

IN THE SUPERIOR COURT OF DOUGHERTY COUNTY

STATE OF GEORGIA

GEORGIA ALLIANCE OF COMMUNITY :
HOSPITALS, INC., etc. and PHOEBE :
PUTNEY MEMORIAL HOSPITAL, INC. :

Petitioners, :

vs. :

GEORGIA DEPARTMENT OF :
COMMUNITY HEALTH and ALBANY :
SURGICAL, P.C., :

Respondents. :

CIVIL ACTION

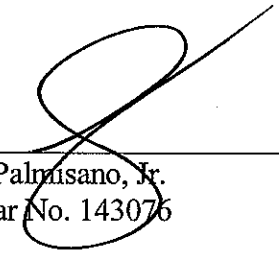
FILE NO. 07-CV-3436-3

**THE MEDICAL ASSOCIATION OF GEORGIA'S
MOTION TO INTERVENE**

COMES NOW, The Medical Association of Georgia ("MAG") and moves pursuant to O.C.G.A. § 9-11-24 for leave to intervene in this action in support of the Georgia Department of Community Health ("DCH") and Albany Surgical, P.C. ("Albany") and to file its claim in the form of the pleading attached hereto as Exhibit A. As further grounds for this Motion, MAG shows that this action has only recently been filed, and the intervention of MAG will not unduly delay or prejudice the adjudication of the rights of the original parties.

In support of this Motion, MAG submits herewith its brief containing argument and citation of authorities. **MAG has contacted counsel for Georgia Alliance of Community Hospitals, Inc., Phoebe Putney Memorial Hospital, Inc., Georgia Department of Community Health and Albany Surgical, P.C. and there is no objection to MAG's Intervention in this matter.**

WHEREFORE, MAG prays that its Motion be granted and that it be allowed to intervene in this action and to file its pleading setting forth its claim in the form attached hereto as Exhibit A, and that it have such other and further relief as is just and proper.



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**THE MEDICAL ASSOCIATION OF GEORGIA'S BRIEF IN
SUPPORT OF ITS MOTION TO INTERVENE**

COMES NOW, The Medical Association of Georgia ("MAG"), and files this its Brief In Support of Its Motion To Intervene , and respectfully shows this Court the following:

FACTS

Petitioners, the Georgia Alliance of Community Hospitals ("Alliance") and Phoebe Putney Memorial Hospital, Inc. ("Phoebe") filed a Petition and Complaint for Declaratory Judgment As To The Invalidity Of An Agency Rule on December 31, 2007 against the Georgia Department of Community Health ("DCH") and Albany Surgical, P.C. ("Albany Surgical"). The Declaratory Judgment is in response to DCH adopting an Amended Rule updating the definition of a multi-specialty ambulatory surgery center to "eliminate general surgery from the definition of multi-specialty ambulatory surgery," and "allow "general surgeons" to develop "single specialty" physician-owned ASC's without CON review. see Petitioner's Petition and

Complaint for Declaratory Judgment ¶43. Petitioners are challenging the validity of the DCH Amended Rule adopted on December 13, 2007, and whether the Amended Rule is authorized by DCH's statutory authority.

In 1999, the General Assembly created DCH to perform the functions previously performed by the Health Planning Agency, by the Department of Medical Assistance, and by the State Personnel Board with respect to the State Health Benefit Plan. O.C.G.A. § 31-5A-4; see also Department of Community Health v. Gwinnett Hospital System, Inc., et al., 262 Ga.App. 879 (2003). The legislative intent in creating DCH was, among other things, the legislature recognizing the "manner in which the healthcare is currently administered at the state level is fragmented and often unresponsive to healthcare issues." O.C.G.A. § 31-5A-1; see also Department of Community Health, 262 Ga.App. at 879.

