IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

LAWNWOOD MEDICAL CENTER, INC.,
d/b/a LAWNWOOD REGIONAL MEDICAL
CENTER AND HEART INSTITUTE,
A Florida corporation,

Appellant,

v.

Case No. 1D06-2016
L.T. Case No. 03-CA-2865

RANDALL SEEGER, M.D., as President
of the Medical Staff of Lawnwood
Regional Medical Center, Inc.,
d/b/a Lawnwood Regional Medical
Center and Heart Institute, and
Member of the Medical Executive
Committee of Lawnwood Regional
Medical Center and Heart Institute,

Appellee.

BRIEF OF AMICI CURIAE, AMERICAN MEDICAL ASSOCIATION AND FLORIDA MEDICAL ASSOCIATION IN SUPPORT OF APPELLANT AND IN SUPPORT OF AFFIRMANCE OF ORDER GRANTING SUMMARY JUDGMENT

Harold R. Mardenborough, Jr.
CARR ALLISON
305 South Gadsden Street
Tallahassee, Florida 32301
(850) 222-2107
(850) 222-8475
Attorneys for Amici AMA and FMA

TABLE OF CONTENTS

CARR ALLISON
305 South Gadsden Street
Tallahassee, Florida 32301
Telephone (850) 222-2107
Facsimile (850) 222-8475

TABLE OF CITATIONS

Cases

Constitutional Provisions, Statutes and Rules

CARR ALLISON
305 South Gadsden Street
Tallahassee, Florida 32301
Telephone (850) 222-2107
Facsimile (850) 222-8475

INTEREST STATEMENT OF AMICI CURIAE

The American Medical Association (the "AMA"), an Illinois not-for-profit corporation, is a private, voluntary organization of physicians founded to promote the science and art of medicine and the betterment of public health. Its 240,000 members practice in all states, including Florida, and in all fields of medical specialization.

The AMA is the largest organization of physicians in the world. The AMA House of Delegates, its ultimate policy-making body, regularly establishes and publishes policies concerning medical issues that represent the consensus viewpoint of America's physicians. Likewise, the AMA's Council on Ethical and Judicial Affairs regularly publishes opinions concerning the physicians' ethical obligations to their patients and to the medical community.

The Florida Medical Association (the "FMA") is a Florida not-for-profit corporation whose almost 20,000 members are licensed Florida physicians of all specialties. The FMA was created and exists for the purposes of securing and maintaining the highest standards of practice in medicine and of furthering the interests of its members. The FMA regularly participates in

legislative efforts, rulemaking proceedings, and litigation on behalf of its members.[1]

Amici have a strong interest in preserving the integrity and enforceability of hospital staff bylaws, including their self-governance provisions, as required by the accreditation rules of the Joint Commission on Accreditation of Healthcare Organizations.[2] Such interest arises from their members' knowledge of and experience in hospital governance and administration. It also arises from their determination that the public health is advanced when the courts give legally binding effect to those bylaws.

This case concerns the legal enforceability of medical staff bylaws. The medical staff, an association of licensed professionals within a hospital, is the only body with the necessary medical expertise and experience within a hospital to

---

[1] The AMA and FMA appear on their own behalves and as representatives of the Litigation Center of the American Medical Association the State Medical Societies. The Litigation Center was formed in 1995 as a coalition the AMA and private, voluntary, non-profit state medical societies to represent the views of organized medicine in the courts.

[2] "[T]he Joint Commission is the nation's predominant standards-setting and accrediting body in health care. [] The Joint Commission's comprehensive accreditation process evaluates an organization's compliance with these standards and other accreditation requirements. Joint Commission accreditation is recognized nationwide as a symbol of quality that reflects an organization's commitment to meeting certain performance standards." http://www.jointcommission.org/AboutUs/joint_commission_facts.htm.

CARR ALLISON
305 South Gadsden Street
Tallahassee, Florida 32301
Telephone (850) 222-2107
Facsimile (850) 222-8475

provide and oversee medical care. It is not simply a department in a hospital, subject to the same administrative controls as other hospital personnel. Its primary obligation, ethical and legal, is to the patient.

