

NOT DESIGNATED FOR PUBLICATION

**COURT OF APPEAL
STATE OF LOUISIANA**

FIRST CIRCUIT

2008 CA 0348

LAURA CRAFTON, M.D.

VERSUS

**RIVER WEST MEDICAL CENTER, RICK DICAPO, RIVER WEST
MEDICAL EXECUTIVE COMMITTEE, CYRIAC LUKE, M.D. AND
STEVEN LEE, M.D.**

CONSOLIDATED WITH

2008 CA 0349

RIVER WEST L.P. d/b/a RIVER WEST MEDICAL CENTER

VERSUS

LAURA CRAFTON, M.D.

Judgment rendered: OCT 31 2008

**On Appeal from the 18th Judicial District Court
Parish of Iberville, State of Louisiana
Numbers 57,570 and 57,619**

The Honorable Alvin Batiste, Jr., Judge Presiding

**Glen Scott Love
Robert L. Graves
Baton Rouge, LA**

-and-

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Pro Hac Vice
Tullahoma, TN**

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River West Medical Executive
Committee, Cyriac Luke, M.D., and
Steven Lee, M.D.**

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**Cyriac Luke, M.D.,
James Grace, M.D., James Smith,
M.D., Connie Keller, Andrew
Hargroder, M.D., Paul Jackson,
M.D., Gerald Falgoust, M.D. and
Steven Lee, M.D.**

BEFORE: CARTER, C.J., WHIPPLE AND DOWNING, JJ.

DOWNING, J.

Laura Crafton, M.D., appeals a summary judgment granted in favor of the appellees¹ (collectively, “River West”), “based on immunity pursuant to the Health Care Quality Improvement Act and the Louisiana Peer Review Statute.” The judgment dismissed Dr. Crafton’s claims against River West arising from her termination from employment and dismissed River West from the lawsuit. We affirm the judgment.

PERTINENT FACTS AND PROCEDURAL HISTORY

Dr. Crafton had privileges to practice medicine at the River West medical facility when she was summarily suspended in August 2001. A Medical Executive Committee met within three days and ratified the summary suspension. Dr. Crafton timely requested a hearing to review the actions against her. After a peer review hearing, the hearing committee ratified Dr. Crafton’s suspension.

Dr. Crafton subsequently filed suit against River West, asserting several causes of action. River West filed a reconventional demand and a separate action. These actions were consolidated. After discovery was completed, River West filed the motion for summary judgment that is at issue on appeal. The trial court granted River West’s motion for summary judgment, dismissing Dr. Crafton’s claims against them.

Dr. Crafton appealed, asserting one assignment of error: the trial court erred in granting River West’s summary judgment motion and dismissing her claims.

DISCUSSION

Summary judgment on the issue of conditional privilege under the Health Care Quality Improvement Act² (“HCQIA”) and the Louisiana Peer Review Statute³ is appropriate. **Smith v. Our Lady of the Lake Hosp., Inc.**, 93-2512, pp.

¹ The appellees include River West, LP d/b/a River West Medical Center, Rick DiCapo, Carl W. Scherer, III, M.D., Antonio Edwards, M.D., Cyriac Luke, M.D., James Grace, M.D., James Smith, M.D., Connie Keller, Andrew Hargroder, M.D., Paul Jackson, M.D., Gerard Falgoust, M.D., Greg Ward, M.D., and Steve Lee, M.D.

² 42 U.S.C. § 11101, *et seq.*

³ Louisiana Revised Statutes 13:3715.3C contains the conditional privilege for the Louisiana peer review process.

19-20 (La. 7/5/94), 639 So.2d 730, 746. Further, “there is a rebuttable presumption that the professional review action satisfies the requirements of 42 U.S.C. § 11112(a).” **Manasra v. St. Francis Medical Center, Inc.**, 33,312, p. 11 (La.App. 2 Cir. 6/23/00), 764 So.2d 295, 302-03. Therefore, “the plaintiff/physician bears the burden of proving by a preponderance of the evidence that *the peer review process did not satisfy the statutory requirements.*” **Id.** “Because of the presumption of fairness set forth in HCQIA, the burden is on [Dr. Crafton] to establish that the requirements of HCQIA were not satisfied.” **Id.**, 33,312 at p. 12, 764 So.2d at 303. Additionally, the Louisiana Supreme Court construes La. R.S. 13:3715.3C to include a presumption of good faith. **Smith**, 93-2512 at p. 20, 639 So.2d at 747. “Hence, the burden is on the plaintiff-physician to establish a lack of good faith or malice.” **Id.**

We review summary judgment on appeal *de novo*, “using the same criteria that govern the trial court’s determination of whether summary judgment is appropriate; *i.e.*, whether there is any genuine issue of material fact, and whether the movant is entitled to judgment as a matter of law.” **Samaha v. Rau**, 07-1726, pp. 3-4 (La. 2/26/08), 977 So.2d 880, 882-83.

Here, River West supported its motion for summary judgment, based on immunity, with full transcripts of the hearings, affidavits and exhibits showing its procedures and proceedings. It provided a “List of Undisputed Material Facts” made in accordance with Louisiana District Court Rules, Rule 9.10, properly referencing the exhibits in support of its motion for summary judgment.

Dr. Crafton’s evidence disputes many of the asserted facts, but she opposes the recognition of immunity for River West on four basic grounds, which she asserts rebut the presumptions in its favor. She argues that her due process rights were violated by having the hearing officer/chairman in a fair hearing also represent the Medical Executive Committee; she argues that inconsistent testimony of the River West chief executive officer creates credibility issues that are

improper for resolution on summary judgment; she argues that her due process rights were violated when the hearing officer/chairman took advice from the Medical Executive Committee's attorney; and she argues that River West failed to substantially comply with its own bylaws. In these regards, she argues that she was limited in the presentation of evidence at the hearing, that River West applied its bylaws in bad faith, that she was given insufficient notice, and that she was given voluminous evidence without adequate time to review. She further argues that expert evidence is necessary to identify whether or not bad faith peer review has occurred.

On our *de novo* review, we agree with the trial court in its findings that Dr. Crafton has failed to prove by a preponderance of the evidence that she can establish bad faith or that the peer review process did not satisfy the statutory requirements. The trial court's thorough and perspicacious oral reasons clearly explain why summary judgment is appropriate in this matter. Since the trial court's reasons adequately explain the decision, we adopt the trial court's reasons and will affirm the summary judgment granted in favor of River West, dismissing Dr. Crafton's claims against the specifically named parties.

DECREE

We affirm the summary judgment granted in favor of River West, LP d/b/a River West Medical Center, Rick DiCapo, Carl W. Scherer, III, M.D., Antonio Edwards, M.D., Cyriac Luke, M.D., James Grace, M.D., James Smith, M.D., Connie Keller; Andrew Hargroder, M.D., Paul Jackson, M.D., Gerard Falgoust, M.D., Greg Ward, M.D., and Steven Lee, M.D., dismissing Dr. Crafton's claims against them. Costs of this appeal are assessed against Dr. Laura Crafton. We issue this memorandum opinion in compliance with Uniform Rules – Courts of Appeal, Rule 2-16.1.B.

AFFIRMED