| SUPERIOR COURT OF CALIFORNIA<br>COUNTY OF LOS ANGELES | Reserved for Clerk's File Stamp<br>**FILED**<br>Superior Court of California<br>County of Los Angeles<br>06/22/2021<br>Sherri R. Carter, Executive Officer / Clerk of Court<br>By: F. Becerra Deputy |
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| COURTHOUSE ADDRESS:<br>Stanley Mosk Courthouse<br>111 North Hill Street, Los Angeles, CA 90012 | |
| PLAINTIFF/PETITIONER:<br>MEDICAL STAFF OF ST. MARY MEDICAL CENTER | |
| DEFENDANT/RESPONDENT:<br>ST. MARY MEDICAL CENTER et al | |
| **CERTIFICATE OF MAILING** | CASE NUMBER:<br>20STCP01915 |

**I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Minute Order (Ruling on Submitted Matter-Hearing on Petition for Writ of Ma...) of 06/22/2021 upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.**

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Sherri R. Carter, Executive Officer / Clerk of Court

Dated: 06/22/2021

By: F. Becerra
Deputy Clerk

# SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

**Civil Division**

Central District, Stanley Mosk Courthouse, Department 86

**20STCP01915** June 22, 2021
**MEDICAL STAFF OF ST. MARY MEDICAL CENTER vs ST. MARY MEDICAL CENTER, et al.** 10:15 AM

Judge: Honorable Mitchell L. Beckloff
Judicial Assistant: F. Becerra
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

**NATURE OF PROCEEDINGS:** Ruling on Submitted Matter-Hearing on Petition for Writ of Mandate

The Court, having taken the matter under submission on 06/11/2021, now rules as follows:

The court issues its ruling in accordance with the "ORDER DENYING PETITION FOR WRIT OF MANDATE" consisting of 16 pages, filed this date and incorporated herein by reference to the Court file.

Summary of the court's ruling: The petition is denied.

Petitioner has a single remaining substantive claim requiring resolution. The claim is for declaratory relief and untethered to a Section 1085 claim.

This matter is transferred to Department 1 for reassignment to a direct individual calendar courtroom for resolution of Petitioner's non-writ claim.

Certificate of Mailing is attached.

**MEDICAL STAFF OF ST. MARY MEDICAL CENTER v. ST. MARY MEDICAL CENTER**
Case Number: 20STCP01915
Hearing Date: June 11, 2021



**ORDER DENYING PETITION FOR WRIT OF MANDAMUS**

This matter concerns the tension between medical staff of St. Mary Medical Center (the Hospital) and the Hospital's administration concerning Hospital operations and self-governance of medical staff.

Petitioner, Medical Staff of St. Mary Medical Center, brings this action for a traditional writ of mandate under Code of Civil Procedure section 1085 (Section 1085). While Petitioner alleges Respondent, Dignity Health dba St. Mary Medical Center, has inflicted numerous wrongs upon it, Petitioner has elected to attempt to remedy those wrongs through a Section 1085 action. Thus, the dispute for resolution by this court arises in that context—a request for a traditional writ of mandate and related remedies.

Petitioner seeks writ, injunctive, and declaratory relief based on numerous grounds. Central to the dispute is whether certain proposed amendments to Petitioner's Bylaws have been adopted and are in effect. The status of Petitioner's proposed Bylaw amendments—whether they were properly rejected or deemed admitted—largely serves as the foundation for the results in this action.

Respondent opposes the petition. Respondent's request for leave to file a sur-reply brief is denied.

The petition is DENIED. Petitioner is not entitled to relief on its first cause of action, its Section 1085 claim. Petitioner is also not entitled to declaratory relief on its claim that "the Hospital Community Board did not take action on the proposed Bylaw changes within 60 days of submission by the Medical Staff," and "the Bylaw changes are deemed 'approved' by operation of the Bylaws as of September 23, 2019"—claims derivative of its Section 1085 claims. (See Prayer, Third Cause of Action, items 1 (a) and (b).) Finally, Petitioner is not entitled to an injunction (a remedy) based on its Section 1085 claims.

The single remaining substantive claim on this petition is Petitioner's request for declaratory relief that "even if the 60-days had not lapsed, the Hospital Community Board was required to consent to the Bylaw changes because withholding consent would have been unreasonable." (See Prayer, Third Cause of Action, item 1 (c).)

Petitioner's Evidentiary Objections:

Objection numbers 1, 6-13, 15-23, 25, 26-31 are all overruled. The remaining objections are sustained. Objection number 14, however, is sustained as to the first sentence.

Respondent's Evidentiary Objections:

Objection numbers 1, 2, 12, 15, 18, 20, 21, 23, 24, 26, 27, 33, 34, 37, 46, 47, 52, 57, 59, 61 and 65 are overruled. Objection numbers 8 (as to "the medical staff"), 14 (as to "dubiously"), 16 (as to "Like many . . . Staff"), 25 (as to "The MEC"), 45 (as to the last sentence), 50 (as to "which your . . . first place"), 63 (as to the last sentence) and 64 (as to "The Hospital Community Board asked . . . comment) are sustained in part as to the language specified. The remaining objections are sustained.

As to the reply evidence, all four objections are sustained.

**STATEMENT OF THE CASE**

***The Parties:***

Respondent has owned the Hospital since 1996 and operates the Hospital under a fictitious business name. (O'Quinn Decl., ¶¶ 4-5, 7-9.) The Hospital is one of eighteen California hospitals owned and operated by Respondent. (O'Quinn Decl., ¶ 4.)

