25-P-860 Appeals Court

MICHAEL F. HOLICK vs. BOSTON MEDICAL CENTER & another.[1]

No. 25-P-860.

Suffolk. May 5, 2026. - September 11, 2026.

Present: Meade, Sacks, & Wood, JJ.

Contract, Physician, Performance and breach. Public Policy. Health Care Facility. Employment, Termination, Retaliation. Practice, Civil, Discovery, Summary judgment. Statute, Construction.

Civil action commenced in the Superior Court Department on June 25, 2021.

The case was heard by Kenneth W. Salinger, J., on a motion for summary judgment.

Ellen J. Zucker (Kimberly Crowley also present) for the plaintiff.

Jonathan D. Persky for the defendants.

Dennis M. Coyne, for Massachusetts Nurses Association, amicus curiae, submitted a brief.

SACKS, J. The plaintiff, Dr. Michael F. Holick, was a physician at the defendant Boston Medical Center (BMC) until

[1] Evans Medical Foundation, Inc.

2021, when BMC terminated his staff appointment because it found he had violated certain restrictions on his clinical privileges. BMC's action also operated to terminate Holick's employment with BMC's faculty practice plan, the defendant Evans Medical Foundation, Inc. (EMF). Holick then filed a Superior Court complaint claiming that BMC had retaliated against him in violation of the health care whistleblower statute, G. L. c. 149, § 187 (count I), and that BMC and EMF had terminated him in violation of a claimed employment contract (count II) and in violation of public policy (count III). After one judge ruled against Holick in a discovery dispute involving the medical peer review privilege, a second judge allowed the defendants' motion for summary judgment, and Holick now appeals. We decline to disturb the discovery ruling, but we vacate so much of the judgment as dismissed a part of Holick's whistleblower claim and his public policy claim. We affirm the dismissal of the rest of his whistleblower claim and of his contract claim.[2]

Background. We draw the factual background largely from the parties' joint statement of facts accompanying BMC's[3] motion for summary judgment, viewing the evidence in the light most

[2] We acknowledge the amicus brief filed by the Massachusetts Nurses Association.

[3] We refer hereafter to the defendants collectively as BMC, except where necessary to refer separately to EMF.

favorable to Holick as the nonmoving party, and reserving certain details for later discussion. See Augat, Inc. v. Liberty Mut. Ins. Co., 410 Mass. 117, 120 (1991). Holick was a physician at BMC who at one time was the chief of endocrinology, diabetes, and nutrition. Holick also conducted research at the Boston University School of Medicine (medical school). Holick studied Ehlers-Danlos Syndromes (EDS), a group of fourteen connective tissue disorders, one of which is hypermobile EDS (hEDS).

Since 2011, Holick has testified about hEDS as an expert witness in dozens of legal proceedings involving allegations of child abuse against a parent or family member. Holick typically testifies that otherwise unexplained fractures, which other experts attribute to nonaccidental trauma (i.e., child abuse), could have been caused by bone fragility associated with hEDS. Unlike the other thirteen variants, hEDS has no identified genetic marker, and the widespread view in the medical community is that it can be diagnosed only in adults and older children, because young children are naturally hypermobile even in the absence of hEDS. According to that view, it cannot be reliably determined whether bone injury in young children consistent with abuse may also be attributable to bone fragility associated with hEDS. Holick, however, believes that young children can be diagnosed as likely having hEDS, that a mother's diagnosis with

hEDS increases the child's risk of bone fractures, and that physicians should take more thorough family histories to determine if hEDS could be the cause of unexplained fractures and bruising in young children.[4]

In communications with high-level BMC staff, Holick criticized other physicians from BMC and other hospitals for opining in court that an hEDS diagnosis could not be made in infants and that injuries in the young children they evaluated were likely the result of abuse, resulting in the children's removal from their parents. Holick expressed concern that BMC's child protection team was "missing cases of EDS." Members of that team, for their part, were concerned that Holick was "overdiagnosing EDS."

In a December 2016 e-mail message, Holick complained to BMC's chief medical officer, Dr. Ravin Davidoff, about a BMC staff member's evaluation of a child that Holick had previously seen in connection with allegations of child abuse. Holick's previous testimony on behalf of the parents had "convinced the judge to order the child returned." Holick had learned,

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[4] The terminology in the summary judgment record is inconsistent in sometimes referring simply to "EDS," rather than "hEDS," in contexts implying that the condition being referred to is difficult or impossible to diagnose with certainty in children under the age of five -- a characteristic of hEDS but not the other thirteen types of EDS. We assume that such references are intended to be to hEDS.

however, that the parents had come back to BMC with the child, who had a rib fracture, bruises, and abrasions, and a BMC pediatric geneticist had concluded that the child did not meet the criteria for hEDS and the cause of the injuries "remain[ed] unknown." The BMC geneticist's testimony to that effect had led to the child's removal from his family and placement in foster care. Holick believed that the BMC geneticist should have delved further into whether the child had a family history of traits associated with hEDS. Holick told Davidoff that BMC should be concerned about the geneticist's "incompetence" and that a "lawsuit should be brought against her and . . . the institution that she represents," i.e., BMC.

