

Volume I  
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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

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BHARANIDHARAN PADMANABHAN, M.D.\*

Plaintiff \*

\*

v.

\* DOCKET NUMBER MICV2011-02685

\*

CAMBRIDGE PUBLIC HEALTH \*

COMMISSION, D/B/A \*

CAMBRIDGE HEALTH \*

Defendant \*

\*\*\*\*\*

HEARING

BEFORE THE HONORABLE EDWARD P. LEIBENSPERGER

APPEARANCES:

For the Plaintiff:

Collora LLP

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Boston, Massachusetts 02210

By: Eve Slattery, Esq.

For the Defendant:

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By: Brian H. Sullivan, Esq.

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Woburn, Massachusetts

August 4, 2011

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P R O C E E D I N G S

1  
2 (Court called to order.)

3 THE CLERK: Padmanabhan v. Cambridge Health Public Health  
4 Commission.

5 Counsel, would you identify yourselves for the Court and  
6 the record, please?

7 MS. SLATTERY: Eve Slattery. I represent the plaintiff,  
8 Doctor --

9 THE COURT: Ms. Slattery, would you mind being at this --

10 MS. SLATTERY: Sure.

11 THE COURT: -- desk over here?

12 Plaintiff over here, and defendants over here. It helps me  
13 keep things straight.

14 Okay. Go ahead.

15 MS. SLATTERY: Eve Slattery. I represent the plaintiff,  
16 Doctor Bharanidharan Padmanabhan.

17 MR. SULLIVAN: Good afternoon, your Honor. Brian Sullivan on  
18 behalf of Cambridge Health Alliance.

19 MR. ROY: Hi, your Honor. Tyson Roy on behalf of Cambridge  
20 Health Alliance.

21 THE COURT: All right. All right. Well, good afternoon,  
22 folks.

23 Let me -- let me start with Mr. Sullivan if I -- if you're  
24 the right one just to address this motion for impoundment that  
25 was filed today. Are you -- I said I was going to start, but

1 are you aware of this motion for impoundment, Ms. Slattery?

2 MS. SLATTERY: I just learned of it.

3 THE COURT: Okay.

4 You're -- you're of course aware of the uniform rule on  
5 impoundment and -- and the -- the restriction on the Court to  
6 impound materials?

7 MR. SULLIVAN: I -- I understand that it is a very difficult  
8 process as well for the Court to undertake, your Honor. I --  
9 and I apologize that Ms. Slattery just got that. I actually  
10 had that and all of my papers hand delivered to her office  
11 this morning. I was not aware she wasn't in the office.

12 We have to bring this motion however because in order to  
13 effectively respond to the complaint for injunctive relief, we  
14 have to and have submitted to the Court peer review protected  
15 materials because it's an ongoing peer review matter.

16 THE COURT: Ms. Slattery, do you have any position to --  
17 today one way or the other about the impoundment?

18 MS. SLATTERY: I do, your Honor. I was very careful in  
19 drafting and preparing the complaint and our motion and  
20 memorandum of law to make sure that there was no evidence that  
21 was confidential or privileged under the peer review statute  
22 so that it would not be part of this proceeding.

23 I mean what -- what's at issue here is whether not  
24 Cambridge Health Alliance is following its own rules. We're  
25 not asking you to look at the substance of -- of what happened

1 here. And I think that that's what their trying to do is -- is  
2 put in sort of selective pieces of the evidence that look  
3 unfavorable on the plaintiff when we're here in Court to ask  
4 you to order Cambridge Health Alliance to follow its own rules  
5 and let us go through the proper procedures, and it's -- I  
6 don't think it's this Court's, you know, responsibility to --  
7 or -- or -- or province to look into the nitty gritty of what  
8 the evidence is in the peer review proceeding. That's for the  
9 -- for the appellate review.

