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Lawnwood Medical Center, Inc. v. Randall Seeger

SC07-1300

NEXT CASE ON THE CALENDAR THIS MORNING IS LAWNWOOD MEDICAL CENTER.

>> MATE PLEASE THE COURT, STEVE BRONIS ON BEHALF OF LAWNWOOD REGIONAL MEDICAL CENTER AND WE'LL REFER TO THE ST. LUCIE COUNTY HOSPITAL GOVERNMENT LAWS, AND THE VAN LEADING TO THE

ENACTMENT OF THE HGL EVIDENCE THAT ITS PURPOSE IS TO PROTECT THE HEALTH AND WELFARE --

>> I WANT TO GO OVER THAT ASSUMPTION.

THIS CASE WAS BROUGHT AS -- BROUGHT A DECLARATORY JUDGMENT ACTION BY LAWNWOOD.

>> CORRECT.

>> AND WERE THERE CROSS-MOTIONS FOR SUMMARY JUDGMENT.

>> NO.

>> YES.

YES.

THERE WERE.

>> OKAY.

.
SO WHEN WE GO OVER WHAT THE PURPOSE OF THE LAW IS, ON -- UNLIKE OTHER CASES WHERE WE ARE LOOKING AT CONSTITUTIONAL ISSUES LIKE NORTH FLORIDA, THERE WAS NO -- NO RECORD IN THE TRIAL COURT SO WE HAVE TO GO BASED ON JUST, WHAT, THAT IS, DO WE GO ON THE LEGISLATIVE --

>> I BELIEVE SO, YES.

>> AND WHAT IN THE LEGISLATIVE -- THE LAW EXPLAINS -- WHAT DOES IT SAY.

>> IT TALKS ABOUT THE EVENTS LEADING UP TO ITS ENACTMENT.

>> IN YOUR BRIEF YOU GO WHOLE HOG IF THE LEGISLATURE HADN'T STEPPED IN, THE ENTIRE CITIZENRY

OF ST. LUCIE COUNTY WAS GOING TO BE IN DIRE -- UNDER DIRE THREAT FOR THEIR HEALTH AND WELFARE, CORRECT.

>> I BELIEVE THE AFFIDAVIT OF THE CEO FILED AT THE TRIAL COURT LEVEL IN HIS DEPOSITION ALSO REFLECTS THOSE FACTS.

>> BUT NOW IF THEY CONTROVERT IT, TAKE AN AFFIDAVIT WITHOUT THERE BEING A HEARING AND DECIDE AN AFFIDAVIT IS EVIDENCE, IT SEEMS TO ME WITH WHAT IS BEFORE US THAT WE ARE ESSENTIALLY LIMITED TO ANY OF THE JUDICIAL RECORDS WHICH INCLUDES JUDGE SCHACK'S WRITTEN ORDER FROM 2000

AND THE LEGISLATIVE, WHATEVER IS IN THE LAW, CORRECT.

>> AND THE COURT WOULD TAKE PUBLIC RECORDS AND JUDICIAL NOTICE OF INDICTMENTS AND CONVICTIONS.

>> IS THAT IN EVIDENCE IN THE TRIAL COURT.

>> YES.

IT WAS PLACE INTO EVIDENCE.

WHEN THE LAW WAS ENACTED IN 2003 THE GENTLEMEN THE SUBJECT OF THE LITIGATION WERE ALREADY SUSPENDED.

>> NO, THEY HAD BEEN INDICTED -- INDICTED.

>> STILL --

>> CORRECT.

ONE OF THE PATHOLOGISTS, HIS LICENSE WAS SUSPENDED BY THE DEPARTMENT OF HEALTH, FINDING THAT HE POSED A SERIOUS DANGER TO THE HEALTH, SAFETY AND WELFARE OF THE PUBLIC.

BUT THEY WERE BOTH UNDER INDICTMENT AND SUBSEQUENTLY --

HEALTH CARE FRAUD, [INAUDIBLE].

>> WOULD YOU MOVE TO DEALING WITH THE CONSTITUTIONAL ISSUES.

>> SURE.

>> AT HAND?

WHAT IS YOUR VIEW OF WHAT THE CONSTITUTION IS TALKING ABOUT WHEN IT TALKS ABOUT PRIVILEGE?