Also in 2016, Davidoff heard concerns from other BMC staff about Holick's testimony and whether he was evaluating children according to acceptable standards. Davidoff met with Holick and they agreed that Holick would stop seeing young children in BMC clinical space, with the ultimate goal of seeing all EDS patients in a research setting at the medical school's General Clinical Research Center (GCRC). This distinction between clinical and research settings would soon become important.

In 2017, Holick evaluated two young children in the BMC clinic after their mother, during her own appointment with Holick, "begged" him to confirm whether the children, who were present, also had EDS. The chair of BMC's department of

medicine, Dr. David Coleman, learned of the incident, met with Holick, and sent him a follow-up letter memorializing Coleman's concerns.

The letter stated that Holick had violated his agreement with Davidoff and was not to see or evaluate patients under thirteen years of age in any clinical space at BMC, but only at the medical school's GCRC as part of an approved research protocol. Holick was told that he could continue his expert witness evaluations of children outside BMC, on his own time, but could not state or imply that either BMC or the medical school endorsed his testimony. Holick was further informed that violations would subject him to disciplinary action including loss of his clinical privileges and faculty appointment. Holick was instructed to countersign the letter to "confirm [his] understanding of this commitment," which Holick ultimately did.

In 2018, Coleman learned that Holick had recently testified to having diagnosed children with EDS at the GCRC. Coleman wrote a letter in December 2018 telling Holick that making diagnoses went beyond the research in which he was permitted to engage at the GCRC. The letter further stated, "[A]ll activity related to providing expert testimony must not conflict with your other department responsibilities and must comply with [u]niversity and [d]epartment policies." The letter asked

Holick to "sign below to confirm [his] understanding of the[se] restrictions," which he did.

Another BMC official followed up that letter with an e-mail message instructing Holick that he could not "use any information gathered in the [GCRC] . . . to make a diagnosis of EDS in a patient [under thirteen years of age] and use that information in any testimony going forward," and that doing so would likely lead to his termination. In a subsequent e-mail message, Coleman stated that any such diagnosis could be made only for purposes of classifying Holick's research results and "must not be shared with any outside entity or person."[5]

In early 2019, BMC's board of trustees voted to restrict Holick's medical privileges so that he could diagnose and treat only patients over the age of twelve. BMC reported this restriction to the Board of Registration in Medicine.

In late 2019, Holick wrote an expert witness report about an infant who had previously been brought to another hospital with multiple fractures and brain and retinal hemorrhages. Holick's report stated that he had examined the infant and his family members through Holick's EDS clinical research program, and that the infant had a fifty percent, or more likely a

[5] Holick responded that he would not share such diagnoses "except when being de-identified for publication purposes," to which BMC apparently did not object.

seventy-five percent, chance of having inherited hEDS. Holick's report stated "with a high degree of medical certainty that [the infant's] unexplained fractures could have been caused by bone fragility that is associated with [hEDS]." The report also recommended a treatment to improve the infant's bone health.

In 2020, Coleman learned of Holick's late 2019 expert report and three other recent expert reports in which Holick made "observations consistent with EDS." In September 2020, Coleman informed Holick by e-mail that Coleman was recommending termination of Holick's BMC privileges. Holick asked Coleman to tell him, "exactly what I am being accused of doing that has violated my letter of agreement." Coleman replied that Holick, by diagnosing a child and using the diagnosis "as the basis for your evaluation in the court report," i.e., for purposes other than clinical research, had engaged in conduct prohibited by the December 2018 "letter agreement" and by the BMC trustees' 2019 restrictions on Holick's medical privileges.

BMC's medical staff bylaws describe procedures to be followed in such circumstances, including the availability of hearings before ad hoc committees of the medical staff and of the board of trustees. Holick disputes whether all such procedures were followed, but it is undisputed that, after proceedings commencing in late 2020, the full board of trustees ultimately voted in 2021 to terminate Holick's staff appointment

and privileges at BMC. This action, by operation of EMF's bylaws and its physician practice agreement with Holick, terminated Holick's employment relationship with EMF. Holick was then offered, and accepted, employment as a professor at the medical school, retroactive to the date of his termination by EMF. In that position, Holick continued his EDS research and continued to provide expert testimony on behalf of families accused of child abuse.