Hospitalized patients are best served when the medical staff as a whole accepts responsibility for their care. Such care is enhanced through constructive self-criticism, commonly called "peer review," within the medical staff membership. It is also enhanced when physicians are subject to the professional oversight of their fellow physicians and are freed from the economic influence of non-physicians in making decisions affecting their patients. Finally, it is enhanced when physicians are allowed to speak collectively within the hospital. All of these goals – joint patient responsibility, peer review and oversight, freedom from economic coercion, and a collective voice – are established and maintained within the hospital environment by enforceable medical staff bylaws. *Amici* submit this brief in order to impress upon this Court the legal and health policy considerations at stake in this suit.

As an Appendix to this brief, *Amici* have attached various policy statements of the American Medical Association advocating

CARR ALLISON
305 South Gadsden Street
Tallahassee, Florida 32301
Telephone (850) 222-2107
Facsimile (850) 222-8475

the legal enforceability of hospital staff bylaws and the importance of allowing self-governance by the medical staff. The consensus viewpoint of America's physicians is that respect for the principles of legal enforceability and of medical staff self-governance is a necessary element of patient care in the hospital setting. Moreover, adherence to agreed dispute resolution procedures in staff bylaws is not only an effective vehicle for achieving a substantively just result, it is also a vital mechanism for reducing tension between the staff and the hospital and thus of protecting patient safety, while a dispute is ongoing.

PRELIMINARY STATEMENT

Appellant, Lawnwood Medical Center, Inc., d/b/a Lawnwood Regional Medical Center and Heart Institute, shall be referred to as "Lawnwood." Appellee, Randall Seeger, M.D., as President of the Medical Staff, appears on its behalf, and will be referred to as "the medical staff." The statute that is the subject of this lawsuit shall be referred to as "the hospital governance law."

CARR ALLISON
305 South Gadsden Street
Tallahassee, Florida 32301
Telephone (850) 222-2107
Facsimile (850) 222-8475

SUMMARY OF THE ARGUMENT

The relationship between a hospital and its medical staff is a special one, a relationship that directly impacts the nature of the care provided to the public. It is a relationship based on mutual trust. It is a relationship, however, where disagreements may arise. Because the hospital environment involves complicated, medical concerns, the optimal structure for resolution of controversies is to be found in the pre-dispute contract between the parties: the medical staff bylaws.

Medical staff bylaws are entitled to judicial protection just like any other contract. Here, Lawnwood and its medical staff entered into a contract that provided procedures under which the parties could resolve their differences. Unfortunately, Lawnwood was not satisfied with the contracted-for dispute resolution procedures. Instead of seeking to negotiate a different contract, the hospital sought legislative intervention. It convinced the legislature to change the contractual relationship between the parties by enacting a special law to govern only this hospital and this medical staff.

The Florida Constitution prohibits the legislature from impairing the obligation of contracts. Art. I, Sec. 10, Fla.

CARR ALLISON
305 South Gadsden Street
Tallahassee, Florida 32301
Telephone (850) 222-2107
Facsimile (850) 222-8475

Const. It is clear that the legislature violated this provision. There is a contract between the parties as defined by the medical staff bylaws. The hospital governance law completely rewrote the obligations the parties owed one another. Put simply, it impaired the contract. Any other conclusion suggests that physicians and medical staffs should have less than full constitutional protection, a suggestion that while the legislature must respect the negotiated undertakings of other Floridians, it is somehow permitted to rewrite contracts in this situation. There is no constitutional or public policy reason to permit this.

The hospital governance law also violates the Florida Constitution because it gives special privileges to a single private corporation. *See* Art. III, Sec. 11(a)(12), Fla. Const. In simple terms, it gives special powers to a single private corporation. That is improper.

Finally, the law violates the Equal Protection rights of the physicians on the Lawnwood medical staff by creating two classes of hospitals and two classes of medical staffs. Both the Florida and United States Constitutions require citizens to be treated equally under the law. The hospital governance law

CARR ALLISON
305 South Gadsden Street
Tallahassee, Florida 32301
Telephone (850) 222-2107
Facsimile (850) 222-8475

here creates two classes of hospitals: one made up of all hospitals in the state other than those in St. Lucie County and one that includes only the two hospitals in St. Lucie County.[3] It also creates two distinct classes of medical staffs: one made up of all medical staffs in the state not in St. Lucie County, and one that includes only the staffs in St. Lucie County. Regardless of which constitutional standard is applied to test this intentional legislative distinction between the created classes, the distinction does not pass constitutional muster. There is no legitimate reason for making the distinction. While the hospital suggests bases for such a distinction, the law fails to meet the purposes that underly its rational.