10 THE COURT: So --

11 MR. SULLIVAN: Well, your Honor, if I could address that  
12 however?

13 THE COURT: Yeah.

14 MR. SULLIVAN: Understanding Ms. Slattery was careful not to  
15 include any of this, I'd suggest that also is because the  
16 effort is to have the Court make this decision in complete --  
17 without any --

18 THE COURT: Well, before we -- we get into that --

19 MR. SULLIVAN: Yes, your Honor.

20 THE COURT: -- I just want to deal with the impoundment --

21 MR. SULLIVAN: Yes, your Honor.

22 THE COURT: -- for a second because I do understand, you  
23 know, what's been raised by the motion for preliminary  
24 injunction. And in response to that, you filed now the entire  
25 -- I believe the entire transcript of the fair hearing plan --

1 hearing --

2 MR. SULLIVAN: I did. I did not file the Exhibits. I did not  
3 file any medical records. I filed that transcript, and I tried  
4 the best I could, I believe I was successful, to redact any  
5 patient names. But it was necessary to file that because of  
6 the claims being brought.

7 THE COURT: Yeah. I'm not arguing with you one way --

8 MR. SULLIVAN: Yes. That is the --

9 THE COURT: -- one way or the other whether it was  
10 necessary. I'm just saying is that transcript what you view as  
11 protected under the peer review privilege?

12 MR. SULLIVAN: That transcript as well as the reports that  
13 are also included in those Exhibits, yes, your Honor.

14 THE COURT: In what Exhibits? In the Exhibits in -- that you  
15 filed?

16 MR. SULLIVAN: Exhibits to -- yes, your Honor. Yes. Not -- I  
17 did not include the Exhibits to the actual hearing.

18 THE COURT: All the -- I mean some of these Exhibits are  
19 letter back and forth requesting a hearing. Which Exhibits?

20 MR. SULLIVAN: Yes, your Honor. The Exhibits which would be  
21 subject to the privilege would be the transcript, I believe  
22 that's Exhibit 1, and if I could -- the Court copy I had I've  
23 given to Ms. Slattery since it wasn't in her possession. If I  
24 could --

25 THE COURT: Yes. If you wouldn't mind just handing -- taking

1 a look at it here.

2 MR. SULLIVAN: So Exhibit 1 which has got volumes A, B, and  
3 C attached are all transcripts of the peer review proceeding  
4 including all the witnesses.

5 I'll just go through and identify what I would suggest the  
6 privilege applies to if that's quicker.

7 Exhibit 5 is the fair hearing committee report. That would  
8 be subject to the peer review privilege, your Honor.

9 And then Exhibit 7 and Exhibit 8 are the investigative  
10 committee report recently concluded and an outside review done  
11 as part as that investigative committee's report. Those would  
12 be the Exhibits which would be subject to impoundment.

13 THE COURT: I -- I will review those Exhibits in a context  
14 of whether they are -- should be impounded and -- and decide  
15 with respect to that. I -- I will not impound the pleadings in  
16 the case. I -- I've read the pleadings and the briefs, and  
17 nothing in there reveals any confidential information about  
18 any patients that I could see.

19 MR. SULLIVAN: Your Honor, that -- that certainty is a  
20 ruling that seems to fit the needs. I would just say that  
21 under the statute, the privilege pertains to the proceedings,  
22 the deliberations of a peer review committee, and includes the  
23 witnesses to a peer review committee which are listed in the  
24 pleadings.

25 However, if the Court's at least able to impound those

1 Exhibits, that does seem to be a reasonable way to handle it.

2 THE COURT: Well, as I said, I'm -- I'm going to take that  
3 under advisement --

4 MR. SULLIVAN: Yes, your Honor.

5 THE COURT: -- I'll -- I'll look at it as to those narrow  
6 groups.

7 All right. Thank you. You may be seated, and I'll turn to  
8 Ms. Slattery for her motion with -- you know, with the  
9 understanding that I have reviewed these papers I will not say  
10 in depth but certainly to get the -- the gist of it. So you  
11 don't have to go too basic. But -- but there are some -- well,  
12 so go ahead and proceed on that basis.

13 MS. SLATTERY: Sure, before I start, your Honor, I just want  
14 to address two points about the impoundment. If -- if you are  
15 going to impound it, Exhibit 2 also falls under the peer  
16 review privilege which lists the grounds for the proceeding.  
17 And I would respond that I was careful not to identify the  
18 witnesses in the pleadings.

19 THE COURT: Yes. All right.

20 MS. SLATTERY: Okay.

21 So, your Honor, we're here -- Doctor Padmanabhan was  
22 summarily suspended in November by Cambridge Health Alliance  
23 where he has worked as a neurologist for the past three years.