Holick's Superior Court complaint asserted in count I that BMC had violated the health care whistleblower statute by retaliating against him for criticizing colleagues who diagnosed injuries in young children as resulting from nonaccidental trauma, such as child abuse, without more thoroughly evaluating, based on a detailed family history, whether the injuries could have resulted from hEDS. Count II asserted that BMC staff bylaws constituted a contract and that BMC's restriction and later termination of Holick's staff privileges violated certain of the bylaws' procedural protections, in breach of that contract. Count III asserted that Holick had been discharged in violation of the public policy, expressed in G. L. c. 111, § 53H, prohibiting hospitals from limiting physicians' ability to testify in court proceedings.

On BMC's motion for summary judgment, a judge ruled that Holick could not establish essential elements of his health care

whistleblower claims; that even if BMC had violated any of its bylaws (treated as a contract), Holick could not show any resulting damages; and that Holick's discharge did not violate any public policy. Holick appealed.

Discussion. 1. Medical peer review privilege. During discovery, BMC objected to certain documents and depositions sought by Holick, arguing that they were protected by the medical peer review privilege, see G. L. c. 111, § 204 (a), and Holick moved to compel production. A judge allowed Holick's motion in part[6] but denied it as to materials relating to the 2020-2021 proceedings ending in the board of trustees' decision to terminate Holick's clinical privileges. The judge ruled that the peer review privilege applied and that Holick had not shown that the statutory lack-of-good-faith exception to the privilege applied with respect to those materials. On appeal, Holick has given us no reason to disturb this ruling.

We review a discovery ruling for abuse of discretion. Commissioner of Revenue v. Comcast Corp., 453 Mass. 293, 302 (2009) (Comcast). Holick argues only that the judge erred in not applying the exception. The burden is on Holick, as the

[6] The judge ordered BMC to produce materials relating to the trustees' 2019 vote to limit Holick's clinical privileges. She ruled that the board was not acting as a peer review committee at that time and that, in any event, Holick had shown that the lack-of-good-faith exception applied. Those rulings are not at issue on appeal.

party asserting the exception, to prove that it applies. Vranos v. Franklin Med. Ctr., 448 Mass. 425, 438 (2007).

General Laws c. 111, § 204 (a), provides that "the proceedings, reports and records of a medical peer review committee shall be confidential and . . . shall not be subject to subpoena or discovery, or introduced into evidence, in any judicial or administrative proceeding." This peer review privilege is intended "[t]o 'promote candor and confidentiality' in the peer review process . . . and to 'foster aggressive critiquing of medical care by the provider's peers.'" Vranos, 448 Mass. at 434, quoting Pardo v. General Hosp. Corp., 446 Mass. 1, 11 (2006). Courts therefore interpret the privilege "broadly," to "provide weighty protection to a medical peer review committee's work product and materials." Vranos, supra.

The sole exception to the privilege is correspondingly narrow.

> "The Legislature provided a single, narrow exception to the privilege 'to establish' that a member of a peer review committee did not act 'in good faith and in the reasonable belief that based on all of the facts the action or inaction on his part was warranted' during the peer review process."

Pardo, 446 Mass. at 11, quoting G. L. c. 111, § 204 (b), and G. L. c. 231, § 85N. See Vranos, 448 Mass. at 435 (exception "must be construed narrowly to preserve the purposes of the peer review privilege to promote good health care"); Carr v. Howard,

426 Mass. 514, 533 n.22 (1998) (G. L. c. 111, § 204 (b), permits use of proceedings and records of peer review committee in action under G. L. c. 231, § 85N, against member of committee for engaging committee duties in bad faith). "[T]he moving party must show that the medical review process itself, and not the reasons for initiating it, was infected with lack of good faith," Vranos, supra at 438, and this requires actual "evidence of misconduct within the peer review process," id., citing Pardo, supra at 12-13. Mere "suspicions . . . are insufficient to pierce the thick armor of the privilege." Vranos, supra at 437.

Here, Holick argues that the judge should have found the lack-of-good-faith exception applicable to the 2020-2021 peer review process culminating in the termination of his clinical privileges. The judge explained in some detail her reasons for ruling otherwise. Yet, on appeal, Holick merely lists the same arguments he made to the judge, without explaining how she abused her discretion in rejecting those arguments. For example, he criticizes the 2020-2021 process as "predicated upon" three assertedly invalid grounds, without acknowledging the judge's point that under Vranos, he had to "show that the medical review process itself, and not the reasons for initiating it, was infected with lack of good faith." Vranos, 448 Mass. at 438. We leave the judge's ruling undisturbed. See

Comcast, 453 Mass. at 302 (discovery rulings reviewed for abuse of discretion).