Respondent's Board is, and has been, the governing body of the Hospital. (O'Quinn Decl., ¶ 7, Ex. 1, ¶ 7.1.) Under title 22 of the California Code Regulations, section 70035, the "[g]overning body [of a hospital] means the person, persons, board of trustees, directors or other body in whom the final authority and responsibility is vested for conduct of the hospital." The California Department of Public Health issued a license to Respondent as a general acute care hospital. (O'Quinn Decl., Ex. 3.) Respondent's Board consists of 16 members. (O'Quinn Decl., Ex. 3.)

"By law, every hospital is required to have a medical staff." (*Medical Staff of Doctors Medical Center in Modesto v. Kamil* (2005) 132 Cal.App.4th 679, 685.) The medical staff—a separate legal entity—oversees physicians who practice at the hospital. (*Id.*; *Hongsathavij v. Queen of Angels/Hollywood Presbyterian Medical Center* (1998) 62 Cal.App.4th 1123, 1130, fn. 2.)

Consistent with the law, Petitioner is a separate, self-governing legal entity. It is distinct from Respondent. As permitted by title 22 of the California Code Regulations, section 70703, subdivision (b), Petitioner adopted written bylaws. (Pet., Ex. 15 [Petitioner's Bylaws].) Petitioner's Bylaws set forth the manner in which Petitioner operates, including how it may amend its Bylaws. (Pet., Ex. 15 [Petitioner's Bylaws], §§ 14.1-14.3, p. 76.)

***Relevant Background Facts:***

In December 2018, the Hospital's CEO, Carolyn Caldwell, created the Physician Advisory Council (PAC) to provide her with input regarding "physician engagement," "quality measures," and "performance expectations" as well as strategic goals. Caldwell did not intend for the PAC to provide any functions provided by Petitioner. (Caldwell Decl., ¶ 18.) Petitioner objected to the PAC's creation as a usurpation of Petitioner's self-governance. (Pet., ¶¶ 21-24.)

In February 2019, the anesthesiology services contract with the Hospital was scheduled to expire. (Caldwell Decl., ¶ 19.) In early January 2019, Caldwell met with the group's president, Dr. Laura Russell, to discuss the contract. (Caldwell Decl., ¶ 19.) At a meeting on February 5, 2019, Caldwell informed Petitioner's Medical Executive Committee (MEC)[1] about the Hospital's intent to initiate a Request for Proposal (RFP) process to search for alternative anesthesiology providers. (Caldwell Decl., ¶ 21.)

On February 5, 2019, Dr. Douglas McFarland, then Chief of Staff for Petitioner, requested an Ad Hoc Dispute Resolution Committee (AHDRC) be convened pursuant to Section 10.4 of Petitioner's Bylaws. McFarland wanted to resolve the contracting dispute he claimed arose when the Hospital interfered with Petitioner's right to "self-governance." (Pet., Ex. 3.) The Hospital Community Board (HCB) rejected the AHDRC request.[2]

On February 21, 2019, before the RFP had been announced and released for radiology and emergency services contracts for the Hospital, the MEC issued a statement declaring that it did not support any change in the anesthesiology, radiology or emergency services contracts. (Pet., Ex. 6; Caldwell Decl., ¶ 15.)

The Hospital considered the MEC's recommendation not to change the anesthesiology group. Nonetheless, after hearing the RFP presentations, the Hospital's interdisciplinary panel concluded non-incumbent anesthesiology group, Somnia, scored higher and would better meet

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[1] In February 2019, more than 60 percent of the physicians who owned or were affiliated with physician groups who held exclusive contracts (anesthesia, radiology, emergency medicine, pathology, laborists) with the Hospital comprised the MEC. (Caldwell Decl., ¶ 8.) "The contract holders and those affiliated with the contract holders earn hundreds of thousands per year for providing 24/365/day coverage as well as administrative services for the department subject to the contract." (Caldwell Decl., ¶ 8.)

[2] Respondent owns and operates 18 California hospitals. Local committees supervise each hospital's operations. Under Respondent's Bylaws, the local committees are known as hospital community boards and allow Respondent's Board to delegate to hospital community boards the authority to approve hospital policies and procedures.[2] (O'Quinn Decl., ¶ 12, Ex. 1 [Respondent's Bylaws, at Article XI, section 11.3(a)].)

the Hospital's than the existing provider. Therefore, Respondent selected Somnia as the replacement for the existing anesthesiology group. (Caldwell Decl., ¶ 26.)

In April 2019, the MEC proposed twenty-two amendments to Petitioner's Bylaws. (Caldwell Decl., ¶ 28.) In May 2019, McFarland submitted the original 22 amendments to Petitioner's members who voted to approve them. (Caldwell Decl., ¶ 30.) On July 25, 2019, Petitioner submitted Petitioner's proposed Bylaw amendments to the HCB for approval. (O'Quinn Decl. ¶ 18-19, Ex. 25; Pet., ¶ 39.)

On that same day, July 25, 2019, the HCB notified the MEC that Respondent intended to review Petitioner's proposed Bylaw amendments, as allowed by the Bylaws of both Respondent and the HCB. (Pet., Ex. 13; O'Quinn Decl., ¶ 18, Caldwell Decl., ¶ 30.) The HCB provided the MEC with a citation to the applicable HCB Bylaw authorizing Respondent's review. (Pet., Ex. 13.) The HCB advised that two HCB members would be participating in a sub-committee created by Respondent for consideration of the amendments. (Pet., Ex. 13.)

