



# Baptist Health Medical Systems v. Arkansas Attorney General (Pulaski Cnty. Cir.Ct.)

Topics Covered: Peer Review

**Outcome: Favorable**

## Issue

The issue in this case was whether the Arkansas Peer Review Fairness Act, Ark. Code Ann. §§ 20-9-1301 – 1308 (APRFA), is valid under the Arkansas and United States Constitutions and, perhaps, the Health Care Quality Improvement Act, 42 U.S.C. §§11101, et seq. (HCQIA).

## AMA Interest

The AMA believes that the basic principles of a fair and objective hearing should always be accorded to a physician whose professional conduct is being reviewed.

## Case Summary

As a result of lobbying by the Arkansas Medical Society (AMS), in 2013 the Arkansas General Assembly enacted APRFA. The intent of APRFA is to balance the rights of patients who benefit from a fair peer review against the harm physicians may suffer on account of an improper peer review. APRFA thus established that peer review actions are to be conducted in compliance with due process standards, which are basically those described in HCQIA, plus certain additional provisions. These include the right to challenge the impartiality of a hearing officer or member of a peer review hearing panel. Also, APRFA “encourages medical staffs to obtain independent counsel to review medical staff bylaws to ensure that they contain provisions [consistent with APRFA].” If a peer review action is conducted in violation of APRFA, the aggrieved physician is entitled to injunctive relief and attorneys’ fees, but not monetary damages.

On June 10, 2014, three large Arkansas hospital systems sued the Arkansas Attorney General and the Director of the Arkansas Department of Health to have APRFA declared facially unconstitutional. Their theories were (a) APRFA provides physicians with procedural protections beyond those specified under HCQIA. HCQIA therefore preempts APRFA; (b) APRFA violated the Arkansas and United States Constitution’s Equal Protection Clauses, because it addressed due process only in hospitals, whereas HCIA also applied to entities other than hospitals; (c) APRFA violated the Fifth Amendment Due Process Clause of and the First Amendment to the United States Constitution, because it interfered with the plaintiffs’ right to retain the attorney of their choice; (d) APRFA interfered with the power of the Arkansas Supreme Court to regulate the practice of law; and (e) APRFA was vague and ambiguous.

AMS asked the court for leave to intervene as an additional defendant, in order to help preserve APRFA. Although that motion was unopposed, the court denied it.

On April 24, 2015, the court found the Arkansas Peer Review Fairness Act to be constitutional and entered summary judgment for the Arkansas Attorney General.

### **Litigation Center Involvement**

The Litigation Center offered to help defray the AMS litigation expenses.