The hospital governance law does only one thing: it strips the medical staff at Lawnwood of the constitutionally guaranteed contractual rights that define how their disputes with Lawnwood should be handled. Judge Ferris was right, and this Court should affirm her Final Summary Judgment.

[3] By its terms, the hospital governance law applies only to counties in St. Lucie County. There are only two such facilities, Lawnwood and St. Lucie Medical Center. While this brief is directed at the impact of the law on the medical staff and patients of Lawnwood, the same arguments would apply to the medical staff and patients at St. Lucie Medical Center.

CARR ALLISON
305 South Gadsden Street
Tallahassee, Florida 32301
Telephone (850) 222-2107
Facsimile (850) 222-8475

ARGUMENT

1. The Hospital Governance Law Impairs The Contractual Rights Of The Medical Staff Under The Medical Staff Bylaws.

"[R]ights existing under a valid contract enjoy protection under the Florida Constitution." *Green v. Quincy State Bank*, 368 So.2d 451 (Fla. 1st DCA 1979). This protection is extensive. "Any conduct on the part of the legislature that detracts in any way from the value of the contract is inhibited by the Constitution." *Dewberry v. Auto-Owners Ins. Co.*, 363 So.2d 1077, 1080 (Fla. 1978).

Lawnwood acknowledges a "contractual relationship" exists, but suggests that the "nature and form of the parties' contract" somehow mitigates the level of protection that should be recognized. Initial Brief, at 25. This suggestion should be rejected because the rights and privileges held by the medical staff under the contract are valuable and subject to constitutional protection.

The contract between the hospital and the medical staff is defined by its own terms. *Amici* acknowledge one reason the contract exists is to ensure compliance with JCAHO requirements.[4]

[4] Judge Ferris properly noted the coordination between a medical staff

CARR ALLISON
305 South Gadsden Street
Tallahassee, Florida 32301
Telephone (850) 222-2107
Facsimile (850) 222-8475

This does not lessen the medical staff's protected interest. If anything, it strengthens it. Lawnwood negotiated the medical staff bylaws in the context of needing JCAHO accreditation. App. To Initial Brief of Appellant, A. 13. No state or federal rule required the "coordination" in the manner agreed to by the parties, they only required the coordination to exist. The parties negotiated how that coordination would occur. The resulting bylaws reflect the rights and obligations of the two parties to the relationship who must work together to comply with state and federal regulations; they describe the manner in which such compliance is accomplished.

Further, physicians rely on the enforceability of the medical staff bylaws when they decide whether to join the staff at Lawnwood or any other hospital. When they join, they agree to be bound by the terms of the existing bylaws unless those bylaws are properly amended. They have every reason to expect the contract to bind both parties and not to have the legislature rewrite the contract at Lawnwood's request.

---

and the hospital's governing board is a JCAHO requirement. App. To Initial Brief of Appellant, A. 12-13.

CARR ALLISON
305 South Gadsden Street
Tallahassee, Florida 32301
Telephone (850) 222-2107
Facsimile (850) 222-8475

The argument that the medical staff at Lawnwood lacks a protected constitutional right that prohibits legislative interference with the contract it has with the hospital is untenable. The physicians on all medical staffs have as much right not to have their constitutional rights infringed as do any other citizens. The contractual rights provided by the bylaws have clearly been impaired. Impairment can be financial or otherwise. What matters is whether a law impedes any rights, substantive or procedural, of the parties. *State ex rel. Women's Benefit Ass'n v. Port of Palm Beach Dist.*, 164 So. 851, 856 (Fla. 1935).