24 Prior to the Medical Executive Committee's decision to  
25 summarily suspend him, they did not interview him or talk to



1 him. He wasn't given an opportunity to present his side of the  
2 story. They summarily suspended him, waited two days to notify  
3 him. Meanwhile, he was seeing patients.

4 And then under their bylaws, Cambridge Health Alliance was  
5 obligated 14 days later to review the summary suspension. They  
6 chose not to. We went to a fair hearing. So between the time  
7 of the -- the suspension in November and the fair hearing in  
8 January, the Medical Executive Committee certainly had  
9 abundant opportunity to get outside reviewers to look at its  
10 records, to do further investigations on a part, and at the  
11 fair hearing in January, the Medical Executive Committee  
12 represented by Doctor Sullivan put on witnesses, evidence,  
13 testimony to support its decision to summarily suspend him and  
14 also its recommendation to terminate his privileges.

15 Doctor Padmanabhan likewise put on witnesses and documents  
16 in evidence as well.

17 At the conclusion, you know, the -- the fair hearing was  
18 done by three physicians from Cambridge Health Alliance who  
19 were appointed by the chair of the Medical Executive  
20 Committee, and it was under their purview at that point to  
21 adjourn the proceeding and -- and to -- to do further  
22 investigation. It chose not. It adjourned. Some -- and -- and  
23 prepared a final report, and the bottom line is the hearing  
24 committee found that Doctor Padmanabhan met his burden of  
25 proof in that there was not credible evidence to support the

1 medical executive decision to terminate his privileges.

2 THE COURT: On a permanent basis?

3 MS. SLATTERY: Correct.

4 But if there's no evidence to support him on the permanent  
5 basis, then there's really no basis to have him be suspended  
6 summarily any longer.

7 So the -- you know, given that there's no credible evidence  
8 to terminate his privileges, we proceeded with filing a  
9 request for appellate review.

10 THE COURT: So what -- why did you seek appellate review? I  
11 mean it -- according to your papers, you thought you won.

12 MS. SLATTERY: Because we were continued to be -- I mean  
13 Cambridge Health Alliance controls the suspension, and instead  
14 of saying look, we -- you know, there is credible evidence,  
15 they said we're -- we're continuing the -- the response was  
16 the medical executives committee said we don't care, we're  
17 continuing the suspension, and, oh, by the way, we want to  
18 conduct an investigation now of his entire practice.

19 They are entitled to investigate him and his practice, but  
20 it has to be under the rules. So the way -- if they want to do  
21 further investigation, they start a new investigation, and if,  
22 at that point, they find something where they want to take  
23 corrective action, then he -- he's entitled to a whole  
24 separate fair hearing plan.

25 What they've done here is we're in the middle of this

1 process where there's rules that -- that needed to be  
2 followed. I mean this protects Cambridge but it also protects  
3 the practitioner under the fair hearing plan. I mean this is  
4 Doctor Padmanabhan's career and livelihood. And so we sought  
5 appellate review because then the whole record goes to the  
6 Board of Trustees, member -- you know, members of the public,  
7 etcetera, who govern Cambridge Health Alliance. And then  
8 they're entitled to make a decision based on that evidence.

9 If -- if, you know, the Medical Executive Committee wants  
10 to do an investigation, fine, but they do that as a separate  
11 proceeding.

12 What we're here to ask the Court is for them to follow  
13 their own rules of this proceeding. I mean clearly what  
14 they're attempting to do is to get new evidence that wasn't  
15 part of the hearing in front of the -- the Board of Trustees.

16 THE COURT: Yeah. But I guess I'm a little confused by -- by  
17 this when -- in reading the report of the fair hearing  
18 committee, it was unclear exactly to me what they did do. But  
19 -- but they do expressly, specifically say that they  
20 recommended more investigation which suggests that they  
21 thought they -- there was going to be -- this was going to  
22 brought -- brought back before them in some way.

23 MS. SLATTERY: Well, under the rules, they're entitled to --  
24 before they adjourn to do further investigation, but they  
25 didn't do that here. They adjourned and -- and with the

1 finding that there, you know, wasn't credible evidence to  
2 support the Medical Executive Committee's recommendation.