On September 19, 2019, within the 60-day period required to act on Petitioner's proposed Bylaw amendments, Respondent informed Petitioner it would not approve all of the proposed amendments. (O'Quinn Decl., ¶ 20; Pet., ¶ 45; McFarland Decl., ¶ 33.) In a nine-page letter Respondent explained its reasons for rejecting some of Petitioner's proposed Bylaw amendments. (Christensen Decl., Ex. 22.)

In October 2019, the term of the then-existing radiology services contract for the Hospital was scheduled to expire. (Caldwell Decl., ¶ 33, Ex. 22.) After the RFP process, the Hospital selected Renaissance Imaging Medical Associates, a non-incumbent, to provide radiology services for the Hospital. (Caldwell Decl., ¶¶ 36-39, Ex. 10.)

In December 2019, Petitioner initiated the AHDRC process to resolve the dispute over the proposed Bylaw amendments. (Caldwell Decl., ¶ 32; Douglas Decl., ¶¶ 4-5.) Respondent's Board and Petitioner agreed to use the AHDRC process to resolve their dispute. (Caldwell Decl., ¶ 32; Douglas Decl., ¶¶ 4-5.)

In June 2020, the ADHRC met to discuss the dispute and scheduled a second meeting. Petitioner withdrew from the dispute resolution process after the first meeting. (Douglas Decl., ¶¶ 5-8.)

In June 2020, the emergency room service contract between the Hospital and Long Beach Emergency Medical Group was scheduled to expire. (Caldwell Decl., ¶ 40, Ex. 12; Pet., ¶ 50.) In February 2018, the Hospital sent a RFP to several physicians groups, including Beach Emergency Medical Group. Petitioner informed the MEC of the RFP. (Caldwell Decl., ¶¶ 42-43.) The Hospital awarded the contract to Vituity, a non-incumbent, after it received the highest score of those responding to the RFP. (Caldwell Decl., ¶ 46.)

This action ensued.

**STANDARD OF REVIEW:**

Section 1085 provides for a traditional writ of mandate to issue to "any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station . . . ." Section 1085 is the proper vehicle for challenging a ministerial action (or inaction) of an agency, such as a mandatory duty to issue regulations. (*Morton v. Bd. of Registered Nursing* (1991) 235 Cal.App.3d 1560, 1566 fn. 5.) Relief under Section 1085 may generally only be obtained where some non-discretionary duty is in issue. Additionally, where all other elements of traditional mandamus are satisfied writ relief may only be obtained in "cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law." (Code Civ. Proc. § 1086.)

"Ordinary mandamus may be used to compel the performance of a duty that is purely ministerial in nature or to correct an abuse of discretion." (*American Board of Cosmetic Surgery v. Medical Board of California* (2008) 162 Cal.App.4th 534, 539

A "duty is ministerial when it is the doing of a thing unqualifiedly required." (*Galzinski v. Somers* (2016) 2 Cal.App.5hh 1164, 1170.) Ministerial actions " 'are essentially automatic based on whether certain fixed standards and objective measurements have been met.' " (*Sustainability of Parks, Recycling and Wildlife Legal Defense Fund v. County of Solano Dep't of Resource Mgmt.* (2008) 167 Cal.App.4th 1350, 1359 quoting *Calvert v. County of Yuba* (2006) 145 Cal.4th 613, 623.) A ministerial act is non-discretionary. It is "an act that [an officer] is required to perform in a prescribed manner in obedience to the mandate of legal authority and without regard to his own judgment or opinion concerning such act's propriety or impropriety, when a given set of facts exists." (*California Ass'n of Prof. Scientists v. Department of Fin.* (2011) 195 Cal.App.4th 1228, 1236.)

Courts may also review administrative decisions pursuant to Section 1085. In reviewing administrative decisions, "The trial court's role in a traditional mandamus proceeding is a limited one. It must determine whether the agency's action was arbitrary, capricious, or without evidentiary support, and/or whether the agency failed to conform to the law. The trial court may not substitute its judgment for that of the agency or force the agency to exercise its discretion in a certain way."[3] (*Association of Irritated Residents v. San Joaquin Valley Unified Air Pollution Control Dist.* (2008) 168 Cal.App.4th 535, 542.)

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[3] Petitioner has not alleged Respondent acted arbitrarily or capriciously in the exercise of a discretionary duty. Citing Business and Professions Code section 809.05, subdivision (a) (see Pet., ¶ 11 and Opening Brief 3:24-4:1), Petitioner did allege Respondent may not act in an arbitrary or capricious manner. Business and Professions Code section 809.05, subdivision (a), however, addresses the peer review process and the great weight a hospital governing body shall give to peer review bodies' findings. The court has not interpreted Petitioner's allegations that Respondent unreasonably withheld its approval of Petitioner's proposed Bylaw amendments as a claim Respondent acted arbitrarily. As noted, this court did not adjudicate

**ANALYSIS**

Petitioner's first cause of action seeks "a peremptory writ of mandamus pursuant to Code of Civil Procedure section 1085, ordering that [Respondent] immediately do the following":

