IN THE COURT OF APPEALS
STATE OF GEORGIA

Appeal No. A06A0369

SATILLA HEALTH SERVICES, INC. d/b/a
SATILLA REGIONAL MEDICAL CENTER

Appellant,

v.

GEORGE S. PILCHER, M.D., MARIANO MIKULIC, M.D, ERNST PHILLIPS, M.D., CARLOS ALOSILLA, M.D., SAMER GARAS, M.D., JAY PATTERSON, M.D., BRETT SASSEEN, M.D., WILLIAM PILCHER, M.D., CARLOS LEON, M.D., and TIMOTHY WALSH, M.D.

Appellees.

AMICUS CURIAE BRIEF OF THE AMERICAN MEDICAL ASSOCIATION and THE MEDICAL ASSOCIATION OF GEORGIA IN OPPOSITION TO APPEAL OF APPELLANT SATILLA HEALTH SERVICES, INC.

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NOW COMES the American Medical Association (AMA) and the Medical Association of Georgia (MAG), and submit this brief as *amicus curiae* in opposition to Appellant Satilla Health Services, Inc.'s appeal.

I. STATEMENT OF INTEREST OF *AMICUS CURIAE*

Amicus, the AMA, an Illinois non-profit corporation, is an association of approximately 250,000 physicians, residents, and medical students and is the largest medical society in the United States. Its members practice in every state, including Georgia, and in every field of medical specialization. The AMA was founded in 1847 to promote the science and art of medicine and the betterment of public health, and these remain its core purposes.[1]

Amicus, MAG, is a non-profit, voluntary professional association of approximately 6000 Georgia physicians and is

[1] The AMA joins this brief on its own behalf and as a representative of the Litigation Center of the American Medical Association and the State Medical Societies. The Litigation Center was formed in 1995 as a coalition of the AMA and private, voluntary, nonprofit state medical societies, including MAG, to represent the views of organized medicine in the courts.

widely regarded as the voice of physicians in this State. MAG, the largest physicians' association in Georgia, was founded in 1849 to promote the art and science of medicine and to improve public health. With these ends in mind, MAG actively works to advocate physician and patient positions in the United States Congress, the Georgia General Assembly, and before state and federal courts throughout the United States.

The AMA, MAG and Georgia patients have a strong interest in preserving the integrity of the medical staff in order to assure that patients receive quality care in Georgia's hospitals.

II. ARGUMENT

The issue on review is whether the lower court abused its discretion in granting Appellees Preliminary Injunction Order. Unless there was no evidence upon which the trial court based its ruling or its ruling was based on an erroneous interpretation of law, the trial court's discretion in granting an injunction will not be disturbed on appeal as an abuse of discretion. Atlanta Area Broadcasting, Inc. v. James Brown Enterprises, Inc., 263 Ga. App. 388, 393 (2003)(Citing Ledbetter Bros., Inc. v. Floyd County, 237 Ga. 22, 23).

While many factors are to be considered in granting a preliminary injunction, this brief is limited to the likelihood Appellees will prevail on the merits, the importance of maintaining the status quo, and the public interest. Garden Hills Civic Assoc., Inc. v. Metropolitan Atlanta Rapid Transit Authority, 273 Ga. 280, 281 (2000)(a trial court may grant a preliminary injunction to preserve the status quo until a final hearing if, balancing the equities of the parties, it appears the equities favor the party seeking the injunction; "in determining whether the equities favor one party or the other, a trial court may look to the final hearing and contemplate the results.")

A. APPELLANT HAS ACTED UNREASONABLY, ARBITRARILY, CAPRICIOUSLY AND DISCRIMINATORILY

The facts of this case are accurately set forth in Brief of Appellees(Brief of Appellees, at 1-14). Appellant is seeking to unlawfully prohibit Appellees from accessing Appellant's facility, Satilla Regional Medical Center (SRMC). SRMC is a public hospital owned by the Ware County Hospital Authority, a public entity created by Georgia law, and operated by Appellant(R.5;227). Appellees are all physicians with

privileges to practice at Appellant's facility(Brief of Appellees, at 1).

