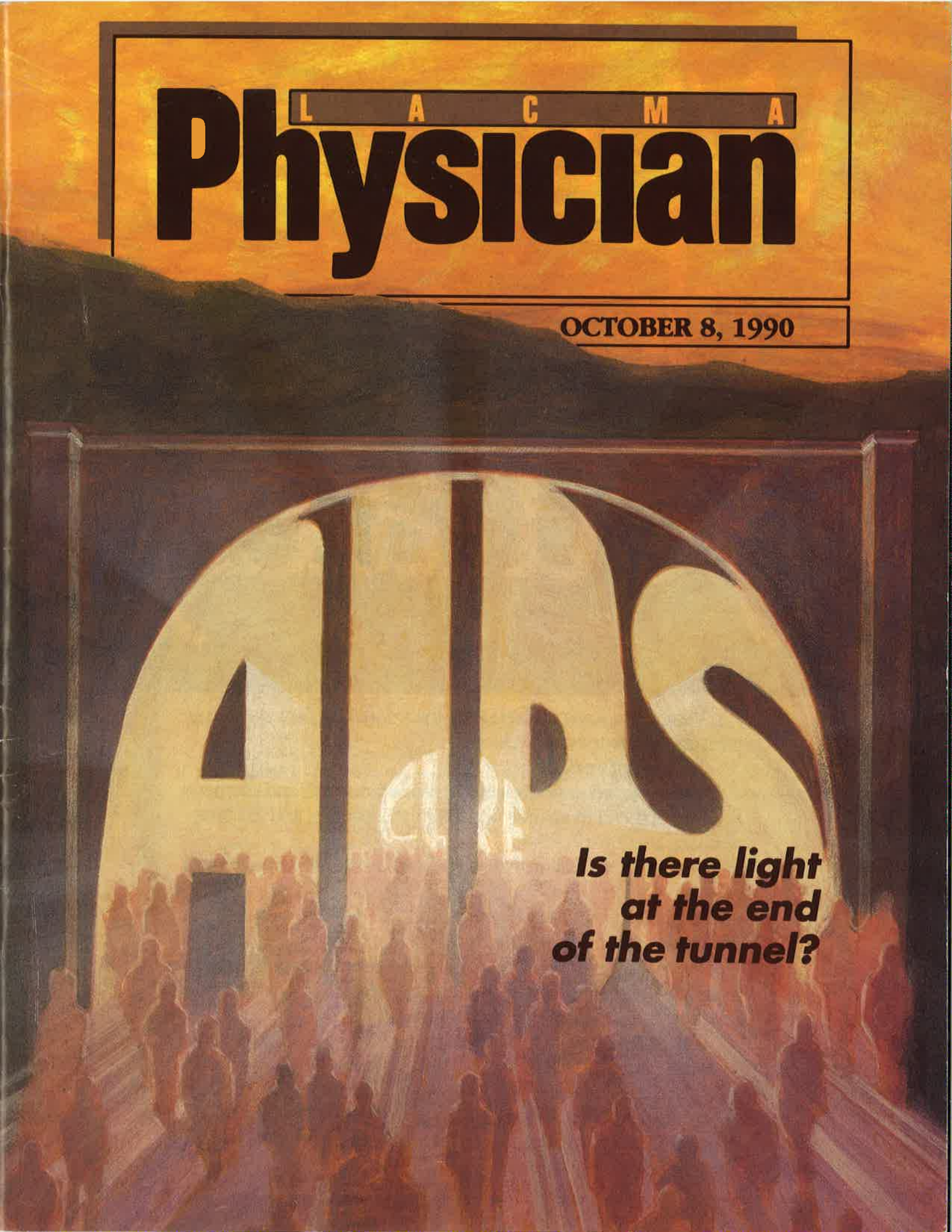


L A C M A  
**Physician**

OCTOBER 8, 1990



*Is there light  
at the end  
of the tunnel?*



HENRY R. FENTON

# Physicians Are Entitled to Due Process

The California courts and the California Legislature have guaranteed that physicians with medical staff privileges may not be deprived of those privileges in the absence of adequate notice and a hearing.