It cannot reasonably be argued that the physicians on the medical staff have no have valuable economic and non-economic interests in the rights and privileges afforded by the Bylaws. The medical staff describes a number of them.[5] Answer Brief at 23. *Amici* believe it is important for the Court to understand

[5] It is surprising that Lawnwood even suggests there is no significant interest in the Bylaws to impair. Initial Brief at 24. To suggest that these contracted-for powers are not significant (and thus the removal of them is not a clear "impairment" of the contract) is to ignore how the parties ended up in this litigation in the first place – the hospital believed it did not have the contractual power to do what it wanted to do with respect to Drs. Walker and Minarik without working with the medical staff. *See* Initial Brief, at 6-7. Indeed, that was the entire purpose of the hospital governance law.

CARR ALLISON
305 South Gadsden Street
Tallahassee, Florida 32301
Telephone (850) 222-2107
Facsimile (850) 222-8475

that impairment of some of these interests will impact not only the physicians at Longwood, but the public at large.

Medical staffs retain important levels of autonomy via Medical Staff Bylaws like the ones here. They have the power to participate in important decisions about medical care, about staffing, and about credentialing. They retain the power to participate in the decisions that will affect themselves and their fellow physicians.

The Bylaws restrict the manner in which the hospital can act without the medical staff's participation. As noted by Judge Ferris, the two must work together on issues such as "1) appointments, 2) granting of clinical privileges, 3) disciplinary actions, 4) all matters relating to professional competency and the smooth operation of the Hospital." App. To Initial Brief of Appellant, A. 14. Lawnwood may retain the power to make certain decisions, but this power is tempered by the contractual obligation to act "reasonably" and with "good cause."[6] This defined relationship has an inherent value, not constitutionally susceptible to legislative impairment.

[6] The term "good cause" is a measurable standard applied by Florida courts for years. It provides a benchmark the parties, and courts, can apply in the event of a dispute between the parties. *C.f. Florida Beverage Corp. v.*

CARR ALLISON
305 South Gadsden Street
Tallahassee, Florida 32301
Telephone (850) 222-2107
Facsimile (850) 222-8475

The impairment of this contractual balance of responsibilities and powers also significantly impacts on the public. There is often a tension between medical staffs (who may be focused more on patient care) and hospitals (which may be more focused on the "business" of medical care). There is an ongoing concern that hospitals may engage in "economic credentialing"[7] to maximize perceived loyalty, referrals and other practices designed to increase their profitability.

"Economic credentialing is the use of economic criteria unrelated to quality of care or professional competence in determining a physician's qualifications for initial or continuing hospital medical staff membership or privileges." http://www.ama-assn.org/ama/pub/category/10303.html. This is a practice physicians in many specialties worry about because it elevates economics over patient care. *See e.g. Statement on Economic Credentialing*, American Society of Anesthesiologists[8] ("The Society condemns the practice known as 'economic credentialing,' by which decisions related to medical staff privileges are based on considerations unrelated to quality of

---

Florida Dep't of Bus. Prof. Reg., 503 So.2d 396 (Fla. 3d DCA 1987).

[7] Appellee discusses this concept briefly, Answer Brief, at 25. It requires additional discussion here.

CARR ALLISON
305 South Gadsden Street
Tallahassee, Florida 32301
Telephone (850) 222-2107
Facsimile (850) 222-8475

care"); *Policy 23*, American College of Medical Quality[9] (economic credentialing impedes the professional's role as the patient's advocate, represents an inappropriate basis for credentialing, and should be considered professionally unacceptable"); *Economic Credentialing (Policy 400191)*, American College of Emergency Physicians[10] ("ACEP strongly opposes the use of economic factors unrelated to quality of care or professional competency either in determining a physician's qualifications for initial or continuing hospital medical staff membership or privileges, or in evaluating physician performance within other health care organizations"); Kusske, The Harm of Economic Credentialing, *American Association of Neurological Surgeons Bulletin*, Vol. 10, Issue 2[11] ("Economic credentialing may be defined as the use of economic criteria, unrelated to quality assurance, to determine a neurosurgeon's qualification for the grant or renewal of medical staff membership or privileges. This type of credentialing is inappropriate.")