> "a. Restore the Hospital Community Board's sole role in approving Bylaw amendments;
> b. Maintain the existing make-up of [Petitioner] and its MEC;
> c. Disband the PAC as being unauthorized by the Bylaws;
> d. Solicit and obtain the meaningful consultation and advice of the MEC before terminating any additional exclusive contracts and give the MEC's review and recommendation great weight in making such a decision;
> e. Solicit and obtain the meaningful review and recommendation of the MEC before initiating any future RFP process and selecting a contract provider medical services at the Hospital, and give the MEC's review and recommendation great weight in making its decision; and
> f. Comply with all requirements of [Petitioner's] Bylaws pertaining to [Petitoner's] rights and duties for oversight of the quality of patient care at the Hospital and for the [Petitioner's] self-governance." (Pet., Prayer)[4]

Petitioner's arguments in its Opening Brief can be summarized as follows:

1. The court should find Petitioner's proposed amendments to the Petitioner's Bylaws to be "deemed approved" under Petitioner's Bylaws at Section 14.3.
2. The Court should issue a writ and injunction to restore the HCB's sole role in approving the Bylaw Amendments.
3. The HCB was without power to reject Petitioner's proposed amendments because each amendment was reasonable.
4. The Court should maintain the existing composition of Petitioner's MEC and its Officers.
5. The Court should disband the PAC.
6. The court should require Respondent to solicit and obtain meaningful contribution from Petitioner on exclusive contracts and RFPs.

Respondent contends Petitioner is entitled to no relief here. Respondent argues Petitioner has failed to identify a single ministerial non-discretionary duty imposed upon Respondent at issue

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Petitioner's declaratory relief claim that Respondent unreasonably withheld its approval of Petitioner's proposed Bylaw amendments.

[4] To the extent Petitioner seeks injunctive and/or declaratory relief that is not derivative of the writ claims, such relief is properly sought in a direct independent calendar court. Nonetheless, Petitioner's claim for injunctive relief fails as it seeks a remedy untethered to any cognizable claim. (*Faunce v. Cate* (2013) 222 Cal. App. 4th 166, 173. ["[I]njunctive and declaratory relief are equitable remedies, not causes of action."])

here. Respondent asserts Petitioner is not entitled to writ relief where it cannot identify such a duty. The court agrees; Petitioner is not entitled to Section 1085 relief here.

***Whether the Proposed Bylaw Amendments Are "Deemed Approved" and Therefore in Effect:***

On September 19, 2019, following a meeting of a subcommittee of Respondent's Board ("which included two members of the [HCB]"), Respondent rejected in writing 19 Bylaw amendments proposed by Petitioner.[5] (Christensen Decl., ¶ 3, Ex. 22.) Petitioner contends Respondent's purported rejection of Petitioner's proposed Bylaw amendments was a nullity—"legally moot and *ultra vires*." (Opening Brief 11:4-5.) Therefore, Petitioner argues, pursuant to Section 14.3 of its Bylaws, all of Petitioner's proposed amendments have been "deemed approved" and are now binding on Respondent.

Resolution of the issue requires the court to determine whether Respondent's Board—as opposed to the HCB exclusively—had the legal authority to reject the proposed Bylaw amendments. The court finds Respondent's Board did, in fact, have the legal authority to reject the proposed Bylaw amendments because Respondent's Board is the "governing body" for the Hospital and specifically reserved its right to make such decisions when it created the HCB as reflected in the HCB Bylaws. Respondent's Board expressly exercised its authority to pass on Petitioner's proposed Bylaw amendments. Thus, the court finds Petitioner's claim its proposed Bylaw amendments have been "deemed approved" is incorrect.

Petitioner's Bylaws set forth a two-step process for the adoption, amendment and/or repeal of its Bylaws. Petitioner's members must first approve any proposed amendment. After Petitioner's members' approval, Petitioner must submit the proposed Bylaw amendment to the "Community Board" for its approval. (See Pet., Ex. 15, § 14.3 [Petitioner's Bylaws, p. 76].) If the "Community Board" takes no action within 60 days of Petitioner's submission, the proposed Bylaw amendment is "deemed" approved. (Pet., Ex. 15, § 14.3 [Petitioner's Bylaws, p. 76].)

Petitioner's Bylaws state in relevant part:

> "Upon approval by the Active Staff [of Petitioner] as provided above, the proposed bylaws change shall be submitted to the Community Board for approval. If no action on the proposed change is taken by the Community Board within 60 days, the proposed change shall be deemed to have been approved by the Community Board." (Pet. Ex. 15, p. 76 [Petitioner's Bylaws at § 14.3].)

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[5] Respondent rejected the following proposed Bylaw amendments: 2.5, 4.5.8, 4.8.3, 4.8.4, 5.5, 6.1.7, 6.2.1, 7.6, 9.6, 10.3.2, 10.4, 12.2.2, 12.6, 13.9, 13.9.1, 13.9.1.1, 13.9.1.2, 13.9.1.1.3, and 14.4.

Petitioner's Bylaws define "Community Board" as "the governing body of this Hospital." (Pet., Ex. 15, p. 2 [Petitioner's Bylaws].) In circular fashion, Petitioner's Bylaws define the "Governing Body" as the "Community Board." (Pet., Ex. 15, p. 2 [Petitioner's Bylaws].)

As agreed during argument, however, Section 14.4 of Petitioner's Bylaws makes clear the "Community Board" in Section 14 is the HCB. Thus, Section 14.3 standing alone requires Bylaw amendments proposed by Petitioner to be considered for approval by the HCB.