There is another ground on which the lack-of-good-faith exception might be thought inapplicable, although the question has not been briefed and so we do not decide it. The exception allows privileged materials to be used "in any proceeding against a member of such [medical peer review] committee to establish a cause of action pursuant to [G. L. c. 231, § 85N]" (emphasis added).[7] G. L. c. 111, § 204 (b). The only reported decisions in which the exception was at issue involved claims against individual members of peer review committees. See Vranos, 448 Mass. at 434-435; Pardo, 446 Mass. at 11 & n.22. See also Carr, 426 Mass. at 533 n.22. In Pardo, after quoting the relevant language of G. L. c. 111, § 204 (b), the court was careful to explain that although "[t]he individual defendant doctors who participated in the peer review committee . . . were

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[7] Section 85N of G. L. c. 231 provides in pertinent part as follows:

> "No member of a professional society or of a duly appointed committee thereof, or a duly appointed member of a committee of a medical staff of a licensed hospital or a health maintenance organization licensed under the provisions of [G. L. c. 176G] shall be liable in a suit for damages as a result of his acts, omissions or proceedings undertaken or performed within the scope of his duties as such committee member, provided that he acts in good faith and in the reasonable belief that based on all of the facts the action or inaction on his part was warranted . . ." (emphases added).

dismissed as defendants before trial[,] . . . [t]he discovery dispute . . . arose before they were dismissed," suggesting that their status as defendants was relevant to whether the exception applied. Pardo, supra at 11 n.22.

Here, in contrast, Holick asserted no claim for damages against any member of a peer review committee, under G. L. c. 231, § 85N, or otherwise. Rather, he sued only BMC and EMF. It is thus unclear whether the exception, which "must be construed narrowly," Vranos, 448 Mass. at 435, applies here at all. We leave the question for a future case.

2. Summary judgment. "The standard of review of a grant of summary judgment is whether, viewing the evidence in the light most favorable to the nonmoving party, all material facts have been established and the moving party is entitled to a judgment as a matter of law." Augat, Inc., 410 Mass. at 120. We draw all reasonable inferences in favor of the nonmoving party. See Sullivan v. Liberty Mut. Ins. Co., 444 Mass. 34, 38 (2005). A moving party may also obtain summary judgment by demonstrating that a party who would have the burden of proof at trial has no reasonable expectation of proving an essential element of his case. See Kourouvacilis v. General Motors Corp., 410 Mass. 706, 716 (1991).

a. Health care whistleblower claims. General Laws c. 149, § 187 (§ 187), "provides a cause of action to health care

providers who are retaliated against for disclosing problems within health care facilities" (footnote omitted). Romero v. UHS of Westwood Pembroke, Inc., 72 Mass. App. Ct. 539, 540 (2008). "Section 187 (b) prohibits health care facilities from 'refus[ing] to hire, terminat[ing] a contractual agreement with or tak[ing] any retaliatory action against a health care provider' for engaging in any of the acts protected under the section." Id.

Here, Holick's whistleblower claims focused on three categories of protected acts, two of which we group together for discussion. The statute protects a health care provider who either "discloses or threatens to disclose to a manager or to a public body," G. L. c. 149, § 187 (b) (1), or "objects to or refuses to participate in," G. L. c. 149, § 187 (b) (3),

> "any activity, policy or practice of the health care facility . . . which the health care provider reasonably believes is in violation of a law or rule or regulation promulgated pursuant to law or violation of professional standards of practice which the health care provider reasonably believes poses a risk to public health."

G. L. c. 149, § 187 (b) (3). The statute also protects a health care provider who "participates in any committee or peer review process, files a report or a complaint, or an incident report discussing allegations of unsafe, dangerous or potentially dangerous care." G. L. c. 149, § 187 (b) (4). We agree with the summary judgment judge that Holick cannot prove his claims

under § 187 (b) (1) (disclosing) or § 187 (b) (3) (objecting), but we conclude that summary judgment should not have been allowed on Holick's claim under § 187 (b) (4) (reporting or complaining), a provision which we, unlike the judge, do not read as limited to formal and official reports or complaints.[8]

i. Section 187 (b) 1 (disclosing) and (3) (objecting). Holick's claims based on disclosing and objecting required him to show, among other things, that he "reasonably believe[d]" that an "activity, policy or practice" of BMC violated "professional standards of practice."[9] G. L. c. 149, § 187 (b) (1), (3). The judge expressly assumed that the phrase "professional standards of practice" incorporates the common-law definition of what he characterized as "the equivalent term 'standard of care' with respect to claims of medical practice." Although it is not clear to us that the statutory term "professional standards of practice," as applied to physicians, is limited to the standard of care -- the Legislature, after all, is familiar with the latter term, yet chose to use the

[8] Our shorthand labels for each subparagraph are for ease of reference only and are not intended to limit their scope.

[9] Holick has not argued that he reasonably believed any BMC activity, policy, or practice violated any "law or rule or regulation." G. L. c. 149, § 187 (b) (1), (3).

former[10] -- we need not decide the point. This is because Holick cited no evidence of a relevant standard, either of care or of practice, that he reasonably believed BMC was violating. He thus had no reasonable expectation of proving an essential element of his claims under § 187 (b) (1) and (3), and the judge correctly ordered summary judgment, without deciding whether Holick could prove the remaining elements of those claims.

