

original complaint in each was not filed until after the four-year repose. Instead the court looked to *Sompolski v. Miller*, 239 Ill. App. 3d 1087, 608 N.E.2d 54 (1st Dist. 1992) where the representative of the deceased was able to use the relation back doctrine in a personal injury case after the two-year statute of limitations had run because the wrongful death claim made by the representative “arose from the same transaction or occurrence.” Referencing *Zeh*, the *Sompolski* court stated that the relation back doctrine is appropriate so long as the defense has been apprised of the information needed to prepare a defense.

The appellate court, finding *Sompolski* analogous to the present case, reversed the trial court’s ruling and remanded the case. *Lawler v. The University of Chicago Medical Center*, No. 1-14-3189 (Ill. App. 1st Dist., Mar. 25, 2016).

#### **Court sustains revocation of physician’s hospital privileges following rule of non-review**

The plaintiff-physician sought a court order to enjoin enforcement of the decision of the defendant-nonprofit hospital’s Board to revoke his medical staff membership and clinical privileges. The trial court found that the plaintiff’s privileges had been revoked without proper notice and a hearing, and without any finding of imminent danger, in violation not only of the Illinois Hospital Licensing Act (Licensing Act), 210 ILCS 85/10.4, but also of the defendant’s bylaws and credentials manual. The court entered a partial summary judgment for the plaintiff, permanently enjoining the defendant from enforcing the revocation. Additionally, the trial court ruled that the defendant was immune from civil damages under the Licensing Act, 210 ILCS 85/10.2 and the Health Care Quality Immunity Act of 1986 (HCQIA), 42 U.S.C. §11101 et seq. Therefore, the court entered a partial summary judgment for the defendant on the plaintiff’s claim for damages. Both parties appealed.

On appeal, the court specifically noted that Illinois follows the “rule of non-review” of private hospital medical staff decisions. The court explained that under this rule, judicial review “is limited to

whether the defendant’s revocation decision was made in substantial compliance with its bylaws, and not whether the imposed discipline was appropriate.” In this case, the appellate court held that the hospital-defendant had complied with section 10.4 of Illinois Hospital Licensing Act and the applicable provisions in its bylaws and credentials manual in revoking plaintiff’s privileges. Further, the court upheld the lower court’s finding regarding the defendant’s damage immunity.

The plaintiff’s difficulties in the instant case involved two arguments he had with members of the hospital’s nursing staff. The arguments related to surgeries and included both yelling and physical contact by the plaintiff with a nurse. On one occasion a police report was filed. The defendant’s credentials manual provided that if a practitioner engages in professional conduct within or outside the hospital, which is or is reasonably likely to be detrimental to the quality of patient care or disruptive to the hospital’s operations disciplinary actions could be brought.

After the first incident, the defendant’s Medical Executive Committee (MEC) scheduled a meeting and invited the plaintiff and the nurses to attend the meeting to discuss the incident. The plaintiff declined to attend the meeting for various reasons, including his attorney’s advice. The second incident occurred the day before the scheduled meeting.

The MEC proceeded with its review meeting and recommended to the Board that the plaintiff undergo anger management counseling and make a formal apology. The plaintiff was informed of the MEC’s recommendation. The next day, the Board met to review the incidents and decided to reject the MEC’s recommendation and instead to revoke the plaintiff’s hospital privileges. The plaintiff was notified of the Board’s decision and its reasons, and that he had a right to request a hearing and appellate review. Additionally, the plaintiff was informed that the hospital would submit a report to the National Practitioner Data Bank as required by federal law.

In response, the plaintiff requested

a hearing. A hearing committee was appointed at which the parties presented evidence and were allowed to question witnesses. Following the hearing, the committee recommended that the Board’s decision be affirmed. The plaintiff was informed of this recommendation and sought review by an appellate review committee. The plaintiff appeared and spoke during the hearing held by this committee. The review committee upheld the revocation recommendation. After further review by the Medical Staff/Board Liaison Committee, the hospital’s Board reaffirmed the revocation of plaintiff’s privileges.

The appellate court found that the hospital followed the proper steps in handling the plaintiff’s disciplinary action.

After reviewing the undisputed facts in the record, we find that the defendant’s decision to revoke the plaintiff’s staff membership and clinical privileges was made in compliance with section 10.4 of the Licensing Act and the applicable provisions in the Bylaws and Credentials Manual. The record shows that the plaintiff received proper notice of the Board’s adverse action and his right to a hearing and appellate review. The record also shows that the plaintiff appeared with his attorney and fully participated in the hearing and the appellate review process.

From this perspective, the court held that the defendant was entitled to summary judgment on the plaintiff’s claim for injunctive relief, and that the trial court had erred in entering a partial summary judgment and injunctive relief for the plaintiff. In addition, the court ruled that there was nothing in the record to suggest that the hospital had engaged in willful and wanton misconduct in revoking the plaintiff’s privileges. As a result, the trial court’s summary judgment for the defendant as to plaintiff’s damage claim was proper. *Murfin v. St. Mary’s Hospital*, No. 5-14-0136 (5th Dist., Mar. 8, 2016). ■