A physician is entitled to practice in a public hospital so long as he/she "stays within the law and conforms to all reasonable rules and regulations of the institution adopted for the government thereof, and he cannot be deprived of that privilege by rules, regulations or acts of the hospital's governing authorities that are unreasonable, arbitrary, capricious, or discriminatory." Dunbar v. Hospital Authority of Gwinnett County, 227 Ga. 534, 540-541 (1971).

Appellant adopted a Resolution prohibiting privileged physicians, including Appellees, that are not under contract from accessing its facilities, space, equipment and personnel(R.30-33). Appellant argues the Resolution constitutes a policy to which Appellees privileges are subject(Brief of Appellant, at 27-28). If the Resolution does constitute such a policy, it is unreasonable, arbitrary and capricious under Dunbar and Appellees have unlawfully been denied their ability to practice in a public hospital.

Appellees had been satisfactorily practicing medicine at Appellant's facility for many years and had informed Appellant

that they would continue to provide twenty-four hour per day, seven day per week coverage at Appellant's facility (Brief of Appellees, at 1,3). Despite Appellant having no reason to doubt Appellees' ability to fulfill their commitment, Appellant contracted with Baptist Specialty Physicians, Inc. (BSPI) to provide such coverage(Bell,R.233;R.30).[2] Notwithstanding the fact BSPI was unable to provide twenty-four hour per day, seven day per week coverage, Appellant adopted the Resolution prohibiting Appellees from accessing Appellant's facilities(T, at 37;R.30-33).[3]

Additionally, Appellees have been practicing medicine in the local community and Appellant's facility for several years, while BSPI was unable to provide Appellant with permanent physicians(Brief of Appellees, at 1,3; R.156-158). The adoption of the Resolution had the effect of completely excluding Appellees from practicing at Appellant's facility, a public hospital. Moreover, Appellant sought to replace one dozen

[2] "Bell" followed by a record citation references the record in the companion case, Satilla Health Services, Inc. v. Willie Bell, M.D. and Joel Ferree, M.D., Appeal No. A06A0368.

[3] "T" denotes transcript from February 9, 2005 hearing.

physicians, established in the community, with temporary physicians. At this preliminary stage of the lawsuit, Appellees have demonstrated serious doubts about Appellant's need for and motivation in demanding an exclusive contract. The trial court therefore had a reasonable basis for finding Appellant's conduct unreasonable, arbitrary and capricious(Bell,R.578-581). As such, Appellant's actions were unlawful under Dunbar.

B. APPELLANT HAS VIOLATED ITS OWN MEDICAL STAFF BYLAWS

Even if the trial court had not found that Appellant's actions were unreasonable, arbitrary and capricious, the Preliminary Injunction Order would have still been required because "a public hospital cannot abridge or refuse to follow its existing bylaws concerning staff privileges." St. Mary's Hospital of Athens v. Radiology Professional Corporation, et al., 205 Ga. App. 121, 127 (1992). To ensure its right to terminate staff privileges so as to maintain an exclusive contract, a hospital must reserve this right in its bylaws or in a contract with the individual physician. Id.

In the present case, there was no contract between Appellees as individuals and Appellant, and the bylaws contain no provision allowing for the termination of a physician's

privileges in the event Appellant enters into an exclusive contract with other providers(Brief of Appellees, at 8,18). Thus, under St. Mary's, Appellant has failed to properly reserve its right to terminate Appellees' privileges so as to enter into an exclusive contract with other physicians.

C. THE PRELIMINARY INJUNCTION PRESERVED THE QUALITY AND CONTINUITY OF PATIENT CARE

The State of Georgia recognizes the critical role of the medical staff in ensuring the delivery of quality patient care in Georgia's health care facilities. As a result, various regulations and policies of this State require medical staff participation in quality of care decisions. Decisions regarding who provides care at a hospital are quality of care decisions. By unilaterally terminating Appellees privileges, Appellant has acted contrary to the policies of this State and to the detriment of quality care.

1. WHO MAY PROVIDE PATIENT CARE IS A QUALITY OF CARE DECISION

The role of the medical staff is critically important to the hospitals and communities they serve. The governing bodies of health care facilities are generally not experts in the various fields of medical science and must depend on the

expertise of their medical staffs to monitor, assess and report on a variety of matters involving the quality of patient care. Decisions regarding who may provide patient care in a health care facility are quality of care decisions that the medical staff must participate in.