3 So --

4 THE COURT: I guess I'm trying to get to as a practical  
5 matter --

6 MS. SLATTERY: Sure.

7 THE COURT: -- what the difference is here between what you  
8 say is their right to say we want to have more investigation,  
9 you know, and then have a hearing. What's the difference  
10 between that and what they did do which was to sort of issue a  
11 report which is somewhat ambiguous but recommend that there be  
12 a full invest -- you know, further investigation, A. So what's  
13 the difference between those two things?

14 And then, B, if the Medical Executive Committee could  
15 decide tomorrow to do a new suspension based on whatever  
16 investigation it's doing, aren't we right back into the same  
17 place anyway, and so wouldn't a more practical result be just  
18 to set some time parameter on when this investigation would be  
19 completed and when there can be a further hearing before the  
20 fair hearing plan and then get on with it?

21 MS. SLATTERY: I mean, the -- the -- in terms of your first  
22 question, your Honor, the -- the reason why it's -- why we're  
23 seeking appellate review is that they've summarily suspended  
24 him, and they reported that to the Board. And he meanwhile  
25 sits -- his privileges are suspended. If they want to do an

1 investigation, fine. Take the suspension off and do your  
2 investigation.

3 And then in terms of your second point --

4 THE COURT: Well --

5 MS. SLATTERY: -- my concern is that we're going through  
6 this fair hearing process where, you know, we got a hearing,  
7 we got the -- we got discovery from Cambridge Health Alliance,  
8 we -- you know, they put on their case, we put on ours. They  
9 can't now just put more evidence in that we haven't had a  
10 chance where we get to cross-examine the witnesses. You know,  
11 if they want to continue with this investigation, my response  
12 would be that his suspension should be lifted and if they want  
13 to put more -- more evidence in front of the -- the fair  
14 hearing committee, then we go back to another hearing.

15 But it's unfair to Doctor Padmanabhan to -- well -- while I  
16 understand your concern for practicality, the reason why we're  
17 here is because in fairness to him, if they want to sort of do  
18 this -- this, you know, yearlong investigation, fine, but undo  
19 his suspension and if -- if there's more evidence that needs  
20 to go back to a fair hearing where we have an opportunity to  
21 cross-examine witnesses, that's fine. But we should both --  
22 you know, the suspension should be lifted and we should get an  
23 opportunity to, you know, confront in a meaningful way this  
24 new evidence that has been submitted today.

25 THE COURT: Well, I will say, and then I will, you know,

1 hear from Mr. Sullivan about it, I'm -- I'm troubled by the  
2 time that's gone by, you know, with Mr. -- excuse me -- Doctor  
3 Padmanabhan suspended without further due process rights  
4 taking place. I am troubled by that.

5 But at the same time, it seems impractical at least that  
6 Mr. -- Doctor Padmanabhan appeals to the Board on what is  
7 really sort of an ambiguous and -- and half-done report.  
8 Wouldn't it be better if the thing was just all done, a  
9 hearing take place, and then the appeal go up if it would be  
10 done on a timely basis?

11 MS. SLATTERY: Right. In terms of the -- your concern about  
12 the time going by, I mean we have been trying to persuade them  
13 to do this, to -- to proceed forward. I mean, the -- the peer  
14 review cases as I read them in the Commonwealth impinge upon  
15 the party to go through the -- the administrative process. So  
16 we've been pushing to try to go through that process. But when  
17 it became clear that this investigation was going to go on  
18 indefinitely, we sought the Court's intervention.

19 THE COURT: Because you're -- you're not asking the Court as  
20 -- to revoke this suspension. You're --

21 MS. SLATTERY: Correct.

22 THE COURT: -- you're just asking the Court to order that  
23 the appeal go forward to the Board of Trustees?

24 MS. SLATTERY: Correct.

25 THE COURT: Far be it for me to predict anything about that,

1 but it seems the Board of Trustees would then be confronted  
2 with the same sort of mixed mess here in terms of whether  
3 there's the decision of the fair housing plan -- I mean the  
4 fair hearing plan was final or that they meant to have more  
5 investigation or, you know, or whatever.

6 MS. SLATTERY: But -- but the evidence that will be in front  
7 of the -- the Board of Trustees is evidence that shows that  
8 his conduct was meeting the standard of care. And I know  
9 they've -- they've submitted evidence now that's saying it's  
10 not, but what would be before the Board of Trustees is that  
11 his conduct met the standard of care and so they would -- you  
12 know, they may or may not, but the hope is that they lift the  
13 suspension and so that he can start to get -- get his career  
14 back and see his patients in a meaningful way again.