After reviewing the meaning of the term "standard of care,"[11] the judge aptly summarized the relevant portion of the summary judgment record as follows:

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[10] In legislating in a given area, the Legislature is presumed to be aware of the statutory and common law that governs that area. See Globe Newspaper Co., petitioner, 461 Mass. 113, 117 (2011). When the Legislature enacted § 187 in 1999, see St. 1999, c. 127, § 146, it was presumably familiar with the courts' use of the term "standard of care" dating to at least 1921, see Carey v. Mercer, 239 Mass. 599, 602 (1921), and with its own use of that term in then-recent statutes, see G. L. c. 112, § 80B, inserted by St. 1993, c. 459, § 7 (practice of registered nurses); G. L. c. 111, § 24D, inserted by St. 1988, c. 23, § 31 (medical care and assistance for pregnant women and infants); G. L. c. 111, § 1, inserted by St. 1987, c. 579, § 1 (medical peer review committees).

[11] The standard of care requires a general practitioner to "exercise[] the degree of care and skill of the average qualified practitioner," and a specialist to exercise the "care and skill of the average member of the profession . . . [practicing] the specialty," in each instance "taking into account the advances in the profession." Palandjian v. Foster, 446 Mass. 100, 104 (2006). "[T]his standard does not require physicians to provide the best care possible[;] . . . what the average qualified physician would do in a particular situation is the standard of care." Id. at 105. "[T]he actions that a particular physician, no matter how skilled, would have taken are not determinative." Id. at 104-105. "Establishing the

> "Defendants have presented unrebutted expert testimony that hEDS cannot definitively be diagnosed or ruled out in children under five years old, that evidence that a young child's parent has hEDS is not associated with an increased fracture risk in their infant children, and that therefore the standard of care for pediatricians seeking to diagnose young children suffering from multiple fractures does not require them to rule out hEDS as a cause before concluding that the child was injured by non-accidental trauma.
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> ". . . Dr. Holick concedes that 'many pediatricians specializing in child abuse often decline to consider EDS as an explanation for young children's injuries.' And he has presented no expert testimony suggesting that the professional standard of practice in diagnosing young children suffering from bruising or bone fractures requires tak[ing] a detailed family history and considering whether the child may have inherited hEDS."

Although Holick need not offer evidence of an actual violation of the standard of care or of practice, he must show at least a reasonable belief of (and perhaps the fact of) what the relevant standard was at the time of the disclosure -- not what he thinks it should have been or should in the future be -- and then prove his reasonable belief that it was being violated.[12] This he did not do. He did not claim to believe that any standard of care or of practice currently requires what

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applicable standard of care typically requires expert testimony." Id. at 105-106.

[12] We need not decide whether Holick must prove what the relevant standard in fact currently is before proving his reasonable belief that it was being violated. In other words, we assume in Holick's favor, without deciding, that the phrase "reasonably believes," G. L. c. 149, § 187 (b) (1), (3), refers not only to the existence of a violation but also to the content of the relevant standard.

he advocates: that a pediatrician or other physician, when examining a young child suffering from bruising or bone fractures, should take a detailed family history and consider whether the child may have inherited hEDS before concluding that the child was injured by nonaccidental trauma. Holick acknowledged at summary judgment not only that "many pediatricians specializing in child abuse often decline to consider EDS as an explanation for young children's injuries," but that he knew of only two other physicians in the United States who, in the preceding nine years, had diagnosed children under the age of five with EDS. Holick unquestionably believes that the standard of care or of practice should require more thorough consideration of hEDS in such circumstances, and there is evidence in the record from which a jury might find that his belief is reasonable, but he has cited no evidence that he reasonably believes his view reflects current standards.

This is true even if § 187's term "professional standards of practice," as applied to physicians, is broader than the common-law standard of care, so that a physician could violate a professional standard of practice without violating the standard of care. Whatever "professional standards of practice" might mean,[13] the word "standard" has been defined, as relevant here,

[13] In our case law, the term is used primarily in reference to § 187 itself, but without discussion of its meaning. See Luu

to mean "something that is established by authority, custom, or general consent as a model or example to be followed." Webster's Third New International Dictionary 2223 (2002). Here, Holick has not shown that the approach he advocates has been established by any relevant group of professionals (or, for that matter, lawmakers or regulators) as a model or example to be followed. Summary judgment on Holick's disclosing and objecting claims, § 187 (b) (1), (3), was therefore proper.

ii. Section 187 (b) (4) (reporting or complaining). Holick's remaining medical whistleblower claim required him to show that BMC retaliated against him for "participat[ing] in any committee or peer review process, fil[ing] a report or a complaint, or an incident report discussing allegations of