That these decisions are quality of care decisions is evidenced in the minimum requirements set forth in the rules and regulations governing the granting of clinical privileges in Georgia. Before an applicant's request for clinical privileges may be granted, the medical staff of the hospital must examine the applicant's credentials to ensure the applicant has a current and valid license to practice the profession, confirmed education qualifications for the position, references for practice and performance background, and congruity of the qualifications with the privileges requested. Ga.Comp.R.&Regs.§§290-9-7-.11(a)(2)(i),(ii),(iii), &(vii). Each of these factors relate to the applicant's ability to provide quality care and demonstrate that the State of Georgia views decisions regarding who provides care in a hospital as a quality of care decision.

Appellant's own medical staff bylaws recognize that privileging decisions are quality of care decisions. Appellant may take action on a revocation of appointment to the medical staff only upon a recommendation from the Medical Executive Committee(R.107). The rationale for such a provision is that who provides care is a quality of care decision that the governing body is not qualified to make.

The rules and regulations governing hospitals in Georgia and Appellant's own bylaws indicate that who provides patient care at a hospital is a quality of care decision.

2. GEORGIA HOSPITAL REGULATIONS MANDATE MEDICAL STAFF PARTICIPATION IN QUALITY OF CARE DECISIONS

Georgia mandates that a hospital's governing body approve bylaws containing a "mechanism for participation of the medical staff in policy decisions related to patient care in all areas of the hospital". Ga.Comp.R.&Regs.§§290-7-.11(c)(1)(emphasis added). Additionally, the medical staff must be organized under bylaws adopted by the medical staff and approved by the governing body, and is "responsible to the governing body for the quality of all medical care provided to patients in the hospital and for the ethical and professional practices of its

members while exercising their hospital privileges." Ga.Comp.R.&Regs.§§290-9-7-.09(b)(2),(b)(3).

The Joint Commission on Accreditation of Healthcare Organizations (JCAHO), an independent organization accrediting health care facilities, requires, "One or more organized, self-governing medical staffs have overall responsibility for the quality of professional services provided by individuals with clinical privileges, as well as the responsibility of accounting therefore to the governing body." *1999 Hospital Accreditation Standards, at MS.1. JCAHO*(emphasis added). JCAHO's standards are indicative of Georgia policy. Hospitals in Georgia are required to obtain a permit prior to operating. O.C.G.A.§31-7-3(a). JCAHO certification is deemed compliance with the standards required to obtain a permit to operate a hospital. Id., at (b). Thus, JCAHO's requirements reflect the policy of Georgia that the self-governing medical staff must participate in policy decisions impacting the quality of care.

In St. Mary's, this Court recognized the policy of this State and the importance of the medical staff by acknowledging a hospital's duty to comply with existing bylaws. Hospital's that seek to terminate a physician's staff privileges in an effort to

maintain an exclusive contract must reserve the right to do so in their bylaws or in contracts with the individual physicians. Id., at 127. The obligation to reserve in the bylaws or in a contract with the individual physician the right to terminate privileges so as to maintain an exclusive contract requires the participation of the medical staff in such decisions because, for example, under Appellant's medical staff bylaws, the bylaws can only be amended if approved by the medical staff and the Board(R.71). This provision of the bylaws recognizes that medical staff issues are quality of care issues that should not be unilaterally decided by the governing body.

Georgia rules and regulations governing hospitals and this Court's holding in St. Mary's establish it is the policy of Georgia that medical staffs participate in quality of care decisions, including who provides care in Georgia's hospitals.

3. APPELLANT'S CONDUCT, IF NOT ENJOINED, WOULD JEOPARDIZE THE QUALITY AND CONTINUITY OF PATIENT CARE

In unilaterally prohibiting Appellees from accessing its facilities, Appellant has violated its medical staff bylaws and encroached on the independence and role of the medical staff to the detriment of quality care.

Appellees have had a long standing presence in the community and Appellant's facility(Brief of Appellees, at 1,3). The fact that patients have been able to maintain a relationship with Appellees and access necessary care from them at Appellant's facility has promoted continuous, high quality care without disruption to patients.