>> I THINK THE CONSTITUTION IS

TALKING ABOUT PROHIBITING
PRIVILEGE TO A PRIVATE
CORPORATION, THE HGL DOES NOT IN
THIS INSTANCE PROVIDE FINANCIAL
BENEFIT OR COMPETITIVE
ADVANTAGE.
IT ENABLES THE BOARD OF TRUSTEES

--

>> BUT DOES IT HAVE TO BE A
FINANCIAL BENEFIT?
I LOOK AT THESE CASES FROM OTHER
JURISDICTIONS AND THEY ARE
REALLY NOT LIMITING IT TO THAT.
>> JUST -- JUSTICE, I AGREE WITH
YOU, IT MAY NOT HAVE TO BE
PURELY FINANCIAL BUT LET'S LOOK
AT THIS... WE HAVE --

[INAUDIBLE] SERVED VOLUNTARILY,
NO PAY, TO ST. CLAIR AND
[INAUDIBLE] AND IT SUGGESTION
WHAT THE LAW DOES IS MAKE IT
EASIER FOR THEM TO FULFILL THE
LEGAL DUTIES AND
RESPONSIBILITIES.

AND MOST CERTAINLY THAT IS A
PRIVILEGE IN COMMON SENSE.

>> BUT IS IT TREATING THE
CORPORATION DIFFERENTLY THAN
OTHER CORPORATIONS.

>> NO, YOUR HONOR.
IT ENABLES THE HOSPITAL TO
OPERATE WITH OTHER HOSPITALS AND
THE HGL APPLIES TO ALL EXISTING
HOSPITALS IN ST. LUCIE HOSPITAL
AND FUTURE --

>> THAT IS WHERE I'M HAVING A
PROBLEM.
YOU SAID THERE WAS A UNIQUE
PROBLEM IN THIS -- ONE HOSPITAL,
BUT NOW, ALONG WITH THAT, EVEN
IF A NEW PRIVATE HOSPITAL COMES
IN, IN ST. LUCIE COUNTY, THEY
ARE GOING TO GET THE BENEFIT OF

THIS LAW THAT DOESN'T -- THAT IS
NOT SOMETHING THAT ANY OTHER
HOSPITAL IN THE STATE OR THE
LEGISLATURE SAW FIT WITH IT --
WAS NECESSARY IN ORDER TO
FULFILL THE MANDATES IN §3.95
AND 766, SO ON ONE HAND YOU WANT
TO SAY THE LAW WAS JUST, REALLY
JUST ALLOWING US TO FULFILL OUR

DUTIES UNDER THE LAW AND ON THE OTHER HAND, YOU ARE SAYING THAT IT WAS THIS CRISIS THAT WAS OCCURRING IN THE ONE HOSPITAL, WITH RECALCITRANT STAFF THAT REQUIRED US TO TAKE THIS EXTREME, EXTREME STEP OF GOING TO THE LEGISLATURE.

AS OPPOSED TO CONTINUING TO FIGHT THE MATTER IN THE COURTS. TO GET RELIEF AND I'M HAVING TROUBLE WITH THOSE 2.EXTREMES AND WHY THAT DOESN'T MEAN BECAUSE THE LAW ITSELF IS MUCH BROADER THAN PEER REVIEW. IT TALKS ABOUT CONTRACTOR SERVICE AND CREDENTIALING AND

QUALITY ASSURANCE.

THAT THERE WAS SOMETHING THAT YOU WERE SEEK AND WENT WAY BEYOND THE INITIAL CONTROVERSY TO -- CONTROVERSY TO GET THE LEGISLATURE TO HELP OUT NOT JUST ONE HOSPITAL BUT TWO OWNED BY THE SAME CORPORATION AND THEN APPLY TO ANY OTHER HOSPITAL IN ST. LUCIE COUNTY THAT COULD COME IN THROUGH -- AND DO THIS IN THE FUTURE.

>> YOUR HONOR, I DON'T THINK THAT THE HGL GOES WAY BEYOND ANYTHING.

WHAT IT DOES IN SECTION 67 IS THAT IT SETS A REASONABLE TIMEFRAME FOR THE MEDICAL STAFF TO INVESTIGATE THIS AND MAKE RECOMMENDATIONS.

