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TO: MEMBERS OF THE LONG ISLAND JEWISH ORGANIZED MEDICAL STAFF

An interesting case was recently reported in this month's New York State Bar's Law Journal, It was a matter before the Supreme Court of the State of New York, concerning a plaintiff physician who claimed that she was subjected to discrimination due to her race and gender, purportedly resulting in her demotion, restrictions being placed on her hospital privileges and the termination of her employment.

The plaintiff also claimed that the hospital's report to the National Practitioner Data Bank concerning the restriction of her privileges was defamatory.

In the pleadings the plaintiff alleged that she was treated disparately from her colleagues and that she was demoted without notice or cause, based on surgical complications and was treated differently than similarly situated male colleagues who committed similar actions.

The Plaintiff requested an administrative hospital hearing but that hearing was still pending when the plaintiff commenced the action.

The defendant-hospital moved to dismiss the complaint, arguing that the Court did not have jurisdiction because she failed to comply with the administrative grievance procedure required by Public Health Law (PHL) §2801-b.

The Court reviewed the statutory procedure under which a physician may challenge a termination of privileges and found that such procedure does require a physician to first file a complaint with the Public Health and Health Planning Council -PHHPC-for review.

The court found that only AFTER the PHHPC review is exhausted may a physician seek redress in court.

Plaintiff's last argument was that the complaint was not subject to dismissal as it was a claim for discrimination, rather than challenging the termination of her privileges, however the court ruled that the claims before the court arose from the restriction of her privileges and on that end, the plaintiff did not exhaust her administrative remedies.

On a final note, the court dismissed the defamation claim. The court found that the alleged defamatory statements – concerning the hospital's concerns over plaintiff's "character" and "honesty" – constituted non-actionable opinion.

Word of caution, if one is to challenge a hospital restriction or termination, the appropriate protocols must be adhered to challenge, to ensure your day in court.

Respectfully submitted.

Schaum Law