

SEP 30 2014

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HAMID SAFARI, M.D. and MARK  
FAHLEN, M.D.,

Plaintiffs - Appellants,

v.

KAISER FOUNDATION HEALTH  
PLAN; et al.,

Defendants - Appellees.

No. 12-16245

D.C. No. 3:11-cv-05371-JSW

MEMORANDUM\*

Appeal from the United States District Court  
for the Northern District of California  
Jeffrey S. White, District Judge, Presiding

Submitted September 12, 2014\*\*  
San Francisco, California

Before: BEA, IKUTA, and HURWITZ, Circuit Judges.

Plaintiffs appeal the district court's decision granting defendants' motions to dismiss under Federal Rule of Civil Procedure 12(b)(6). Plaintiffs bring an as-

---

\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

applied challenge and a facial challenge under 42 U.S.C. § 1983 to the peer-review process that a California health care provider must conduct before revoking a doctor's privileges to practice medicine at the provider's facilities. Plaintiffs claim the peer-review process violates the Due Process Clause of the Fourteenth Amendment.

Both the plaintiffs' as-applied and facial challenges are foreclosed by *Pinhas v. Summit Health, Ltd.*, 894 F.2d 1024 (9th Cir. 1989). First, the peer-review process has not changed materially since *Pinhas* because California Business & Professions Code § 809, *et seq.* merely codified the common law that existed when *Pinhas* was decided. *See El-Attar v. Hollywood Presbyterian Med. Ctr.*, 301 P.3d 1146, 1151 (Cal. 2013) (“[T]he peer review statute, like the common law fair procedure doctrine that preceded it, establishes minimum protections for physicians subject to adverse action in the peer review system.” (internal quotations omitted)). *Pinhas*'s holding is therefore still valid. As a result, defendants were not state actors when they conducted peer review and revoked plaintiffs' privileges to practice medicine at defendants' facilities. *See Pinhas*, 894 F.2d at 1034.

Second, as *Pinas* remains valid, plaintiffs incorrectly named defendants, who are private parties, in a facial challenge to the peer-review statutes. *Id.* at 1034–35.

AFFIRMED.