AND IT ALSO --

>> [INAUDIBLE] ST. LUCIE COUNTY VERSUS ANOTHER COUNTY, LEON COUNTY OR ANY OTHER COUNTY. WHY IN JUST THAT COUNTY DO WE HAVE A LAW THAT BASICALLY

LESSENS THE POWER OF THE MEDICAL STAFF AND COURSES THEM TO MAKE A DECISIONS IN THIS AND NO OTHER MEDICAL STAFF --

>> I DON'T UNDERSTAND, JUSTICE, HOW IT LESSENS THE POWER OF THE MEDICAL STAFF THEM.

MEDICAL STAFF OF THIS HOSPITAL HAS AN OBLIGATION, A RON UNDER

STAY AND FEDERAL LAW --

>> THEY HAVE TO DO IT IN THE
TIMEFRAME THEY HAVE TO DO IT IN
ST. LUCIE COUNTY, IS THAT
CORRECT.

>> THE 395.0193, SAYS
[INAUDIBLE] SHALL INVESTIGATE
DISCIPLINARY APPOINTMENT AND
MAKE RECOMMENDATIONS AND WITH
395.0913 DOESN'T SAY IS WHAT IT
DOES IF A MEDICAL STAFF REFUSES
TO INVESTIGATED AND MAKE A
RECOMMENDATION.

>> OR IF THEY INVESTIGATE --
[INAUDIBLE].

>> WELL, IF IT WERE TO TAKE --
ACTUALLY WERE TO END UP IN AN

INVESTIGATION AND MAKE
RECOMMENDATIONS, THERE IS NO
REASON IN THE WORLD WHY IT
SHOULD TAKE MORE THAN -- WE ARE
NOT TALKING ABOUT SOMETHING THAT
IS EXTREMELY DIFFICULT TO DO.
[INAUDIBLE].

>> BUT IF THAT IS A GOOD IDEA
AND IT MAY BE A GOOD IDEA THERE
IS -- WHAT YOU ARE SAYING IS
THERE IS YOU A GAP IN THE LAW,
THEN WHAT I'M HAVING TROUBLE
WITH IS, IF IT IS GOOD POLICY
FOR THE STATE, WHY SHOULDN'T THE
LEGISLATURE HAVE LOOKED AT IT
AND SO, WE HAVE THE GAP IN THE
LAW, AND WE ARE GOING TO APPLY
IT AROUND THE STATE, BECAUSE WE
DON'T WANT TO HAVE A SITUATION
WHERE THE MEDICAL STUFF JUST
SIMPLY REFUSES TO ACT AND NOW
THAT WE HAVE SEEN IT CAN HAPPEN
WE WANT TO HAVE THAT IN THE LAW
AND THEN IT WOULD BE DEBATED,
YOU HAVE THE AMA, YOU HAVE THE
FMA, WHATEVER, ALL IN THERE, TO

SORT OF SAY, THIS IS GOOD OR BAD
AND WE HAVE DEBATE ON THAT
ISSUE.

>> YOU'RE RIGHT.
AND IT MAY BE A GREAT IDEA FOR
THE LEGISLATURE TO MAKE IT THE
STATEWIDE LAW BUT IT DOESN'T
MAKE IT UNCONSTITUTIONAL.

>> BUT I GUESS THAT IS WHERE WE

GO BACK TO THE QUESTION OF THE PRIVILEGE ISSUE AND I GUESS THE ECONOMIC PART, WOULD YOU AGREE, THAT PRIVILEGE HAS TO BE MORE THAN JUST SOMETHING THAT ECONOMICALLY BENEFITS THE PRIVATE CORPORATION OPERATION.

>> YES. AND LET ME TALK ABOUT THIS ECONOMICS.

>> BUT YOU SAID YES, IT WOULD HAVE TO BE SOMETHING MORE, THE PRIVILEGE JUST DOESN'T MEAN A FINANCIAL BENEFIT.

>> OR COMPETITIVE ADVANTAGE OR SOMETHING WE CAN SAY REALLY IS THE STUFF OF PRIVILEGE, ENABLING A BORED LIKE THIS, TO MAKE IT

EASIER FOR THEM TO DO THEIR JOB AND IT DOESN'T REALLY GO BEYOND QUALITY OF CARE THEM.

HGL TALKS ABOUT QUALITY OF CARE. THE A-- THEY MAKE A BIG ISSUE OF SOMETHING THEY CALLED ECONOMIC CREDENTIALING.