The parties do not question the timeliness of the rejection of Petitioner's proposed Bylaw amendments. Respondent rejected Petitioner's proposed Bylaw amendments within the required 60 days. Thus, Petitioner's proposed Bylaw amendments cannot be deemed admitted based on any untimely action (unless Respondent's Board lacked authority to reject them).

Instead, the issue is about authority. Did Respondent have the authority to reject Petitioner's proposed Bylaw amendments, or was such authority vested exclusively in the HCB?

Under Respondent's Bylaws, Respondent's activities, including the operation of its hospitals, are conducted by Respondent's Board. All corporate powers are exercised by or under the direction of Respondent's Board. (O'Quinn Decl., ¶ 7, Ex. 1. [Respondent's Bylaws, Article VII, Section 7.1.]) Further, under Respondent's Bylaws, the formation of local committees known as hospital community boards are permitted and allow Respondent's Board, the governing body of the Hospital, to delegate to hospital community boards the authority to approve hospital policies and procedures.[6] (O'Quinn Decl., ¶ 12, Ex. 1 [Respondent's Bylaws, at Article XI, section 11.3(a)].)

Accordingly, Respondent's Board, based on the evidence before the court, is and has been the ultimate governing body of the Hospital. Respondent merely created and delegated certain governance authority to the HCB.[7] (O'Quinn Decl., ¶ 7, Ex. 1, ¶ 7.1, Ex. 4 [HCB Bylaws, ¶ 1.1. ["This Hospital Community Board is established and appointed by the Board of Directors of [Respondent]."]; Verified Answer Ex. 10, ¶ 7.1.)

Under the HCB Bylaws, Respondent's Board has the authority to intervene to decide governance matters such as adoption, amendment and/or repeal of Petitioner's Bylaws.

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[6] "The Hospital Community Board shall have final authority to approve all hospital policies and procedures for hospital services at the hospitals that the Hospital Community Board supports (the 'Local Hospital'), where such approval is required of a governing body of law, regulation or accrediting body. <u>This Board may elect to exercise such approval rights by notice to the Hospital Community Board and, in such cases, the referenced policies and procedures shall be deemed approved by the Hospital Community Board</u>." (O'Quinn Decl., Ex. 1, p. 4 [Respondent's Bylaws][emphasis added].)

[7] "[Respondent] shall establish one or more Hospital Community Boards related to hospitals owned and operated by this Corporation . . . ." (O'Quinn Decl., Ex. 1, p. 4 [Respondent's Bylaws].)

(O'Quinn Decl., ¶ 16, Ex. 4 [HCB Bylaws, ¶ 9.2, subd. (c). ["[Respondent's] Board may, by notice to the [HCB], elect to exercise the approval rights of the [HCB] under this Section 9.3 (c)."].)[8]

Respondent's Board did just that—it made a discretionary decision to invoke its right to intervene concerning consideration of Petitioner's proposed Bylaw amendments. Respondent's Board exercised its authority and effectively removed the HCB's authority to consider Petitioner's proposed Bylaw amendments. (O'Quinn Decl., ¶ 18; Caldwell Decl., ¶ 30.) Thus, Respondent had the authority to and did timely reject Petitioner's proposed Bylaw amendments.

Petitioner argues its Bylaws create a contract between it and the HCB. As result of (unidentified) consideration exchanged with respect to this "contract," Petitioner contends Respondent cannot—through its Bylaws or the HCB's Bylaws—unilaterally change the terms of Petitioner's "contract" with the HCB. Petitioner contends therefore Respondent lacked the authority under Petitioner's Bylaws to rescind its delegation of authority to the HCB and pass on Petitioner's proposed Bylaw amendments.

Petitioner's "contract" argument is not persuasive. As argued by Respondent, "under California contract law, medical staff bylaws adopted pursuant to California Code of Regulations, title 22, section 70703, subdivision (b) do not in and of themselves constitute a contract between a hospital and a physician on its medical staff." (*O'Byrne v. Santa Monica-UCLA Medical Center* (2001) 94 Cal.App.4th 797, 810.) Therefore, this contract-based argument fails as a matter of law.

More importantly, however, the express terms of Petitioner's Bylaws at Section 14.4 undermine Petitioner's argument here.

Section 14.4 of Petitioner's Bylaws states: "[Petitioner's] Bylaws shall not conflict with the [HCB] Bylaws and shall reflect current practices with respect to [Petitioner's] organization/function." (Pet., Ex. 15, p. 76 [Petitioner's Bylaws].)

While Petitioner's Bylaws and those of the HCB do not conflict on their face, Petitioner's interpretation of its Bylaws at Section 14.3 here create a conflict. By interpreting Section 14.3 of its Bylaws as vesting *exclusive* authority to the HCB to consider and approve Petitioner's proposed Bylaw amendments, Petitioner contradicts both Respondent's and the HCB's Bylaws, which expressly give Respondent the authority to consider and approve Petitioner's proposed Bylaw amendments if it so elects, and when Respondent provides written notice to HCB of its intent to do so.

Based on the evidence before the court, Petitioner has not demonstrated a failure by Respondent to comply with a non-discretionary duty. A traditional writ of mandate does not lie

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[8] There appears to be typographical error as the section refers incorrectly to Section 9.3(c) instead of Section 9.2(c).

where no clear and present duty exists. That is, no "ministerial duty is implicated by Respondent's exercise of its expressly reserved right under two sets of governance Bylaws (its own and the HCB Bylaws) to review and approve or reject [Petitioner's] Bylaw amendments." (Opposition 17:18-20.)

