

IN THE SUPREME COURT OF FLORIDA

LAWNWOOD MEDICAL CENTER, INC.,
d/b/a LAWNWOOD REGIONAL MEDICAL
CENTER AND HEART INSTITUTE, a
Florida Corporation,

Appellant,

vs.

CASE NO. SC7-1300
L.T. No.:1D06-2016

RANDALL SEAGER, M.D, as President
of the Medical Staff of Lawnwood
Regional Medical Center, Inc.,
d/b/a Lawnwood Regional Medical
Center and Heart Institute, and
Member of the Medical Executive
Committee of Lawnwood Regional
Medical Center, Inc., d/b/a Lawnwood
Regional Medical Center and Heart
Institute,

Appellees.

**THE ASSOCIATION OF AMERICAN PHYSICIAN & SURGEON'S
MOTION FOR LEAVE TO FILE AN AMICUS BRIEF
IN FAVOR OF APPELLEES AND THE DECISION BELOW**

Proposed *Amicus Curiae*, the Association of American Physicians and Surgeons ("AAPS"), through counsel and pursuant to Florida Rule of Appellate Procedure 9.370(a), files this Motion for Leave to File an Amicus Brief, and states:

1. The Association of American Physicians & Surgeons, Inc. ("AAPS") is a non-profit national organization consisting of thousands of physicians in all

specialties, and has many members in Florida. 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. The motto of AAPS is “omnia pro aegroto,” or “all for the patient.”

2. AAPS files amicus briefs in cases of high importance to the medical profession, like this one. AAPS has successfully filed amicus briefs in many appellate cases. *See, e.g., Stenberg v. Carhart*, 530 U.S. 914 (2000) (U.S. Supreme Court Justice Kennedy frequently citing an AAPS submission); *Springer v. Henry*, 435 F.3d 268, 271 (3d Cir. 2006) (citing an AAPS amicus brief in the first paragraph of the decision); *United States v. Rutgard*, 116 F.3d 1270 (9th Cir. 1997) (reversal of a sentence as urged by an amicus brief submitted by AAPS).

3. AAPS has a particular interest in the governance of physicians on staff at hospitals. There is a growing misuse of peer review commonly known as “sham peer review,” for which the only meaningful defense is the medical staff bylaws. Sham peer review consists of manipulation of peer review to eliminate physicians for economic or other disingenuous reasons. Medical staff bylaws are the last line of defense – indeed, the only real protection – against actions by

hospital administrators that can be anti-competitive and harmful to patient care. AAPS seeks leave to submit its brief specifically to emphasize the importance of the medical staff bylaws, and the necessity of defending the integrity of their contractual obligations against legislative interference.

4. As AAPS explains more fully in its accompanying amicus brief, the Florida legislature interfered with private contractual relations for the anti-competitive and unconstitutional benefit of one private and powerful corporation. This contravened judicial, constitutional, and economic norms. In particular, the contractual obligations set forth in medical staff bylaws cannot be changed by legislative fiat for the benefit of a single for-profit hospital, and AAPS addresses that issue specifically in its accompanying amicus brief.

5. AAPS can assist this Court in the disposition of this case by providing valuable insights into sham peer review, and how that disrupts the quality of patient care. AAPS can further assist by explaining the affect on its members of the issues at stake in this case.

6. Proposed amicus AAPS was granted permission to file an amicus brief and to appear before the district court of appeal, and there is no apparent reason to deny AAPS leave to file again here.

7. It would serve the interests of justice to provide this Court with the

additional information that is submitted in the accompanying amicus brief by AAPS in favor of Appellees and the judgment below.

WHEREFORE, proposed amicus, the Association of American Physicians and Surgeons, respectfully requests that this Honorable Court enter an Order granting them leave of court to file an amicus brief in favor of Appellees.

Respectfully submitted,

Glenn J. Webber, Esquire
Glenn J Webber, PA
Florida Bar No.: 356158
101 SE Ocean Blvd, Ste 203
Stuart, FL 34994
Phone (772) 287-5600
Facsimile (772) 781-7561
Attorney for the Association of
American Physicians & Surgeons

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail only to Charles W. Hall, Esquire, Fowler White Boggs Banker, P.A., P. O. Box 210, St. Petersburg, Florida 33731-0210; Richard H. Levenstein, Kramer, Sewell, Sopko & Levenstein, 853 Southeast Commons Blvd., Stuart Florida 33431; Major B. Harding, Ausley & McMullen, Post Office Box 391, Tallahassee, Florida 32302; Harold R. Mardenborough, Jr., Carr Allison, 305 South Gadsden Street, Tallahassee, Florida 32301; and Stephen J. Bronis, Esquire, Steven Wisotsky, Esquire, Zuckerman Spaeder LLP, 201 S. Biscayne Blvd., Suite 900, Miami, Florida 33131 this 10th day of December, 2007.

Glenn J. Webber, Esquire