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v. Fallon Serv., Inc., 105 Mass. App. Ct. 236, 239 n.4 (2025); Romero, 72 Mass. App. Ct. at 540-541; Commodore v. Genesis Health Ventures, Inc., 63 Mass. App. Ct. 57, 65-66 (2005). Apart from § 187, we have found one use of the term in the General Laws, and numerous uses in State agency regulations, but no definition of the term. See G. L. c. 112, § 206 (referring to professional standards of practice for dietitians and nutritionists). See also, e.g., 262 Code Mass. Regs. § 8.03 (2015) (supervisees of licensed mental health counselors); 105 Code Mass. Regs. § 158.040 (2015) (records of adult day health programs); 105 Code Mass. Regs. § 200.300 (2009) (physical examination of school children by health care professionals); 254 Code Mass. Regs. § 3.00 (1998) (real estate brokers and salespersons). The similar term "standards of practice" appears in, e.g., 259 Code Mass. Regs. § 5.05 (2020) (physical therapists), 266 Code Mass. Regs. § 6.00 (2017) (home inspectors); 231 Code Mass. Regs. § 2.03 (2016) (architects); 260 Code Mass. Regs. § 7.01 (2016) (speech-language pathologists and audiologists).

unsafe, dangerous or potentially dangerous care." G. L. c. 149, § 187 (b) (4). Holick did not assert that he had participated in any committee or peer review process related to hEDS diagnoses, but he argued that his e-mail messages to BMC management on that subject constituted the "filing" of a "report or complaint" alleging "unsafe, dangerous or potentially dangerous care."[14] The judge rejected this argument, concluding that "fil[ing] a report or a complaint" must refer to something "formal and official," such as filing "a formal complaint or report with a peer review committee, a State board of registration, in court, or with some other official body or government entity." The judge reasoned that § 187 (b) (4) "does not protect less formal disclosures to supervisors or management of a health care entity," such as those made by Holick, "because that is the subject of § 187 (b) (1)."

We are not persuaded that § 187 (b) (4) covers only those reports or complaints that are formal and official. The judge was certainly correct in reasoning that § 187 (b) (4) should not be construed in a way that renders § 187 (b) (1) superfluous.[15]

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[14] Despite the awkward phrasing and punctuation of § 187 (b) (4), we interpret it, as did the judge, to mean that a report or a complaint, like an incident report, must discuss allegations of unsafe, dangerous, or potentially dangerous care in order to constitute protected activity.

[15] Courts "endeavor to interpret a statute to give effect to all its provisions, so that no part will be inoperative or

But that does not require restricting the coverage of § 187 (b) (4) to "formal and official" reports or complaints, because, even if we assume that the words "files a report or a complaint" in § 187 (b) (4) mean the same as "discloses" in § 187 (b) (1), the coverage of § 187 (b) (4) already differs in numerous other ways from that of § 187 (b) (1). Section § 187 (b) (4) covers a disclosure that concerns, e.g., a single instance of "care," even if not rising to the level of "an activity, policy or practice" as in § 187 (b) (1); one that concerns "allegations," even if the health care provider does not "reasonably believe[]" the matter being reported to be a violation of "a law or rule or regulation . . . [or] professional standards of practice" as in § 187 (b) (1); and one that concerns "unsafe, dangerous or potentially dangerous care," even if not "a risk to public health" as in § 187 (b) (1).[16] "Where the Legislature used different language in different paragraphs of the same statute, it intended different meanings." Ginther v. Commissioner of Ins., 427 Mass. 319, 324 (1998).

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superfluous" (quotation and citation omitted). Shirley Wayside Ltd. Partnership v. Board of Appeals of Shirley, 461 Mass. 469, 477 (2012).

[16] As an additional example, § 187 (b) (1) covers a disclosure or threatened disclosure "to a manager or to a public body," whereas a "report or complaint" under § 187 (b) (4) might be thought to include one to a board of trustees, a professional society or association, or the media. We do not, of course, resolve any of these questions now.

We need not determine the precise interplay of the two paragraphs. For now, focusing solely on the words of the paragraphs themselves, we conclude only that, although there may be some overlap, protection of an informal report or complaint under § 187 (b) (4) does not render superfluous the protection of a disclosure under § 187 (b) (1).[17]

Accordingly, Holick's December 2016 e-mail message to Davidoff -- complaining that a BMC pediatric geneticist "incompeten[tly]" aided in a child's removal from his family by failing to sufficiently consider whether the child's rib fracture and bruising might be attributable to hEDS -- could qualify as a report or complaint protected by § 187 (b) (4).[18]

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[17] Such legislative history as has been called to our attention sheds no particular light on the relationship between the two paragraphs. Language like what is now in § 187 (b) (4) was absent from Senate Bill No. 85 (Jan. 1997) but appeared in Senate Bill No. 2099 (Feb. 1998). Language mirroring the four-part structure of § 187 (b) appeared in Senate Bill No. 2119 (Feb. 19, 1998), Senate Bill No. 2304 (July 1998), House Bill No. 584 (Jan. 1999), and House Bill No. 1011 (Jan. 1999). Section 187 was enacted by an outside section of the 1999 general appropriation act, St. 1999, c. 127, § 146.