Petitioner's position otherwise is not persuasive. Petitioner argues Respondent's reservation of rights under the HCB Bylaws "is of no consequence here" because "[t]hat is not what [Petitioner] agreed to in its Bylaws . . . ." (Reply 11:17-20.) Whether Petitioner agreed to Respondent's reservation of rights does not change the legal landscape. Petitioner's Bylaws expressly reference approval of its proposed Bylaw amendments by the Community Board, the HCB. To the extent Respondent delegated the authority to consider proposed amendments to Petitioner's Bylaws to the HCB, Respondent retained the authority to revoke that designation and did so.[9] The Bylaws for Respondent, the HCB and Petitioner when considered together all support Respondent's authority.

To the extent Petitioner seeks writ relief "restoring the HCB's *sole* role in approving ByLaw amendments," the court cannot grant the request. (Opening Brief 12:21-13:7.) Petitioner has provided no legal authority for doing so.

Finally, Respondent argues Petitioner has not exhausted its administrative remedies as to Respondent's rejection of Petitioner's proposed Bylaw amendments.

Section 10.4 of Petitioner's Bylaws creates the AHDRC process. The AHDRC process provides for disputes between Petitioner and Respondent to "be addressed and resolved in accordance with the meet and confer process of [the AHDRC] . . . ." The procedure for the dispute resolution process is specifically provided in Sections 10.4, 10.4.1 and 10.4.2 of Petitioner's Bylaws. (Pet., Ex. 15 [Petitioner's Bylaws] p. 64.) Petitioner's Bylaw specifically admonish: "Neither party shall initiate any legal action related to the Dispute until [the AHDRC] has completed its efforts to resolve the dispute." (Pet., Ex. 15 [Petitioner's Bylaws] p. 64.)

Petitioner commenced the internal administrative remedy but provides no evidence it completed the AHDRC process as to Petitioner's proposed Bylaw amendments.[10] In fact, the evidence shows the opposite is true. (Douglas Decl., ¶¶ 5-8.)

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[9] For the same reasons, Petitioner's request for related declaratory relief "as set forth in the Petition at page 26" cannot be granted. (Opening Brief 12:17-20.)

[10] There is no evidence Respondent denied Petitioner's request for dispute resolution as to its proposed Bylaws. Respondent did, however, deny the AHDRC process as to the termination of existing clinical services contracts and as to alternative contracts. (McFarland Decl., ¶¶ 19-20, 35 Ex. 3-4.)

As it appears the AHDRC process provided Petitioner with a plain, speedy and adequate remedy as to Respondent's rejection of Petitioner's proposed Bylaws, Petitioner is not entitled to writ relief.[11] (Code Civ. Proc. § 1086.)

***Whether Respondent Unreasonably Withheld Its Approval of the Bylaw Amendments:***

Even assuming the Bylaw amendments were properly rejected by Respondent's Board and not "deemed approved," Petitioner contends Respondent could not have rejected the proposed Bylaw amendments. Petitioner relies on its Bylaws at Section 14.3 providing the Community Board "may not unreasonably withhold its approval from [Petitioner's] recommended change." (Pet., Ex. 15, § 14.3.) According to Petitioner, Respondent did not comply with Petitioner's Bylaws when it rejected the proposed Bylaw amendments because each amendment was reasonable, and "could not be rejected but for the unreasonable grounds cited by Respondent."[12] (Opening Brief 13:20-21; 13:8-22:15.)

Petitioner's claim and explanation as to the reasonable nature of its proposed Bylaw amendments and Respondent's alleged unreasonable rejection undermines Petitioner's traditional mandamus claim. A claim of unreasonable rejection necessarily requires consideration of how a party may have exercised its discretion—approving proposed Bylaw amendments is not a non-discretionary duty.[13]

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[11] As discussed *infra*, Petitioner argues it need not comply with Section 1085 because Business and Professions Code section 2282.5, subdivision (c) authorizes the remedy of a writ of mandate. While the court rejects the argument, the court notes Business and Professions Code section 2282.5, subdivision (c) also imposes an obligation between "medical staff and the hospital governing board" to "meet and confer in good faith to resolve the dispute." That did not happen here because Petitioner withdrew from the process.

[12] That Petitioner's proposed Bylaw amendments may have been reasonable is but one factor for consideration on this issue. Despite a proposed reasonable Bylaw amendment, Respondent might for operational or contractual reasons reasonably withhold its approval of it. (See, e.g., Christensen Decl., Ex. 22 p. 8 [5.5], p. 10 [9.6].) The issue is not whether the proposed amendment is reasonable. The issue is whether Respondent unreasonably withheld its approval. Additionally, as noted, Petitioner did not allege arbitrary or capricious action by Respondent as to the proposed Bylaw amendments. Respondent's Exhibit 22 sets forth Respondent Board's reasons for rejecting those Bylaw amendments it rejected. For example, Respondent's Board rejected proposed Bylaw Amendment 2.5 because it was "overbroad and interferes with basic freedom of contract." Respondent's Board rejected proposed Bylaw amendment 6.2.1 because of risk from a dangerous practitioner and the need for a summary suspension.

[13] That Petitioner may not obtain writ relief does not decide whether and to what extent, if at all, Petitioner is entitled to relief under its third cause of action for declaratory relief on this issue. (See Pet., Prayer, Third Cause of Action, item c.)