15 THE COURT: But what would stop the MEC from the day after  
16 the Board lifts the suspension to temporarily suspend him  
17 again based on the investigation they're doing?

18 MS. SLATTERY: I mean that -- that's entirely possible, but  
19 I would -- you know, I think that they're trying frankly to  
20 not follow their own rules and figure out a way to just keep  
21 him out of practice without giving him a meaningful process  
22 here.

23 THE COURT: Okay. Thank you.

24 Let me -- let me hear from Mr. Sullivan.

25 MR. SULLIVAN: Yes. Thank you, your Honor.

1           Your Honor, first, I would just like to let the Court know  
2 that Andrew Fupra who is an assistant general counsel at  
3 Cambridge Health Alliance and served as the fair hearing plan  
4 hearing officer came to Court with us today, and he's here in  
5 the courtroom.

6           As far as some of the issues that have been discussed,  
7 first, I'd just like to start with the last statement about if  
8 there were an appellate review, the only evidence to the Board  
9 of Trustees would be that Doctor Padmanabhan met the standard  
10 of care. I'd suggest that from what the Court has in front of  
11 the Court, that's not true. At the very least, the fair  
12 hearing committee report would go to the Board of Trustees.  
13 That hearing report I believe states, and I've quoted it and  
14 put it in Exhibit, that he was not meeting the standard of  
15 care. They found that the summary suspension was specifically  
16 warranted, and the fact that -- and -- and I'd suggest that  
17 this is what has occurred, your Honor. The fair hearing  
18 committee sent it back for further investigation precisely  
19 because of the extensive due process given to Doctor  
20 Padmanabhan.

21           There was extensive prehearing discovery between myself and  
22 Ms. Slattery's office. Doctor Padmanabhan called two expert  
23 witnesses, one of whom was an employment law specialist. I  
24 remember stating at the -- at the hearing that I'm not going  
25 to speak against it. I don't know that it was necessarily



1 something that was necessary, but there was extensive process  
2 provided which is precisely one of the reasons why it was sent  
3 back for further investigation on the question of permanent  
4 termination, absolutely not on the question of summary  
5 suspension. And so when we think about the likelihood of  
6 success on the merits, at this stage, it cannot be said that  
7 it is likely that Doctor Padmanabhan would get the Board of  
8 Trustees to set aside a summary suspension when a panel --

9 THE COURT: Well, that's not the issue.

10 MR. SULLIVAN: All right. Well --

11 THE COURT: I'm not -- I'm not predicting -- no one's  
12 predicting what the Board of Trustees --

13 MR. SULLIVAN: But for an injunction to --

14 THE COURT: -- is going to do.

15 MR. SULLIVAN: But for an injunction to issue, the plaintiff  
16 has the burden of establishing a likelihood of that success at  
17 this stage.

18 THE COURT: No. I think the plaintiff has the burden of  
19 establishing a likelihood of success that there's been a due  
20 process violation, and your own rule says that there's an  
21 appeal or rather that there's a time period, I forget which --  
22 what it is now, 14 days, for the Board of Trustees to hear an  
23 appeal.

24 MR. SULLIVAN: I think that's correct, your Honor, and so I  
25 will go to that. The -- the appellate review process

1 affectively cannot be done because essentially procedurally  
2 what happened is the fair hearing committee, having listened  
3 to three days of testimony and lengthy testimony from Doctor  
4 Padmanabhan, sent it back for further investigation under that  
5 portion of the bylaws. And the summary suspension was left in  
6 place which is allowable under the bylaws.

7 I would like to address because it sounds like a process --  
8 a claim of a process violation, but one of the initial claims  
9 in the brief and from Ms. Slattery's argument is that the MEC  
10 was obliged to review the summary suspension within 14 days. I  
11 think as a practical matter looking at -- more as a practical  
12 matter, looking at the bylaws, that provision is clearly in  
13 place for a situation where a chief, and the bylaws allow this  
14 to happen, a chief or a supervisor for whatever reason  
15 immediately suspends someone under their supervision. That has  
16 to be reviewed by the MEC within 14 days.

