harry A. Tucker, Jr.
562 Barclay
Craig, Colorado 81625

Thomas C. Thornberry
555 Breeze Street, Suite 250
Criag, Colorado 81625

Charles E. Norton
Charles B. Hecht
One United Bank Center
1700 Lincoln Street, Suite 3800
Denver, Colorado 80203


Donley K. Rees