Respondent's governance decision as to amending Petitioner's Bylaws is discretionary and not ministerial. (*Carrancho v. California Air Resources Board* (2003) 111 Cal.App.4th 1255, 1267. ["A ministerial act is an act that a public officer is required to perform *in a prescribed manner in obedience to the mandate* of legal authority *and without regard to his own judgment or opinion concerning such act's propriety or impropriety,* when a given state of facts exists. Discretion, on the other hand, is the power conferred on public functionaries to act officially according to the dictates of their own judgment."] [Emphasis in original.]) As such, writ relief is legally unauthorized here, and it would be improper for the court to second-guess Respondent's discretionary governance decisions on a traditional mandamus claim. (See *Mateo-Woodburn v. Fresno Community Hospital & Medical Center* (1990) 221 Cal.App.3d 1169, 1185. ["Judges are untrained and courts ill-equipped for hospital administration, and it is neither possible nor desirable for the courts to act as supervening boards of directors for every . . . hospital . . . in the state."])

***Maintaining the Existing Composition of the MEC and Officers:***

Petitioner argues because Petitioner's proposed Bylaw amendments were "deemed approved" and are in effect, the court should issue a writ of mandate and injunction compelling Respondent to "recognize and proceed in a manner consistent with a composition of [Petitioner], including its officers, pursuant to the amended . . . Bylaws." (Opening Brief 22:20-25.)

Petitioner's claim fails because its proposed Bylaw amendments were not "deemed approved" and are not in effect.

***Disbanding the PAC:***

Petitioner argues Respondent inappropriately circumvented its Bylaws by forming the PAC, a committee tasked with the same mission and functions reserved for the MEC under Petitioner's Bylaws. (*Compare* Pet., Ex. 2 with Ex. 15, pp. 63-64, § 10.3.2; see McFarland Decl., ¶¶ 4, 12- 13.) Petitioner contends the PAC is therefore an unauthorized committee. Petitioner asserts the court should issue an order "that compels Respondent to disband the PAC as an *ultra vires* activity and proceed in a manner without referencing or using a PAC or any other unauthorized committees." (Opening Brief 23:5-7.)

Petitioner provides no legal authority for the court to order—pursuant to a non-discretionary ministerial duty or otherwise—Respondent to disband a committee it formed because that committee has a mission and purpose that may overlap with the MEC. Moreover, the court cannot determine a complete overlap exists. Petitioner does not demonstrate, for example, the PAC has authority to "represent[] and act[] on behalf of [Petitioner] in the intervals between [Petitioner's] meetings . . ." as does the MEC. (Pet., Ex. 15, p. 63.)

***Whether to Compel Respondent to Solicit and Obtain Meaningful Contribution From Petitioner on Exclusive Contracts and RFPs:***

Petitioner argues Respondent "ignore[d] the unanimous recommendations" from Petitioner. (Opening Brief 23:10-11.) Citing federal authority, Petitioner argues the "law requires that, when a party has the right to make recommendations, the consultation must be meaningful and, based thereon, the party must have an opportunity to review necessary documents and information." (Opening Brief 23:16-18.) Petitioner asserts Respondent violated its non-discretionary ministerial duty under Section 13.9 of Petitioner's Bylaws when it ignored Petitioner's recommendations.

Petitioner's Bylaws at Section 13.9 provides:

> "[Petitioner] shall review and make recommendations to the Community Board regarding quality of care issues related to medical service arrangements for physician and/or professional services, prior to any decision being made, in the following situations: (a) the decision to execute a medical service contract in a previously open department or service; (b) the decision to renew or modify a medical service contract in a particular department or service; (c) the decision to terminate a medical service contract in a particular department or service." (Pet., Ex. 15, p. 75.)

The court finds Petitioner—as argued by Respondent—fails to establish grounds for relief under Section 1085 through this allegation. The evidence submitted shows Respondent did not accept Petitioner's recommendation. Petitioner again has shown no non-discretionary ministerial duty requiring Respondent to accept (as opposed to consider) Petitioner's recommendations. Instead, Petitioner argues Respondent unreasonably disregarded Petitioner's recommendations which might (assuming certain facts) constitute a cognizable claim warranting a traditional writ of mandate.[14]

Further, as noted by Respondent, Petitioner's Bylaws at Section 13.9 do not contain a review and recommendation provision as to RFPs. Thus, the allegation Respondent released multiple RFPs for new hospital groups (such as to replace the long-serving Long Beach Emergency Medical Group) without the MEC's involvement does not demonstrate a failure by Respondent to comply with a non-discretionary ministerial duty (including Petitioner's own Bylaws). (See Pet., ¶ 50-51.)

Petitioner is not entitled to writ relief based on these allegations.

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[14] Further, Petitioner complains Respondent allowed certain contracts to expire by their own terms—despite a contrary recommendation from Petitioner—effectively changing the composition of Petitioner's officers. Petitioner does not demonstrate, however, how such a claim relates to a non-discretionary ministerial duty imposed upon Respondent.

***Alleged Violation of the Attorney General Agreement (the AG Agreement):***

Petitioner argues Respondent's conduct violated the AG Agreement—an agreement entered into between the Attorney General and Respondent as a condition of the Attorney General's approval for Respondent's alignment with certain hospital entities and ownership. (Pet., ¶ 17.)