Under current law, the General Assembly directs DCH to "adopt, promulgate, and implement rules and regulations sufficient to administer the provisions of this chapter including the certificate of need program." O.C.G.A. § 31-6-21(b)(4). DCH is responsible for interpreting and applying the statute, the state health plan, and its rules and regulations in order to fulfill its function as established by the legislature. Department of Community Health, 262 Ga.App. at 880. The legislature cedes this authority to DCH because the public is better served by having experts in the complexities of healthcare planning make these decisions. Id. The issues are complicated, and the applicable laws, rules, regulations, and precedents require much study, especially for the decision-maker who is already not familiar with them. Id. at 881. Courts have recognized the "interpretation of a statute by an administrative agency which has the duty of enforcing or administering it is to be given great weight and deference." Hosp. Auth. of Gwinnett County v. State Health Planning Agency, 211 Ga.App. 407 (1993); see Department of Community Health, 2007 WL 806027.

Consistent with O.C.G.A. § 31-6-21(b)(4), DCH adopts rules and regulations for the CON program with the prior advice, comment and recommendations of the Health Strategies Council. The Health Strategies Council consists of experts representing the numerous groups having an interest in healthcare. The Health Strategies Council met on May 18, 2007 and voted to recognize general surgery as a single specialty with the same rights as all other specialties with regard to the certificate of need process, and to send the recommendation to the DCH Board. The Health Strategies Council decided that general surgery should be treated fairly as all other medical specialties. DCH accepted this recommendation and adopted rules and regulations recognizing general surgery as a single specialty with the same rights as all other specialties with regard to the CON process.

In support of their position, Petitioners argue the Amended Rule “attempts unlawfully to overrule the holdings of all three courts in the *Albany Surgical* cases, by agency rulemaking.” see Petitioner’s Petition and Complaint for Declaratory Judgment ¶155. However, Albany Surgical found that DCH has such “broad delegation of rule-making authority is sufficient to permit the promulgation of rules defining what is or what is not a single specialty within the CON process.” See Albany Surgical v. Department of Comm. Health, 257 Ga.App. 636, 638 (2002). DCH has acted within the authority granted to DCH by the General Assembly by adopting the rule updating the definition of a multi-specialty ambulatory surgery center to eliminate general surgery from the definition of multi-specialty ambulatory surgery. Consistent with Albany Surgical, DCH has adopted a rule authorized by statute that is reasonable.

ARGUMENT AND CITATION OF AUTHORITY

I. MAG has standing to intervene in this matter.

MAG is a non-profit, voluntary professional association of Georgia physicians. MAG was founded in 1849, is part of the American Medical Association federation, and is the largest physicians' association in Georgia. MAG has over 6,000 members and the majority of these members are actively practicing medicine.

MAG was founded in order to promote the art and science of medicine and improvement of the public health in Georgia. In order to achieve these goals, MAG actively advocates the positions of physicians and patients in the United States Congress, the Georgia General Assembly, state and federal courts throughout the United States, and in the private sector with large health plans, hospitals and other entities that significantly affect patient care. Additionally, MAG publishes a widely disseminated medical journal (the "Journal of the Medical Association of Georgia"), organizes and conducts continuing medical education programs in the State of Georgia and provides accreditation for healthcare professionals working in the Georgia prison system. MAG provides a variety of services to their members and the general public, and they have an interest in legal matters affecting their goals and their members.

MAG's membership includes hundreds of general surgeons actively practicing in the State of Georgia. These MAG members would be adversely affected by the judicial determination that the Amended Rule adopted by DCH is invalid as general surgery would continue to be incorrectly and improperly defined as multi-specialty. General surgery is universally recognized as a single specialty by organized medicine and must complete a specialized residency program subject to board certification requirements mandated by the American Board of Surgery. To invalidate this Amended Rule adopted by DCH continues to treat general surgery differently than other specialties.