Appellees informed Appellant they would continue to provide twenty-four hour per day, seven day per week coverage at Appellant's facility(Brief of Appellees, at 5). Appellant, nonetheless, maintains that it must have an exclusive contract(Bell,R.233). With no input from the medical staff whatsoever, Appellant decided to prohibit Appellees from accessing Appellant's facilities and to use only physicians under contract with BSPI(Brief of Appellees, at 9;R.30-33). BSPI was a recently created entity that could only provide Appellant with temporary physicians, and had already failed to provide the needed coverage(R.156-158;T, at 37).

Replacing Appellees with temporary physicians and failing to ensure twenty-four hour per day, seven day per week coverage disrupted the continuity of care and reduced the quality of care. That Appellant either did not recognize or disregarded

the impact of its decision on the quality of care is precisely the concern with governing bodies unilaterally making quality of care decisions that the public policy of this State was designed to avoid.

By failing to include the medical staff in the decision to prohibit Appellees' access to its facilities, Appellant has acted contrary to the policy of this State and placed patient care in jeopardy.

D. THE PROHIBITION AGAINST ACCESS TO THE HOSPITAL FACILITIES WAS IN ALL MEANINGFUL RESPECTS A TERMINATION OF HOSPITAL PRIVILEGES

Appellant argues there is a distinction between prohibiting a privileged physician's access to a hospital's facilities and terminating a physician's privileges(Brief of Appellees, at 18). There is no support in Georgia law for this proposition. To the contrary, the law of this State implies no such distinction exists.

Quoting Dunbar, this Court stated, "With regard to public hospitals, the Supreme Court has recognized that although a physician has no absolute right to practice in a given public hospital, only a privilege, the physician is entitled to practice in the public hospitals as long as he complies with

applicable laws, rules and regulations, and such privileges may not be deprived by rules or acts that are unreasonable, arbitrary, capricious or discriminatory." St. Mary's, at 127. The phrase "only a privilege" refers to the privilege to "practice in a given public hospital", and the phrase "such privileges" refers to a physician's entitlement to "practice in the public hospitals". A physician that has been prohibited from accessing a public hospital's facilities cannot "practice in the public hospital" and has lost the privilege. As indicated by the quote from Dunbar, there is no distinction between terminating a physician's privileges and prohibiting a privileged physician's access to a hospital's facilities.

Additionally, recognizing a distinction between prohibiting a privileged physician's access to a hospital's facilities and terminating a physician's privileges would eviscerate the rule set forth by this Court in St. Mary's. In St. Mary's, regarding a hospital's authority to terminate staff privileges so as to maintain an exclusive contract, this Court stated, "Nonetheless, this termination right may not be exercised in a manner inconsistent with the staff bylaws. Consequently, to ensure its right to terminate staff privileges to maintain exclusive

relationships, hospitals must so provide either in the bylaws or in a contract with the individual physician (and not just in the contracts with the physician's professional corporation)." Id., at 127.

Recognizing a distinction between prohibiting a privileged physician's access to a hospital's facilities and terminating a physician's privileges will allow hospitals to avoid their duty under St. Mary's to reserve the right to terminate a physician's privileges in the bylaws or in a contract with the individual physician by simply characterizing the termination of privileges as a prohibition on access to the hospital's facilities. The present case and the companion case of Satilla Health Services, Inc. v. Willie Bell, M.D. and Joel Ferree, M.D.(Appeal No. A06A0368) provide an example. Appellant first informed Drs. Bell and Ferree that their privileges were being terminated(Bell,R.39). It was not until after Drs. Bell and Ferree obtained the Preliminary Injunction Order of February 15, 2005 that Appellant adopted the Resolution prohibiting physicians not under contract, including Appellees herein, from accessing Appellant's facilities and stating that it was not to affect the privileges of the physicians to whom it was

directed(R.30-33). Only then did Appellant assert that a distinction between prohibiting a privileged physician's access to its facilities and terminating a physician's privileges exists.

If a distinction is to be recognized between prohibiting a privileged physician's access to a hospital's facilities and terminating a physician's privileges, the rule announced in St. Mary's will be rendered unenforceable because hospitals will no longer terminate a physician's privileges so as to enter an exclusive contract. Instead, they will prohibit access to their facilities.

