

SUPREME COURT STATE OF LOUISIANA

DOCKET NO. 06 CC 2378

WALTER BORG, M.D.

Plaintiff-Appellee

Versus

**DOUGLAS W. COOK, M.D., PALMETTO ADDICTION
RECOVERY CENTER, INC, DENEAN JAMES, BCSAC, JOHN
COLALUCA, D.O., JAY WEISS, M.D. AND TONY YOUNG, Ph.D.**

Defendants-Appellant

**SECOND CIRCUIT COURT OF
APPEAL FOR THE STATE OF LOUISIANA
Docket No. CW 06-41739**

**4TH JUDICIAL DISTRICT COURT
FOR THE PARISH OF OUACHITA
STATE OF LOUISIANA
CASE NO. M108-2005 CIVIL SECTION "C"
THE HONORABLE BENJAMIN JONES**

**MOTION FOR LEAVE OF COURT BY THE ASSOCIATION OF
AMERICAN PHYSICIANS AND SURGEONS TO FILE AN *AMICUS
CURIAE* BRIEF IN SUPPORT OF THE APPLICATION FOR A
SUPERVISORY WRIT TO REVIEW DENIAL OF WALTER BORG,
M.D.'S MOTION TO COMPEL THE DEPOSITION OF CECELIA
MOUTON, M.D.**

**FILED IN SUPPORT OF PLAINTIFF-APPLICANT,
WALTER BORG, M.D.**

CIVIL PROCEEDING

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MAY IT PLEASE THE COURT:

The Association of American Physicians and Surgeons, Inc. (“AAPS”) respectfully seeks leave from this Court to file the accompanying *amicus curiae* brief in support of Petitioner Walter Borg, M.D.

AAPS is a non-profit national organization consisting of thousands of physicians in all major specialties. Founded in 1943, AAPS is dedicated to defending the patient-physician relationship and the ethical practice of medicine. AAPS is one of the largest physician organizations funded virtually entirely by its physician membership. This enables it to speak directly on behalf of the ethical service to patients who entrust their care to the medical profession. AAPS files *amicus* briefs in cases of high importance to the medical profession, like this one. *See, e.g., Stenberg v. Carhart*, 530 U.S. 914 (2000) (U.S. Supreme Court Justice Kennedy frequently citing AAPS submission); *United States v. Rutgard*, 116 F.3d 1270 (9th Cir. 1997) (reversal of a sentence as urged by an *amicus* brief submitted by AAPS).

AAPS has a strong interest in promoting the integrity and accountability of medical board disciplinary proceedings. The membership of AAPS has a substantial and legitimate interest in the outcome of this case. All practicing physicians, including thousands of members of AAPS and many in Louisiana, are subject to such disciplinary proceedings. The ruling below, which appears to flatly prohibit the deposition of investigators, makes it impossible to uncover wrongdoing and even discrimination. Nothing supports such a sweeping ruling, least of all confidentiality statutes designed to protect the physician rather than wrongdoing.

In its *amicus curiae* brief, AAPS intends to argue that the ruling below should be overturned and Plaintiff- Applicant Walter Borg, M.D. (“Borg”) should be allowed to depose Dr. Cecilia Mouton, the Director of Investigations for the Louisiana State Board of Medical Examiners (“LSBME”) who was personally involved in Dr. Borg’s case, in order to discover information relevant to this litigation.

AAPS respectfully submits the accompanying *amicus curiae* brief to underscore that medical board officials, as anyone else, must be held legally accountable for their actions.

AAPS seeks to emphasize that the court ruling below contravenes an authority of this Court. *Larriviere v. Howard*, 771 So. 2d 747 (La.App. 3 Cir. 2000), writ granted in part by, and remanded by, 781 So. 2d 567 (La. Jan. 26, 2001). In *Larriviere*, this Court affirmed an appellate ruling that the Public Records Act does not impede the deposition sought by plaintiff. “Even if we assume that the act applies, La.R.S. 44:4(3) clearly precludes applicability of the privilege to this case. La.R.S. 44:4(3) (emphasis added) states: ‘This Chapter shall not apply: To any records, writing, accounts, letter, letter books, photographs or copies thereof, in the custody or control of any officer, employee, agent or agency of the state whose duties and functions *are to investigate . . . the business of any private person . . .* when the records, writings, accounts, letter books, photographs or copies thereof, *pertain to the business of the private person, firm or corporation, and are in their nature confidential.*’” *Larriviere v. Howard*, 771 So. 2d 747 at 750 (emphasis in decision). This Court should apply the *Larriviere* holding to this case and overturn the decision below, thereby allowing discovery to proceed.

AAPS also objects to the second rationale invoked by the trial court below concerning the law governing public disclosure of disciplinary proceedings. La. R.S. 37:1285(E). That provision simply protects physicians against public disclosure of their disciplinary records. Dr. Borg, the intended beneficiary of that provision, is the one seeking this information, and has agreed to enter into a protective order to address any concerns the Board may have regarding its disclosure. Nothing in this provision justifies concealing the information at issue in this case, and the decision below cites no cases for such a proposition.

WHEREFORE, *Amicus* requests the granting of this motion for leave to file the attached brief in support of Plaintiff-Applicant to provide information that will be directly useful to the Court in its consideration of this matter.

Dated: October 5, 2006

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of October, 2006, a copy of the foregoing *Motion For Leave of Court by the Association of American Physicians and Surgeons to File an Amicus Curiae Brief in Support of the Application for a Supervisory Writ to Review Denial of Walter Borg, M.D.'s Motion to Compel the Deposition of Cecelia Mouton, M.D.* was mailed via Federal Express overnight shipping, postage prepaid to:

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