---

[8] http://www.asahq.org/publicationsAndServices/standards/18.pdf

[9] http://www.acmq.org/policies/policy23.pdf

[10] http://www.acep.org/webportal/PracticeResources/PolicyStatements/certcred/EconomicCredentialing.htm

[11] http://www.aans.org/library/Article.aspx?ArticleId=10030

CARR ALLISON
305 South Gadsden Street
Tallahassee, Florida 32301
Telephone (850) 222-2107
Facsimile (850) 222-8475

The disagreement over the practice of economic credentialing is played out across the nation between hospitals and medical staffs. *See e.g. Baptist Health v. Murphy*, 2006 Ark. Lexis 58 (Ark. 2006)(litigation over hospital's requirement physician sign economic credentialing policy). Once such policies go into effect, it is very difficult for physicians to challenge them. *See* Danello, *Economic Credentialing: Where Is It Going?*[12](citing *Rosenblum v. Tallahassee Mem'l Reg. Med. Ctr.*, No. 91-589 (Fla. Cir. June 1992)(upholding decision to deny privileges to cardiologist who directed program at competing hospital); *Knapp v. Palos Comm. Hosp.*, 465 N.E.2d 554 (Ill. 1984), *cert. denied*, 493 U.S. 847 (1989) and others). In simple terms, the problem is that the most significant power medical staffs have to prevent economic credentialing is the power they maintain via medical staff bylaws. If those are not enforceable, nothing is left to protect the public from the deleterious effects of economic credentialing.

The primary defense to the practice is the participation of the medical staff in making decisions about how the hospital

[12] http://library.findlaw.com/2003/Dec/17/133216.html

CARR ALLISON
305 South Gadsden Street
Tallahassee, Florida 32301
Telephone (850) 222-2107
Facsimile (850) 222-8475

operates. The AMA formally opposes economic credentialing[13] and even advises physicians and medical staffs on how to fight the practice. Recommended strategies focus on ensuring the medical staff oppose economic credentialing in various ways. These include: 1. Developing bylaw provisions which clearly articulate membership and privilege criteria, including a provision prohibiting economic credentialing; 2. Encouraging medical staff involvement in the development of medical staff development plans and strategic planning activities; and 3. Encouraging medical staff involvement in the development of conflict of interest policies.[14]

The bylaws that existed at Lawnwood before the hospital goverance law was enacted gave the medical staff the ability to implement the AMA strategies. *See* App. To Initial Brief of Appellant, A. 15-16. The medical staff could make recommendations on initial appointments to and advancement of the staff; creation of departments, specialties and subspecialties; creation of utilization plans; the grant of privileges; evaluation of potential exclusive arrangements;

[13] The FMA has also formally opposed the practice, even seeking legislation prohibiting the practice. *Economic Credentialing*, Annals of Emergency Medicine, Vol. 30, Issue 6, pp. 759-64 (1997).

CARR ALLISON
305 South Gadsden Street
Tallahassee, Florida 32301
Telephone (850) 222-2107
Facsimile (850) 222-8475

denial of staff membership for particular privileges; decisions about termination or limitation of privileges; discipline; and the appeals of disciplinary hearings. The hospital can only ignore these recommendations if it has good cause to do so. App. *Id.*, A. 14. This gives the medical staff significant power to act as it believes appropriate on issues related to, among other things, the practice of economic credentialing. The hospital governance law removes this bargained-for power, and will harm both the physicians and the public.

The medical staff has conducted a detailed analysis regarding what, if any, balancing test is to be applied to a law that impairs existing contracts. Answer Brief at 22-25. There is no reason for *Amici* to readdress those arguments. Regardless of what test is applied, however, the law cannot be justified. If the legislature had some legitimate reason to step into this area, or if there were some need to exercise its police power to "clarify" what happens when medical staffs and hospitals clash over policy, the need would exist across the State of Florida. However, the need does not exist. The contractual relationship between the parties already provided for the manner in which the

[14] http://www.ama-assn.org/ama/pub/category/10303.html

CARR ALLISON
305 South Gadsden Street
Tallahassee, Florida 32301
Telephone (850) 222-2107
Facsimile (850) 222-8475

disagreements were to be handled, and they were indeed handled before the hospital governance law was enacted. To the extent there were further concerns about public safety, there were already legal mechanisms in place to deal with the concerns. There was no need for the legislature to strip the medical staff of its contractual rights; those concerns could have been resolved without violating their constitutional rights.

