OA 11-6-95
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SUPREME COURT OF FLORIDA

AGENCY FOR HEALTH CARE ADMINISTRATION, et al.

Appellants,
Cross-Appellees.

vs.

ASSOCIATED INDUSTRIES OF FLORIDA, INC. et al.

Appellees,
Cross-Appellants.

CASE. NO. 86,213

DISTRICT COURT OF APPEAL, FIRST DISTRICT - NO. 95-2578

CIRCUIT COURT NO. 94-3128

FILED
SID J. WHITE
OCT 9 1995
CLERK, SUPREME COURT
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Chief Deputy Clerk

BRIEF OF AMICUS CURIAE HOSPITAL BOARD OF DIRECTORS OF LEE COUNTY D/B/A LEE MEMORIAL HEALTH SYSTEM

IN SUPPORT OF APPELLANT AGENCY FOR HEALTH CARE ADMINISTRATION

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STATEMENT OF THE CASE

The Amicus adopts the Statement of the Case presented in the brief of Appellant, Agency for Health Care Administration.

STATEMENT OF THE FACTS

The Amicus adopts the Statement of the Facts presented in the brief of Appellant, Agency for Health Care Administration.

SUMMARY OF ARGUMENT

I. THE DETERMINATION BY THE TRIAL COURT THAT THE AGENCY FOR HEALTH CARE ADMINISTRATION WAS UNCONSTITUTIONALLY CREATED WILL HAVE AN EXTREMELY DETRIMENTAL EFFECT UPON THE PUBLIC IN THE STATE OF FLORIDA.

The Agency for Health Care Administration is the primary regulatory agency exercising its jurisdiction over Florida hospitals. The presumed result of its unconstitutionality is that the regulatory power of the agency over hospitals (as well as many other health care organizations) is suspended or voided, so that any actions of the agency in overseeing the operations of hospitals in the interest of public health and safety would be void and unenforceable. In the absence of state oversight of hospitals, there is a likelihood that uncontrolled and substandard conditions would exist regarding the provisions of health care which would pose an immediate danger to the public.

II. THE DETERMINATION BY THE TRIAL COURT THAT THE AGENCY FOR HEALTH CARE ADMINISTRATION WAS UNCONSTITUTIONALLY CREATED WILL HAVE AN EXTREMELY DETRIMENTAL EFFECT UPON HOSPITALS IN THE STATE OF FLORIDA.

Within the regulatory framework administered by the Agency for Health Care Administration, hospitals are required to perform various internal disciplinary and reporting functions regarding their medical staff and personnel. The imposition of these "self-policing" duties is accompanied by a corresponding grant of immunity from legal liability. If the agency

itself is void, then discipline imposed by hospitals in reliance upon the regulatory scheme will have been taken without legal authority, and hence without immunity, resulting in serious exposure to legal liability.

ARGUMENT

DESCRIPTION OF THE AMICUS

Prior to presenting those arguments the Amicus wishes to bring to the attention of the court, it would no doubt be helpful if the court were introduced to the Amicus so as to better understand the Amicus' interest in the outcome of this proceeding.

The Amicus is Hospital Board of Directors of Lee County, a special-purpose unit of local government created by Special Act of the Florida legislature, Chapter 63-1552, Laws of Florida, Special Acts 1963, located in Lee County, Florida, and doing business as the Lee Memorial Health System. The Hospital Board of Directors of Lee County operates two hospitals with a total of over 650 beds, a nursing home, home health agencies, and a variety of other health care services and facilities. It is the largest health care organization in Lee County, with over 3,500 employees and an annual budget in excess of $300,000,000. The Lee Memorial Health System, while it is a large public health care system with a publicly-elected board, has no taxing power and receives no direct tax revenues to assist it in its mission to serve the people of southwest Florida. It provides approximately $18,000,000 of uncompensated care each year to low income patients, and is the "safety-net" hospital in southwest Florida.[1]

[1] A discussion of Lee Memorial's public nature may be found in Federal Trade Commission v. Hospital Board of Directors of Lee County, 38 F.3d 1184 (11th Cir. 1994) and Hospital Board of Directors of Lee County v. McCray, 456 So. 2d 936 (Fla. 2d DCA 1984).

The hospitals operated by Hospital Board of Directors of Lee County are licensed pursuant to Chapter 395, Fla. Stat., and are thus subject to the regulatory authority of the Florida Agency for Health Care Administration.

There should be no doubt that the Amicus, Hospital Board of Directors of Lee County, will be directly affected by the decision that this court reaches in this appeal.

ARGUMENT

I. THE DETERMINATION BY THE TRIAL COURT THAT THE AGENCY FOR HEALTH CARE ADMINISTRATION WAS UNCONSTITUTIONALLY CREATED WILL HAVE AN EXTREMELY DETRIMENTAL EFFECT UPON THE PUBLIC IN THE STATE OF FLORIDA.