It has not been uncommon, however, for hospitals to immediately suspend medical staff privileges without first providing notice and a hearing, on the basis that the physician in question constitutes an immediate threat to the welfare of the patients at the hospital or that there was some other important reason to immediately suspend privileges.

A recent case reiterates that the medical staff privileges which are obtained by physicians are fundamental rights that are subject to protection, whether the action taken against the physician is a suspension or a termination of privileges. In appropriate situations, this recent case may be of assistance to physicians whose staff privileges are suspended before they are given a notice or hearing, and who attempt to set aside such a suspension in court.

In the recent precedent-setting case of *Bergeron MD v. Desert Hospital Corporation*, the Court of Appeal held that a Super-

rior Court had properly set aside a decision by a private hospital suspending a physician from the hospital's emergency room call roster.

The plaintiff, a cardiologist, was suspended from participation in the emergency room call roster allegedly on the basis that he had told the patient that the hospital did not do angioplasties. He received notice of suspension from the hospital administrator who also advised him that the suspension would remain in effect "pending the completion of an investigation and institution of appropriate corrective action, if necessary."

Dr. Bergeron went to court contending that his suspension from the call panel was a denial of his rights pursuant to the medical staff bylaws and that he had been deprived of a vested property right without due process of law. The Superior Court agreed, issuing a writ of mandate ordering the hospital to reinstate Dr. Bergeron's privileges.

The Court of Appeal affirmed the Superior Court's judgment, rendering an important decision that reiterates and clarifies the existence of certain rights that physicians have in California as members of medical staffs.

First, the court reiterated the fundamental proposition of California law that physicians have a property interest directly

relating to the pursuit of their livelihood in using hospital facilities. The Court of Appeal stated, as have earlier cases, that this property interest is a fundamental interest tantamount to a fundamental constitutional interest.

Secondly, the Court of Appeal rejected the hospital's contention that participation on the emergency room roster did not constitute a "clinical privilege" under the medical staff bylaws. As the Court of Appeal stated:

"The issue of whether or not an attribute of staff membership is a property right should not depend on the label the hospital has attached thereto, but whether, and what extent, such attribute *benefits* the staff member."

Since it was apparent that participation in the emergency room call roster related directly to Dr. Bergeron's pursuit of his livelihood, the Court of Appeal held that the right to participate on that roster constituted a fundamental right which was subject to protection by the courts.

Thirdly, the Court of Appeal held that since the plaintiff's participation on a hospital's emergency room call roster was a fundamental property right, it could not be suspended or revoked without notice and a hearing. The Court of Appeal accordingly held

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**Henry R. Fenton**, a West Los Angeles attorney, specializes in the representation of physicians.

## Legal Line

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that the Superior Court had properly rendered the decision to set aside the suspension of Dr. Bergeron and reinstate his right to participation on the hospital's emergency room call roster.

**T**his decision has immediate impact on California physicians — for several reasons.

First, it stands for the proposition that a physician's medical staff privileges normally may not be suspended before he has been given notice of the charges against him and a hearing. An exception to that proposition may exist where the failure to suspend the physician would result in imminent danger to patients of the hospital. With increased frequency, hospitals have suspended privileges without first providing physicians with written notice of the charges and a hearing, whether or not there was evidence that the physician posed an imminent danger to his patients. Such action is sometimes taken before medical staff committees have had an opportunity to review the matter.

Also, the decision provides needed clarification with respect to the meaning of the term medical staff or clinical staff privileges. Other cases have been encountered in which hospitals have taken a position that removal from emergency room call rosters, or removal from other clinical rotations in a hospital, can be carried out against a physician summarily and without notice or hearing. This has sometimes occurred before there has been approval by any medical staff committees.

The *Bergeron* decision makes clear that the removal or limitation of any attribute of medical staff membership, which benefits the staff member, is intrinsic to the physician's property interest in pursuing his livelihood at the hospital. Thus, this decision will make it easier to preserve and protect physician's rights as members of medical staffs. ■

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