In Aldridge v. Georgia Hospitality & Travel Association, 251 Ga. 234.304 S.E. 2d 708, 710 (1983), the Georgia Supreme Court set forth the standards to be used in determining the standing of an industry or trade association to represent the interests of its members in cases of this type:

We adopt the three-part test set out in Hunt v. Washington State Apple Advertising Commission...: “ An association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right (b) the interests it seeks to protect are germane to the organization’s purpose; and (3) [sic] neither the claim asserted or the relief requested requires the participation of individual members in the lawsuit. (citing Hurt v. Washington State Apple Advertising omission, 432 U.S. 333, 341, 97 S.Ct. 2434, 2440, 53 L.Ed.2d 343 (1975). see also Sawnee Electrical Membership Corporation v. Georgia Department of Revenue, 279 Ga. 22 (2005).

In Aldridge, the Georgia Supreme Court noted three policy reasons for its decision. First the association before it had demonstrated that it was a zealous advocate of its members’ interests and that it had provided adequate representation in the suit. Second, the Court found that allowing associations to represent their members’ interests in appropriate cases promotes judicial economy, since the association can, in a single lawsuit, adequately represent many members with similar interests, thus avoiding repetitive and costly separate actions. Finally, the Court observed that associations are generally less susceptible than individuals to retaliation by those officials responsible for executing the challenged policies. Aldridge.supra, 251 Ga. At 236-37.304 S.E. 2d at 711.

The interests which MAG seeks to protect in this action are clearly germane to MAG’s purposes and policies. Neither the relief requested nor the claims asserted require the participation of individual MAG’s members in the lawsuit. MAG is a zealous advocate of its member’s interests, and it will provide its members adequate representation in the suit. Allowing MAG to represent the interests of its members in this case will promote judicial economy, since MAG can, in this single lawsuit, adequately represent their numerous members with similar interests, thus avoiding

repetitive and costly separate actions. MAG meets the associational standing requirements of the Aldridge case.

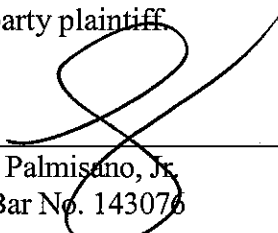
II. MAG's Intervention should be granted.

O.C.G.A. § 9-11-24(b)(2) allows for a party to intervene as a plaintiff to an action at the discretion of the Court where the claim to be asserted by the intervening plaintiff has a question of law or fact in common with the claims asserted in the underlying action and the intervention will not unduly delay or prejudice the adjudication or the original parties' rights. In the present action, MAG's interest has questions of law and fact in common with the present lawsuit. MAG supports DCH's Amended Rule as the rule complies with the authority granted to DCH by the General Assembly. Moreover, the addition of MAG to this cause of action will not unduly delay or prejudice the adjudication or the original parties' rights as the present lawsuit was filed less than a month ago.

Therefore, this Court should grant MAG's motion, and allow MAG to intervene in this action.

CONCLUSION

For all of the reasons set forth above, MAG requests that its motion be granted and that it be allowed to intervene in the present cause of action as a party plaintiff.



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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Medical Association of Georgia's Motion To Intervene and The Medical Association of Georgia's Brief In Support Its Motion To Intervene upon counsel for all parties by depositing a copy of same in the United States mail in an envelope with sufficient postage thereon addressed as follows:

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This 18 day of January 2008.



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ORDER

The Medical Association of Georgia's Motion to Intervene having been read and considered, and the Court having considered the full record and all submissions and arguments of counsel, and having determined that the Medical Association of Georgia's claims have questions of law or fact in common and that the proposed intervention of The Medical Association of Georgia will not unduly delay or prejudice the adjudication of the rights of the original parties:


IT IS HEREBY ORDERED that The Medical Association of Georgia's motion is granted as follows:

1. The Medical Association of Georgia is hereby permitted to intervene in this action.

2. The Answer of the Medical Association of Georgia attached to its Motion to Intervene is hereby ordered filed, and this action shall continue with the Medical Association of Georgia under the style and caption shown above.

SO ORDERED this _____ day of _____, 20____.

Prepared and presented by:


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