17 In this case, that's not what happened. The MEC summarily  
18 suspended his privileges. So it seems nonsensical to state  
19 that the bylaws require that same MEC to review its own  
20 decision.

21 THE COURT: But what -- you said that the fair hearing panel  
22 has authority under the bylaws to defer a decision to and  
23 order further investigation?

24 MR. SULLIVAN: I didn't say that they necessarily had  
25 authority under the bylaws. What I suggested is it seems from

1 reading that report that the fair hearing committee listened  
2 to all the evidence, mine and Doctor Padmanabhan's evidence.  
3 They considered it, and what they essentially did is say all  
4 right, these issues -- he -- his privileges should be  
5 suspended. But as far as permanent termination goes, that  
6 requires or necessitates some further investigation. And part  
7 of that involved medical records requested by Mr. Slattery  
8 prehearing which were provided to her expert. They were  
9 testified to. And that further investigation was done, and at  
10 this stage, has been completed.

11 And the due process argument, your Honor, is interesting in  
12 that this investigative committee gave a time and a place for  
13 Doctor Padmanabhan, I believe it was just last week or the  
14 week before, to appear to discuss any of these issues. He  
15 chose not to take advantage of that opportunity.

16 THE COURT: All right. Let -- let me slow you down on that.

17 MR. SULLIVAN: Yes, your Honor.

18 THE COURT: So first of all, you say that there's something  
19 in the bylaws that allows them to -- allows that fair hearing  
20 panel to ask for further investigation. Is there any governing  
21 piece of the bylaws that says how long that has to take place  
22 or how long -- when it must be completed by?

23 MR. SULLIVAN: Not that I saw. And I'm not -- and I wouldn't  
24 -- I would not take the position that the timeline is ideal.  
25 We understand that. But this is a medical staff proceeding.

1 These are clinicians that are doing this. It's not a -- it's  
2 not a bevy of professional investigators. That's how peer  
3 review works. All of these physicians that are doing this are  
4 clinicians in themselves.

5 THE COURT: And then the second thing I think you said is at  
6 this stage, meaning today, the further investigation is  
7 completed?

8 MR. SULLIVAN: And that's -- that report is in front of the  
9 Court. So the next --

10 THE COURT: Where is that report?

11 MR. SULLIVAN: That report, if I can again borrow the  
12 Exhibits from Ms. Slattery, thank you, it was one of the  
13 reports that I suggested would require impoundment, and it's  
14 7.

15 THE COURT: That's Exhibit 7?

16 MR. SULLIVAN: That's Exhibit 7. Yes, your Honor.

17 THE COURT: All right.

18 MR. SULLIVAN: And then there's the outside review that was  
19 done as part of that --

20 THE COURT: All right.

21 MR. SULLIVAN: -- that's Exhibit 8.

22 THE COURT: That's -- that's just dated August 1.

23 MR. SULLIVAN: Yes, your Honor.

24 THE COURT: So that was a few days ago.

25 And -- and then what do you --

1 MR. SULLIVAN: And that's -- some of the time here is he was  
2 just asked to come in for an interview last week, and I  
3 suggest that -- that that may be what led to this this week.

4 THE COURT: Well, what do you say will happen now after this  
5 August 1 report?

6 MR. SULLIVAN: This now has to go to the Medical Executive  
7 Committee as an investigative report. And I agree with, Ms.  
8 Slattery. If the -- if the Medical Executive Committee now  
9 either sticks with current -- what they previously recommended  
10 or anything adverse to Doctor Padmanabhan, I would agree with  
11 Ms. Slattery that that then triggers further fair hearing plan  
12 rights.

13 THE COURT: When will the Medical Executive Committee take  
14 it up and make a decision?

15 MR. SULLIVAN: I don't know if that's August or September.

16 THE COURT: Why? Because they only meet once a month or  
17 what?

18 MR. SULLIVAN: I think it's one a month, your Honor.

19 THE COURT: And if the medical -- assuming anything the  
20 Medical Executive Committee does which is adverse to the  
21 Doctor, he then could go to a fair hearing plan?

22 MR. SULLIVAN: I agree with that. Further material has been  
23 reviewed, some of which was at -- produced by Ms. Slattery at  
24 the hearing. But further material was reviewed, and I would  
25 agree with that.