[18] Similarly, in May 2017, Holick wrote to high-level BMC officials and criticized BMC pediatricians for concluding that it was not possible to diagnose EDS in an infant. On appeal, BMC argues briefly that even if these 2016 and 2017 communications were protected by § 187, any allegedly retaliatory conduct reasonably attributable to those communications occurred more than two years before Holick commenced this action on June 25, 2021. See G. L. c. 149, § 187 (d) (two-year limitations period for health care whistleblower claims). We decline to resolve this argument, which is insufficiently developed in the record; it may be

As for whether Holick's message concerned "unsafe, dangerous or potentially dangerous care," G. L. c. 149, § 187 (b) (4), the record includes statements by BMC officials acknowledging that failing to recognize a child's genetic disorder, and thus misdiagnosing the child's otherwise unexplained condition as more likely the result of child abuse, can cause patient harm, can have "horrifying" effects on the child and the family, and can be "dangerous" to public health. Therefore, summary judgment should not have entered on Holick's § 187 (b) (4) claim.

b. Breach of contract. Holick claimed that BMC's medical staff bylaws gave him contractual rights, and that BMC, in breach of this contract, terminated him without following the bylaws' required procedures. Our courts have assumed without deciding that such bylaws give physicians contractual rights. See Ayash v. Dana-Farber Cancer Inst., 443 Mass. 367, 386, cert. denied sub nom. Globe Newspaper Co. v. Ayash, 546 U.S. 927 (2005); Katz v. Children's Hosp. Corp., 33 Mass. App. Ct. 574, 576 (1992). Making that same assumption here (which BMC has not challenged), the judge agreed there was some evidence that BMC

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pursued on remand. The same is true of BMC's questioning whether Holick can prove that his communications were "'a substantial or motivating part' of the adverse employment action." Romero, 72 Mass. App. Ct. at 541 n.4, quoting Taylor v. Freetown, 479 F. Supp. 2d 227, 241 (D. Mass. 2007) (construing G. L. c. 149, § 185).

had violated Holick's procedural and thus contractual rights. He concluded, however, that the claim should be dismissed, because Holick, like the plaintiff in Ayash, had cited no evidence of having "suffered compensable loss as a result of the breach," i.e., "economic losses suffered as a result of the hospital's failure" to follow the procedures required by its bylaws. Ayash, supra at 388. The judge ruled that, like the defendant in Ayash, BMC "is liable neither for negative effects on the plaintiff's future career nor for the plaintiff's emotional distress." Id. The judge also ruled, citing McCone v. New England Tel. & Tel. Co., 393 Mass. 231, 234 n.8 (1984), that any damage to Holick's professional reputation was not compensable through a breach of contract claim.

Holick identifies no error in these rulings. Although BMC's summary judgment motion, citing Ayash, had argued that Holick had shown no compensable loss from any breach of contract, Holick's summary judgment opposition failed to address the argument in any way. On appeal, moreover, Holick cites no admissible evidence of any economic losses attributable to his termination. His brief argues that his current salary at the medical school is based solely on his grant income, "which has dwindled because his research is limited," but he cites nothing in the record that supports this assertion. Nor does he argue that the judge erred in determining what types of harm were

compensable.[19] We therefore affirm the judgment for BMC on the contract claim.

c. Discharge in violation of public policy. Holick also claims that he was an at-will employee who was terminated in violation of public policy: specifically, the prohibition in G. L. c. 111, § 53H, on a hospital's entering into an agreement with a physician that restricts the physician from testifying before a court or agency. Although the judge agreed that Holick was an at-will employee, the judge saw no evidence that BMC had entered into such an agreement with Holick or had otherwise restricted him from testifying. Our review of the record leads to a different conclusion: Holick cited evidence that there was such an agreement and that he was terminated for testifying in

[19] Both Ayash and McCone involved claims for breach of the implied covenant of good faith and fair dealing, rather than claims for breach of a contract's express terms. See Ayash, 443 Mass. at 388; McCone, 393 Mass. at 233-234. As noted in McCone, however, "a suit for breach of an implied covenant of good faith and fair dealing is a suit on the contract," and "damage to [the plaintiffs'] professional reputations, disruption of their personal lives, and great pain of body and mind . . . . are not contract damages." McCone, supra at 234 n.8. Holick misplaces reliance on Hlatky v. Steward Health Care Sys., LLC, 484 Mass. 566 (2020), to argue that he is entitled to contract damages for "the destruction of [his] life's work." Id. at 581 (Gants, C.J., concurring in part and dissenting in part). In Hlatky, the contract was "not merely an employment contract" but obligated the defendant to "provide support" to the research center of which the plaintiff served as director, and the defendant was found to have violated the latter contractual duty. Id. at 580-581. Holick points to no such duty here.

spite of it. Summary judgment should not have entered for the defendants on this claim.