The Official Code of Georgia does not recognize a distinction between prohibiting a privileged physician's access to a hospital's facilities and terminating a physician's privileges. The phrase "permission to treat patients" in a hospital is synonymous with the term "privileges":

> Whenever any licensed doctor of medicine, doctor of podiatric medicine, doctor of osteopathic medicine, or doctor of dentistry shall make an application for permission to treat patients in any

> hospital owned or operated by the state, any political subdivision thereof, or any municipality, the hospital shall act in a nondiscriminatory manner upon such application . . . This subsection shall apply solely to applications by licensed doctors of medicine, doctors of podiatric medicine, doctors of osteopathic medicine, and doctors of dentistry who are not members of the staff of the hospital in which privileges are sought at the time an application is submitted and by those not privileged, at such time, to practice in such hospital under a previous grant of privileges.O.C.G.A.§31-7-7(a)(emphasis added).

The first use of the term "privileges" in the above-referenced code section refers back to the phrase "permission to treat." The second use of the term "privileges" and the term "privileged" refer to the privilege "to practice in such

hospital". As the language from this code section demonstrates, there is no distinction between prohibiting a privileged physician's access to a hospital's facilities and terminating a physician's privileges because a privileged physician that has been prohibited from accessing a hospital's facilities no longer has "permission to treat patients" at the hospital and cannot "practice in such hospital". The physician's privileges have been terminated.

Georgia Department of Human Resources' (DHR) rules and regulations relating to hospital medical staffs also confirm the equivalence between prohibiting a privileged physician's access to a hospital's facilities and terminating a physician's privileges. The rules and regulations state, "The medical staff shall implement measures, including peer review, to monitor the ongoing performance of the delivery of patient care by those granted clinical privileges, including monitoring of compliance with the medical staff bylaws, rules and regulations, and hospital policies and procedures." Ga.Comp.R.&Regs.§§290-9-7-.11(b)(2)(emphasis added). DHR defines the "medical staff" as "the body of licensed physicians, dentists, and/or podiatrists, appointed or approved by the governing body, to which the

governing body has assigned responsibility and accountability for the patient care provided at the hospital." Ga.Comp.R.&Regs.§§290-9-7-.02(i)(emphasis added). Under DHR's rules and regulations, the medical staff is responsible for patient care provided at the hospital and is charged with monitoring the care delivered by all physicians with privileges. The rationale for this rule is that privileged physicians are permitted to treat patients at the hospital, and the medical staff is the only body qualified to assess the quality of care rendered. If a privileged physician's access to a hospital's facilities may be prohibited while the physician's privileges remain unaffected, it will be impossible for a medical staff to fulfill its duty to monitor the performance of patient care provided by those with privileges. Thus, DHR rules and regulations imply that there is no distinction between prohibiting a privileged physician's access to a hospital's facilities and terminating a physician's privileges.

Because there is no distinction between prohibiting a privileged physician's access to a hospital's facilities and terminating a physician's privileges, hospitals, as they are bound to do under St. Mary's, must abide by their existing

bylaws. Since Appellant failed to reserve in its bylaws or in contracts with Appellees its right to terminate their privileges, Appellant is obligated to provide Appellees with their due process rights under the bylaws prior to terminating their privileges. Such is the position of the AMA and MAG.[4]

III. CONCLUSION

Georgia law and policy recognize that the medical staff's role is critical in maintaining quality care in Georgia's public hospitals. This role is particularly important in decisions concerning the physicians permitted to provide medical care at a hospital because these decisions must be made by those individuals with the necessary expertise to judge the quality of

[4] AMA policy states, "The AMA supports the concept that individual medical staff members who have been granted clinical privileges are entitled to full due process in any attempt to abridge those privileges by granting exclusive contracts by the hospital's governing body." Policy H-230.987 Hospital Decisions to Grant Exclusive Contracts. (http://www.ama-assn.org/apps/pf_new/pf_online?f_n=browse&doc=policyfiles/HnE/H-230.987.HTM&&s_t=&st_p=&nth=1&prev_pol=policyfiles/HnE/H-225.998.HTM&nxt_pol=policyfiles/HnE/H-230.955.HTM&).

care. Appellant encroached on the medical staff's role and violated Georgia law to the detriment of quality patient care.

WHEREFORE, for all the foregoing reasons, the AMA and MAG respectfully request that the trial court's Order appealed from be affirmed in its entirety.

Respectfully submitted, this _____ day of December, 2005.

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