IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, AGENCY FOR HEALTH CARE ADMINISTRATION, ET AL.,

Appellants/Cross Appellees,

v. CASE NO.: 86,213

ASSOCIATED INDUSTRIES OF FLORIDA, INC., ET AL.,

Appellees/Cross Appellants.
_____/

BRIEF OF AMICUS CURIAE
FLORIDA HEALTH CARE ASSOCIATION, INC.

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PREFACE

This brief is filed on behalf of the Florida Health Care Association which has filed a Motion to Appear and File a Brief as Amicus Curiae on behalf of and in conjunction with the State of Florida, Agency for Health Care Administration, Appellants/Cross Appellees.

This brief addresses paragraph 5 of the Final Order and Declaratory Judgment issued by Judge F.E. Steinmeyer, Circuit Court of the 2nd Judicial Circuit, in and for Leon County, Florida, on June 26, 1995. Judge Steinmeyer's Order was issued based on Appellees'/Cross Appellants' Motion for Summary Judgment. The parties had advised the lower court that there were no disputed issues of material fact and that the action was ripe for final adjudication on all issues. The Florida Health Care Association does not take any position, nor address any of the other rulings of the trial court.

STATEMENT OF THE CASE AND STATEMENT OF THE FACTS

This is an appeal from the Final Order and Declaratory Judgment issued by Judge Steinmeyer on June 26, 1995. The State of Florida, Agency for Health Care Administration filed an appeal and this brief is filed by the Florida Health Care Association on behalf of the constitutionality of the Agency for Health Care Administration as addressed in paragraph 5 of Judge Steinmeyer's Order. The parties advised the trial court below that there were no disputed issues of material fact and that the action was ripe for final adjudication on all issues. The Florida Health Care Association herein adopts the Statement of the Case and Statement of the Facts that pertain to the trial court's decision in paragraph 5 of the Final Order and Declaratory Judgment, as set out in the Initial Brief filed by the State of Florida, Agency for Health Care Administration, Department of Business and Professional Regulation. The Florida Health Care Association does not take any position on, nor does it address any of the other rulings by Judge Steinmeyer in the Final Order and Declaratory Judgement dated June 26, 1995.

SUMMARY OF ARGUMENT

The Agency for Health Care Administration is constitutionally structured pursuant to Article IV, Section 6 of the Florida Constitution as it is a separate department created by the 1992 Legislature which was validly created and constitutionally effective July 1, 1992, January 1, 1993 or July 1, 1993. It must be presumed that the Legislature knew that by merging the Department of Administration and the Department of General Services, effective January 1, 1993, that the Legislature was appropriately creating the Agency for Health Care Administration, such that the creation of the Agency for Health Care Administration did not violate Article IV, Section 6 of the Florida Constitution.

Even assuming that the creation of the Agency for Health Care Administration would have violated the twenty-five department limit imposed by Article IV, Section 6 of the Florida Constitution, the Agency for Health Care Administration was still constitutionally structured as a non-departmental entity pursuant to Section 20.02 (2), Fla. Stat. The placement of the Agency for Health Care Administration into the Department of Business and Professional Regulation clearly achieves maximum efficiency and effectiveness as intended by Section 20.02 (2), Fla. Stat. and Article IV, Section 6 of the Florida Constitution. The Agency for Health Care Administration and the Department of Business and Professional Regulation are both intricately involved in the regulation of businesses and professions in the State of Florida.

ISSUE I.

THE AGENCY IS CONSTITUTIONAL PURSUANT TO ARTICLE IV, SEC. 6, OF THE FLORIDA CONSTITUTION EITHER AS A SEPARATE DEPARTMENT OR AS A UNIT WITHIN D.B.P.R.

A. Historical Background

The 1992 Legislature created the Agency for Health Care Administration ("AHCA") effective July 1, 1992, to become the sole state agency in charge of health care regulation. Although the 1992 Legislature placed AHCA within the Department of Business and Professional Regulation ("DBPR"), the Agency head of AHCA was instructed to report directly to the governor without being under the supervision or control of the Secretary of DBPR. The obvious intent of the Legislature was to vest AHCA with substantial and independent authority.

During the 1992 Legislative Session, the Legislature merged two existing departments, the Department of Administration and the Department of General Services into one department, which merger became effective January 1, 1993. The effect of this merger was to reduce to 24 the number of departments at the executive branch of state government.

In subsequent sessions of the Legislature, the intent to give AHCA powers and responsibilities like those given to other departments became evident by the Legislature in 1993 giving AHCA regulatory authority over nursing homes, adult congregate living

facilities (presently adult living facilities), home health agencies and hospitals, and in 1994, the Legislature giving licensing and disciplinary responsibilities to AHCA over physicians, nurses, dentists and other health care professionals.

B. Order of the Trial Court

The pertinent portion of the Order of the Trial Court states as follows:

> Article IV, Sec. 6 of the Florida Constitution requires all functions of the executive branch to be allotted to twenty-five departments. The Agency for Health Care Administration ("AHCA") was created within a Department of Business and Professional Regulation ("DBPR") but AHCA is not subject to the "control, supervision, or direction" of DBPR. s. 20.42, Fla. Stat. (1993) A "function" cannot be "allotted" to a department if the department has no control over that function. Since DBPR has no control or supervision over AHCA, AHCA is unconstitutionally structured in violation of the 25 department limit of Article IV, s. 6 of the Florida Constitution.