"[T]he public policy exception to at-will employment has been recognized for asserting a legally guaranteed right (e.g., filing a worker's compensation claim), for doing what the law requires (e.g., serving on a jury), or for refusing to do that which the law forbids (e.g., committing perjury)" (quotation, citation, and emphasis omitted). Meehan v. Medical Info. Tech., Inc., 488 Mass. 730, 733 (2021). See Luu v. Fallon Serv., Inc., 105 Mass. App. Ct. 236, 243 (2025). "The law recognizes a fourth category to the exception, for 'performing important public deeds, even though the law does not absolutely require the performance of such a deed.'" Luu, supra, quoting Meehan, supra. "[T]he public policy exception should be narrowly construed to avoid converting the general at-will rule into 'a rule that requires just cause to terminate an at-will employee'" (citation omitted). Meehan, supra at 732.

Here, although Holick's claim might be viewed as falling into the fourth category ("important public deeds"), we think it fits better into the first category ("legally guaranteed right"). A physician's right to testify free of restrictions imposed by the physician's employing hospital is, like the right at issue in Meehan, "a legally guaranteed right of employment, and therefore, termination from employment for the exercise of

this legally guaranteed right fits within the first public policy exception to employment at will defined by our case law."[20] Meehan, 488 Mass. at 735 (employee's statutory right to submit rebuttal statement to be included in personnel file).

General Laws c. 111, § 53H (§ 53H), provides:

> "No hospital shall enter into a contract or agreement which creates or establishes a partnership, employment or any other professional relationship with a licensed physician that would prohibit or limit the ability of that physician to provide testimony in an administrative or judicial hearing, including cases of medical malpractice."

Section 53H expresses a clear public policy that physicians should be free to give testimony, without restriction from the hospitals that employ or have professional relationships with them (e.g., clinical privileges), even when the testimony may be adverse to the interests of other physicians, or for that matter to the interests of the hospital itself. A similar if not identical public policy is expressed in G. L. c. 112, § 2D, enacted at the same time, which provides:

> "No physician shall enter into a contract or agreement which creates or establishes a partnership, employment or any other form of professional relationship that prohibits a physician from providing testimony in an administrative or judicial hearing, including cases of medical malpractice."

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[20] This first category, unlike the fourth category, requires no judicial determination of "how important the policy is, and whether it relates primarily to internal affairs." Meehan, 488 Mass. at 735. "In enacting the statutory employment right, the Legislature has already made both determinations, concluding that the right is a matter of public significance." Id.

See St. 2012, c. 224, §§ 82, 109 (enacting § 53H and G. L. c. 112, § 2D). These statutes create employment rights -- rights to testify without restrictions imposed by a physician's employing hospital, or by a hospital or other entity (presumably including a faculty practice plan such as EMF) with which a physician has any other form of professional relationship.

Viewed against this backdrop, Coleman's September 2020 e-mail message to Holick, explaining Coleman's recommendation that Holick's clinical privileges be terminated, is evidence that the termination violated public policy. Coleman explained that Holick, by diagnosing a child and using the diagnosis "as the basis for your evaluation in the court report," had engaged in conduct prohibited by the December 2018 "letter agreement" and by the BMC trustees' 2019 restrictions on Holick's medical privileges. The December 2018 "letter agreement" had instructed Holick that he could not diagnose children with EDS as part of his research protocol and then "us[e] these diagnoses to render opinions in legal proceedings," and that "all activity related to providing expert testimony must not conflict with your other department responsibilities and must comply with [u]niversity and [d]epartment policies."

In short, a jury could find that BMC had extracted from Holick an agreement expressly limiting his ability to testify about what he had learned from evaluating children for EDS in

his research. When BMC concluded that Holick had violated that agreement, BMC terminated Holick's clinical privileges, which caused his employment by EMF to terminate. That the agreement did not purport to prohibit all expert testimony by Holick -- but only testimony about certain observations or diagnoses made in the course of his research activities, which the agreement also limited -- is not, at least at this stage, dispositive. The agreement itself could be found to violate § 53H, and the termination of Holick's privileges and thus his employment when he assertedly violated the agreement could be found to violate the public policy § 53H embodies. That Holick may have continued providing expert testimony after his termination does not alter the fact that he was terminated and that his giving expert testimony appeared to play more than an incidental role in that termination. It was therefore error to order summary judgment on Holick's claim of discharge in violation of public policy.

Conclusion. So much of the judgment as dismissed that portion of count I asserting a violation of G. L. c. 149, § 187 (b) (4), and as dismissed count III (discharge in violation of public policy), is vacated, and the case is remanded for further proceedings consistent with this opinion. The judgment is otherwise affirmed.

So ordered.