1 THE COURT: Well, as I stated before, what troubled me was  
2 the timing because I basically agree with what you -- you say  
3 in your memo that there is a lot of due process going on here.  
4 I mean it's certainly not a case where there's no due process.  
5 But good due process can be sabotaged by lengthy periods of  
6 time where someone's rights are sort of, you know, in  
7 suspension while things are going on. And if they aren't going  
8 on in a timely manner, then at some point in time, I think it  
9 starts to impose on the due process rights even if they're  
10 ultimately to be given to the person.

11 So that's -- that's my concern, that -- that this thing be  
12 completed and Mr. -- I'm sorry -- Doctor Padmanabhan given an  
13 opportunity to appeal and then get on with the appeal to the  
14 executive committee -- excuse me -- to the Board of Trustees  
15 if he -- if he so chooses at that point in time.

16 So can you represent that this -- that the MEC will issue  
17 its decision in August? I mean if you can -- can you check  
18 with your client on that?

19 MR. SULLIVAN: I can. I -- I believe it might be September  
20 just because of the summer months, but I can certainly check,  
21 your Honor, absolutely.

22 THE COURT: And then what's the time period from the  
23 issuance of an MEC decision to when a fair hearing has to take  
24 place assuming there is one?

25 MR. SULLIVAN: I -- there is, and I can't recall exactly at

1 the moment if it's 30 days. And anything that Ms. Slattery  
2 recalls, I'd be happy to hear if she has a recollection of  
3 that. But if the Court gives me a moment, I can look at the  
4 fair hearing plan.

5 Within 15 days of getting notice of a recommended  
6 corrective action, the chief executive officer of the  
7 Alliance, which by the way is who appointed the fair hearing  
8 committee as well, it was not the CEO of the MEC, I believe,  
9 shall give the practitioner written notice about the  
10 recommended corrective action, a copy of the fair hearing  
11 plan. The practitioner then has 30 days from receipt of that  
12 notice to request the hearing.

13 Once the practitioner's requested the hearing, the CEO  
14 sends the practitioner 30 days, not more than 45 days, written  
15 notice of the hearing including the time and place, and then  
16 if the practitioner needs to continue it, the practitioner can  
17 continue it.

18 THE COURT: All right. Here's what I'm going to suggest. I  
19 think I'm going to ask that you step out, all of you, and have  
20 a chance to confer with your client and see if you can come  
21 back with an agreed upon time for the MEC to issue its report  
22 and -- and any other time period you -- you can agree to. And  
23 then -- and then come back and let me know where you stand,  
24 all right?

25 MR. SULLIVAN: Yes, your Honor.

1 THE COURT: All right. So we'll hold this matter and take up  
2 other matters --

3 (Break in audio.)

4 (Recess Taken.)

5 COURT OFFICER: All rise.

6 THE CLERK: Be seated, please. Court's now in session. Once  
7 again, your Honor, Padmanabhan v. Cambridge Health Public  
8 Health Commission.

9 THE COURT: Okay. Mr. Sullivan, what have you been able to  
10 come up?

11 MR. SULLIVAN: Yes, your Honor. We will get this to the  
12 Medical Executive Committee in August, this month.

13 THE COURT: So that the medal -- Medical Executive Committee  
14 will issue its decision this month?

15 MR. SULLIVAN: I would -- I can't recall what the timeline I  
16 just gave the Court -- but that -- yes, your Honor. Yes.

17 THE COURT: All right.

18 MR. SULLIVAN: Yes.

19 THE COURT: Anything else that you agreed upon?

20 MS. SLATTERY: No.

21 THE COURT: All right.

22 All right. So --

23 The Court's going to deny the request for preliminary  
24 injunction without prejudice to renew if by the end of August  
25 you've not received the report of the Medical Executive



1 Committee with respect to its further investigation. Then the  
2 Court anticipates that both sides will move promptly to get to  
3 the next fair hearing hearing --

4 MR. SULLIVAN: Yes, your Honor.

5 THE COURT: -- and follow the process as to go from there if  
6 necessary up to the appeal -- up the appeal process.

7 All right?

8 MR. SULLIVAN: Thank you, your Honor.

9 THE COURT: Thank you.

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(Adjourned)



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