Petitioner asserts the conditions in the AG Agreement obligate Respondent to maintain the existing leadership and independence of Petitioner. The AG Agreement provides:

> [Respondent] and Common Spirit Health shall maintain privileges for current medical staff at St. Mary Medical Center who are in good standing as of the closing date of the Ministry Alignment Agreement. Further, the closing of the Ministry Alignment Agreement shall not change the medical staff officers, committee chairs, or independence of the medical staff, and such persons shall remain in good standing for the remainder of their tenure at St. Mary Medical Center. (Pet., Ex. 1, p. 8, Art. XIV.)

According to Petitioner, Respondent's decision to establish the PAC "eroded [Petitioner's] independence and was contrary to the letter and spirit of the [AG Agreement] requiring an independent Medical Staff, and violated the Bylaws' requirement that the Medical Staff oversee patient care, and was contrary to California law." (Pet., ¶ 24.) Petitioner argues several other actions by Respondent, such as eliminating the "long serving radiology group" (Pet., ¶ 42) and conducting the RFP process for a new emergency room group (replacing the long-serving Long Beach Emergency Medical Group) (Pet., ¶ 51), further eroded the independence of Petitioner despite Petitioner being entitled to independence under the AG Agreement.

Respondent argues Petitioner is not a party to the AG Agreement such that Petitioner may not sue to enforce it. Petitioner counters it has third-party beneficiary status under the AG Agreement.

Even assuming Petitioner's position on its third-party beneficiary status is correct,[15] Petitioner's claim does not sound in mandamus. It sounds in contract. A contractual breach does not support a writ of mandate because an aggrieved party has available to it "a plain, speedy, and

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[15] While the court need not address the breach of contract claim, Petitioner does not appear to "either satisfy an obligation of the promissee to pay money to the beneficiary, or the circumstances indicate the promissee intends to give the beneficiary the benefit of the promised performance." (*Medical Staff of Doctors Medical Center in Modesto v. Kamil* (2005) 132 Cal.App.4th 679, 685.) While the AG Agreement may result in some incidental benefit to Petitioner, it does not appear Respondent or the Attorney General intended to benefit Petitioner as opposed to the public generally.

adequate remedy, in the ordinary course of law."[16] (Code Civ. Proc. § 1086. See also *300 DeHaro Street Investors v. Department of Housing & Community Development* (2008) 161 Cal.App.4th 1240, 1254.)

Accordingly, the court finds Petitioner is not entitled to relief here based on alleged violations by Respondent of the AG Agreement.

***Violation of Business and Professions Code section 2282.5:***

Finding Respondent's arguments nothing more than "hyper-technical and procedural legal arguments to avoid the merits of this lawsuit," Petitioner asserts Business and Professions Code section 2282.5, subdivision (c) "expressly authorizes" this court to issue a traditional writ of mandate, injunction or other appropriate relief. (Reply 2:7; 2:13-14.) Petitioner asserts it is entitled to "some sort of edict to protect and enforce [Petitioner's] rights in section 2282.5" based on all the wrongs it has suffered. (Reply 2:19.)

Wholly ignoring that Petitioner first raised Business and Professions Code section 2282.5, subdivision (c) as authority for a writ of mandate in its Reply Brief,[17] nothing suggests Business and Professions Code section 2282.5 supplants Section 1085. While Business and Professions Code section 2282.5 authorizes a court to issue a writ of mandate in addressing matters of medical staff self-governance, the section does not suggest the requirements of Section 1085 are inapplicable to a medical staff self-governance claim. Petitioner has cited no authority otherwise.

Moreover, the court is not persuaded by Petitioner's claim ministerial duties are "usually" required for a traditional writ of mandate such that no duty is required here. Whether ministerial or not, there must be a clear and present duty. The duty must have fixed standards and objective measurements. (*Sustainability of Parks, Recycling and Wildlife Legal Defense Fund v. County of Solano Dep't of Resource Mgmt., supra,* 167 Cal.App.4th at 1359.) The duty must be "unqualifiedly required." (*Galzinski v. Somers, supra,* 2 Cal.App.5th at 1170.) Section 1085 requires some legal authority requiring performance by the entity against whom a writ is sought.

The court finds Petitioner's reliance on alleged violations of Business and Professions Code section 2282.5 without regard to the requirements of Section 1085 does not entitle it to writ relief.

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[16] Alternatively, the conditions of consent contained in the AG Agreement are statutory. It appears only the Attorney General has the right to enforce it as there is no specific provision for a private right of enforcement. (See Corp. Code § 5926.)

[17] Petitioner did not cite Business and Professions Code section 2282.5 in its petition as authority for the court to issue a writ of mandate. Instead, it referenced Section 1085.

**CONCLUSION**

Based on the foregoing, the petition is DENIED.

As noted, Petitioner has a single remaining substantive claim requiring resolution. The claim is for declaratory relief and untethered to a Section 1085 claim. Petitioner requests declaratory relief that "even if the 60-days had not lapsed, the Hospital Community Board was required to consent to the Bylaw changes because withholding consent would have been unreasonable." (See Prayer, Third Cause of Action, item 1 (c).)

The court cannot enter judgment on the petition until the remaining claim is resolved. The court therefore transfers this matter to Department 1 for reassignment to a direct individual calendar courtroom for resolution of Petitioner's non-writ claim. Department 1 will provide notice when the matter is reassigned.

[If Petitioner elects to voluntarily dismiss the claim such that all claims in the petition have been resolved, this court will enter judgment.]

**IT IS SO ORDERED.**

June 22, 2021

Hon. Mitchell Beckloff
Judge of the Superior Court