C. Impact of Trial Court's Ruling

The major concern of FHCA is that if the Trial Court's Order is upheld, then those actions taken by AHCA may be void or voidable. The impact of all the actions by AHCA being either void

or voidable is far-reaching. AHCA, since 1993, has been empowered with the authority to grant or deny certificates of need for nursing home and hospitals, to grant or deny, suspend or revoke licenses for the operation of nursing homes, adult congregate living facilities and hospitals and fine and take other administrative actions against nursing homes, adult congregate living facilities and hospitals. Further, and most importantly, AHCA pursuant to Title XIX of the Social Security Act has been the state agency empowered in conjunction with the federal government to certify nursing homes in the Florida Medicaid Program. The Florida Medicaid Program is a duly funded program with contributions from both the State of Florida and the federal government to assist those residents of nursing homes that are medically and financially qualified. The federal government contributes approximately 55% of the Medicaid dollar allotted while the State of Florida contributes approximately 45% of the Medicaid dollar. So if it is determined that the actions by AHCA in certifying the nursing homes and/or making Medicaid payment to these nursing homes for services rendered are void or voidable the federal government may take action to recoup the federal funds contributed. Further, AHCA inspects the nursing home facilities for compliance with federal regulations and the federal government relies on these inspections to determine whether nursing homes shall be certified for Medicare pursuant to Title XVIII of the Social Security Act. If the actions of AHCA are determined to be void or voidable, the federal government once again, may take

action to recoup Medicare funds extended. The potential impact of this decision for Florida's taxpayers who will be forced to bear the burden of any federal recoupment efforts is enormous.

Obviously there are other concerns as to the decisions made by AHCA on licenses granted or denied or licenses disciplined by AHCA if it is determined that those actions by AHCA are void or voidable. Not only do those decisions carry fiscal concerns but many of these decisions affect the immediate health, safety and welfare of millions of Florida's citizens.

D. The Agency for Health Care Administration is a Separate Department

FHCA adopts the argument set out in the Initial Brief filed by AHCA that AHCA is a Department pursuant to Article IV, s.6 of the Florida Constitution. It is the position of FHCA that the creation of AHCA by the 1992 Legislature did not violate Article IV, Section 6 of the Florida Constitution, as that same Legislature merged two departments (Department of Administration and Department of General Services) even though the merger was not effective until January 1, 1993. Even assuming that the action by the Legislature on July 1, 1992 violated Article IV, s. 6 of the Florida Constitution, AHCA existence was still valid and AHCA was the 25th department effective January 1, 1993. Certainly AHCA was not in violation of Article IV, Section 6 of the Florida Constitution when the Legislature in 1993 ratified its existence and even added to its powers. State v. Johnson, 616, So. 2nd 1 (Fla., 1993).

Statutes are presumed to be constitutional and the courts must

construe them in harmony with the constitution if it is reasonable to do so. Florida Department of Education v. Glasser, 622 So. 2nd 944, 946 (Fla., 1993).

E. AHCA is a Non-Departmental Entity

FHCA adopts the argument set out in the Initial Brief filed by AHCA as to AHCA being a non-departmental entity pursuant to Section 20.02(2), Fla. Stat. The Legislature has created several "agencies" that are not subject to the control, supervision or direction of the department into which those "agencies" are placed. These agencies, such as the Division of Administrative Hearings, PRC, Division of Retirement and Residential Property and Casualty Joint Underwriting Association, are evidence that there are certain "agencies" that should be integrated into one of the departments of the executive branch to achieve maximum efficiency and effectiveness as intended by Section 20.02(2), Fla.Stat., and Article IV, Section 6 of the Florida Constitution. The integrating of AHCA into the Department of Business and Professional Regulation clearly meets the intent of Section 20.02(2), Fla. Stat. as these two entities are both involved in the regulation of the businesses and professions. The need for an autonomous entity to regulate health care related businesses and professions arises out of the unique characteristics inherent in the health care related industries. Therefore, while the integration of these two entities inherently achieves maximum efficiency due to their regulatory functions, the specific programs, unique to the health care industries, requires a certain amount of autonomy from the policies

and procedures established by DBPR in its regulatory functions.

Therefore the 1992 Legislature could have clearly envisioned the wisdom of integrating AHCA into the Department of Business and Professional Regulation with its expertise and responsibilities in regulation of professions. The efficiency and effectiveness of placing AHCA within DBPR is entitled to a "rebuttable presumption of the existence of necessary fact support in which facts may be known or assumed." Fulford v. Graham, 418 So. 2nd 1204, 1205 (Fla. 1st DCA 1982).

AHCA is constitutional either as a free-standing department or as an autonomous agency within DBPR.

CONCLUSION

The Agency for Health Care Administration is constitutionally structured under Article IV, Section 6 of the Florida Constitution as either a separate department or as a unit within the Department of Business and Professional Regulation.

Respectfully Submitted on this 6th day of September, 1995.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. mail on this 6th day of September, 1995, to the following:

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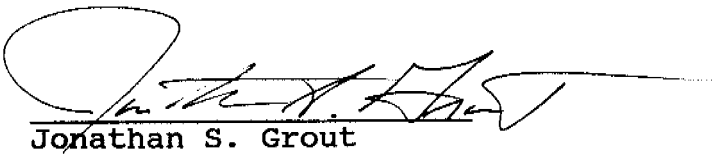

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