The Agency for Health Care Administration is the primary state agency with jurisdiction over Florida hospitals, § 395.002, Fla. Stat. It has the legislative authority to issue licenses, § 395.003, Fla. Stat., and to adopt rules which establish standards for the construction and operation of hospitals, § 395.1055, Fla. Stat.

State licensure and regulation of hospitals is for the purpose of protecting the public health and safety, § 395.001, Fla. Stat. The regulatory scheme covers construction and maintenance of the physical facilities and their operation, including, among other things, sanitation, infection control, fire safety, and comfort and care of patients, § 395.1055, Fla. Stat.

If that Agency for Health Care Administration ceases to have legal existence because it is declared to have been unconstitutionally created, it follows that rules heretofore adopted by the agency would be void, and that any authority to enforce the rules or the legislative mandate would be non-existent.

The result would be chaotic, as hospitals such as the Amicus would be uncertain as to the scope of their responsibility, and perhaps more important, unscrupulous individuals would have the opportunity to engage in the business of providing hospital services without concern for standards established by the agency.

It is probably an overstatement to say that unbridled exploitation of the lack of an oversight authority regulating hospitals would occur, but the uncertainty of who would be in charge would prove not only confusing, but unsettling as well.

While certainly local agencies such as city fire marshals and county health departments, whose authority has been heretofore more or less preempted by the state, might step in to impose their own brand of hospital regulation, the potential for widely varying standards among political subdivisions would create some interesting situations.

Assuming that ultimately there would be remedial action by the legislature to correct the constitutional problems regarding the agency, so that regulation of hospitals would once more fall within the purview of a state agency, the need for hospitals to adapt first to one set of standards and then another would seem to entail at least some expense, all of which would be added to the cost of health care at a time when health care providers are struggling to respond to public opinion and control their costs.

Speaking from the perspective of a licensed facility, the Amicus believes that this court should wisely determine that the agency's authority to administer the hospital regulatory mechanism in this state has been uninterrupted, and that to so determine is necessary in the public interest.

II. THE DETERMINATION BY THE TRIAL COURT THAT THE AGENCY FOR HEALTH CARE ADMINISTRATION WAS UNCONSTITUTIONALLY CREATED WOULD HAVE AN EXTREMELY DETRIMENTAL EFFECT UPON HOSPITALS IN THE STATE OF FLORIDA.

While the injury to the public of negation or suspension of the agency's existence vis-à-vis the regulation of health care facilities would be serious, there is also a specific harm which may befall hospitals.

Hospitals are required to report disciplinary actions taken against members of their medical staffs to the Agency for Health Care Administration, § 395.0193 (4). Hospitals are also required and authorized to take such disciplinary action under the licensure statute, § 395.0193 (2) and (3), and a corresponding immunity from monetary liability is granted against claims brought on actions taken by the hospital in fulfilling its duty, § 395.0193 (5).

The concern which arises is whether or not such immunity will continue if the Agency for Health Care Administration is held to have been unconstitutionally created, and therefore void ab initio. It can be argued by an affected party that the reports to the agency were defamatory, and that they were sent to an entity which had no legal right to exist. The Amicus has forwarded at least two such reports of disciplinary action to the agency within the last year, and has relied in large part on the immunity provisions when doing so. If the decision in the trial court is upheld, there is great concern as to the exposure to liability and the expense of defending suits against the hospital and individual members of its medical staff, board and administration based on decisions to impose discipline on those practitioners.

Similar concerns are raised regarding reports submitted to the agency pursuant to the operation of the hospital's risk management program, § 395.0197. Certain serious incidents occurring in the facility must be reported to the agency for review, § 395.0197 (6). These are to be held confidential by the agency, § 395.0197 (8); and there is immunity from liability for

risk managers in submitting such reports, § 395.0197 (11). If the agency is held not to have legally existed, what will be the effect on the confidentiality and immunity provisions contained in the statute?

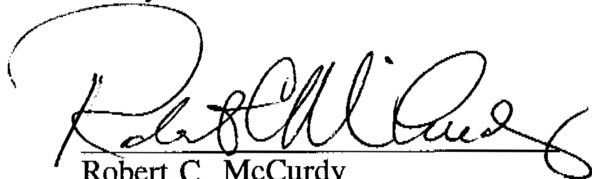
The Amicus urges the court to consider that its decision in this case must not be one which invalidates the protections afforded hospitals by the legislative framework upon which hospital have relied. To do otherwise has the potential to create devastating problems for Florida hospitals and the people who work in them.

CONCLUSION

The Amicus, Hospital Board of Directors of Lee County, believes that it has demonstrated to the court that there are very serious practical implications which will arise if the decision in the lower tribunal is upheld.

The court is urged to reverse the trial court's decision regarding the unconstitutionality of the Agency for Health Care Administration, but if reversal is deemed inappropriate, then to formulate a decision which will adequately protect the citizens who have relied on the continued existence of the agency.

Respectfully submitted this 4th day of October, 1995.



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CERTIFICATE OF SERVICE

I CERTIFY that a copy hereof has been furnished to the attached Service List this 4th day of October, 1994.

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