2. The Hospital Governance Law Violates The Florida Constitution By Giving Special Privileges to a Private Corporation.

There are hundreds of hospitals in the State of Florida. By statute, each of these hospitals has its own medical staff. § 395.0191, Fla. Stat. (2005). However, the hospital governance law purports to grant a special power, the power to ignore a clear contract, to the hospitals in a single county and to strip the medical staffs there of their contractual rights. There is no legal justification for such a law to apply to only one county; it is clear the only purpose of the statute was to give special rights to Lawnwood. The legislature does not exist to provide private companies special powers such as these. Such a law cannot stand.

CARR ALLISON
305 South Gadsden Street
Tallahassee, Florida 32301
Telephone (850) 222-2107
Facsimile (850) 222-8475

3. The Hospital Governance Law Violates The Equal Protection Clauses Of The United States and Florida Constitutions.

"It is well settled under federal and Florida law that all similarly situated persons are equal under the law. [] Moreover, without exception, all statutory classifications that treat one person or group differently than others must appear to be based at a minimum on a rational distinction having a just and reasonable relation to a legitimate state objective." *Palm Harbor Special Fire Control Dist. v. Kelly*, 516 So. 2d 249 (Fla. 1987).

Amici recognize that the state has broad power to make laws that do not impact fundamental legal rights, and that the rational basis test is the easiest to meet. This does not mean every law passes the test. *See Florida Real Estate Comm'n v. McGregor*, 336 So. 2d 1156 (Fla. 1976). "[T]here must be a logical connection between the classification involved and the stated purpose to be achieved by the statute" and where there is no "such logical connection," the law must be stricken. *Id*. at 1159.

The stated purpose of the hospital governance law has no such logical connection with the stated purpose of the statute.

CARR ALLISON
305 South Gadsden Street
Tallahassee, Florida 32301
Telephone (850) 222-2107
Facsimile (850) 222-8475

The law claims to "clarify" that in the event of a conflict between board of director and staff bylaws, the board's bylaws prevail. Contract-impairment issues aside, this could be a rational purpose if it were to be applied to a logical set of citizens. However, it makes no sense to seek "clarification" of a state-wide issue by making a law that applies only to a single geographic region. There is no logical reason to classify hospitals and medical staffs in the State of Florida by simply considering whether they are in St. Lucie County, in which case they are subject to the hospital governance law; or whether they are not in that county, in which case they are not subject to the hospital governance law.

This issue will have to be decided in an absence of case law involving situations even remotely similar to these facts. The reason is simple: it is unlikely any legislature has attempted to pass a law that fails even the rational basis test so completely. The special governance law here blatantly creates completely irrational categories and fails to even correct the problem it is purportedly designed to cure. It must be stricken.

CARR ALLISON
305 South Gadsden Street
Tallahassee, Florida 32301
Telephone (850) 222-2107
Facsimile (850) 222-8475

CONCLUSION

For all the reasons stated herein, this Court should affirm the Final Summary Judgment entered by Judge Ferris.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Brief has been delivered by U.S. Mail to Stephen J. Bronis and Steven Wisotsky, Zuckerman Speader LLP, 201 S. Biscayne Blvd., Suite 900, Miami, Florida 33131 (Counsel for Appellant), and Major B. Harding, Ausley & McMullen, Post Office Box 391, Tallahassee, Florida 32302 and Richard Levenstein, Kramer, Sewell, Sopko & Levenstein, 853 S.E. Monterey Commons Blvd., Stuart, Florida 33431 (Counsel for Appellees) and Glenn Webber, Seidule & Webber, P.A., 729 S. Federal Highway, Suite 210, Stuart, Florida 34994 (Counsel for Amicus AAPS), this 3rd day of January, 2007.

_____

Harold R. Mardenborough, Jr.
Florida Bar No. 947172
Carr Allison
305 South Gadsden Street
Tallahassee, Florida 32301
Phone (850) 222-2107
Facsimile (850) 222-8475
Attorneys for *Amici*

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing Brief has been prepared in Courier 12 point font in compliance with Rule 9.210(a)(3), Fla. R. App. P.

_____

Harold R. Mardenborough, Jr.

CARR ALLISON
305 South Gadsden Street
Tallahassee, Florida 32301
Telephone (850) 222-2107
Facsimile (850) 222-8475