WELL, THEY MAKE THAT POINT BECAUSE THE HD -- HGL SAYS THEY HAVE THE POWER TO POWER TO ENTER INTO CONTRACT FOR HOSPITAL BASED SERVICE AND IT IS RECOGNIZED AS ESSENTIAL FOR QUALITY OF CARE AND AFFORDABLE SERVICES THAT HOSPITALS HAVE THIS ABILITY TO CONTRACT FOR SPECIALIZED HOSPITAL BASED SERVICES LIKE RADIOLOGIST, EMERGENCY ROOM SERVICES, AND ANESTHESIOLOGY.

>> ARE THERE OTHER HOSPITAL -- OTHER BILLS THAT HAVE PROVIDED BY LOCAL ACT PRIVILEGES TO HOSPITALS IN PARTICULAR DISTRICTS?

I'M NOT AWARE OF ANY, YOUR HONOR.

>> SO THIS IS A UNIQUE --

>> IT WAS -- THAT SITUATION IN ST. LUCIE COUNTY.

I WILL ALSO SAY ECONOMIC CREDENTIALING IS PERMITTED BY THE STATUTES AND LAWS OF FLORIDA.

OUR COURTS --

>> WE TALKED -- YOU ARE TALKING

ABOUT AN ADVANTAGE HERE, AND SEEMS TO ME THAT BY GIVING THE HOSPITAL PROVIDER TO CHANGE THE BYLAWS OF THE MEDICAL STAFF -- SEEMS LIKE --

>> THAT IS --

>> THE HOSPITAL AN ADVANTAGE HERE.

>> THAT IS A GOOD POINT, AND I'M GLAD YOU ASKED ME THAT AND I WANT TO ADDRESS IT.

THERE IS CONFUSION IN SECTION 5 OF THE HGL.

ON THE ONE HAND, SECTION FIVE SAYS THAT NEITHER THE HOSPITAL, THE BOARD, MORE THE MEDICAL STAFF CAN UNILATERALLY AMEND THE

BYLAWS.

I THINK TO ANSWER YOUR QUESTION THE COURT COULD EASILY SEVER THE LAST SENTENCE OF SECTION 5. FROM THE HGL AND THERE WOULD NOT BE ANY QUESTION ABOUT THAT.

>> ARE YOU CONCEDED THERE IS A PROBLEM WITH THIS --

>> I THINK THERE IS CONFUSION IN -- AND AMBIGUITY THAT MIGHT LEAD TO THAT CONCLUSION I THINK THE COURT COULD EFFECTIVELY SEVER THE LAST SECTION OF SECTION 5 WITHOUT DOING ANY DAMAGE TO THE REST OF IT.

>> IN TERMS OF THE PICTURE OF WHAT EXISTS IN THE REST OF THE STATE AND WOULD HAVE BEEN TO ME HELPFUL IF THERE HAD BEEN AN EVIDENTIARY DEVELOPMENT, FRANKLY, THE BYLAWS THAT WERE PUT INTO EFFECT IN 1993, WHICH WERE PASSED, APPROVED BY THE BOAR, NOW THE BRIEF SAYS, IT MUST HAVE BEEN INADVERTENT, BECAUSE THE -- THE BAD DEAL FOR

THE HOSPITAL, AND IS THAT CORRECT.

>> I DON'T THINK IT WAS A BAD DEAL, WHAT IF YOU ARE ASKING WHAT THE RECORD REFLECTS --

>>.

>> WE HAVE TO GO WITH WHAT THE RECORD REFLECTS,.

>> RIGHT.

>> ALL WE KNOW IS THIS BOARD APPROVED IT AND, YOU KNOW, WHAT I WOULD LOVE TO KNOW IS THAT THESE BYLAWS ARE UNIQUE TO ST. LUCIE COUNTY OR TYPICAL --

>> THEY ARE NOT TYPICAL.

I CAN'T I REPRESENT HOSPITALS FROM AROUND THE STATE.

>> BUT WE --

>> THEY ARE NOT --

>> WE DON'T HAVE THAT IN EVIDENCE.

>> NO.

>> YOU INDICATE AND I THINK PART OF THE ISSUE, I WAS TRYING TO -- THAT I STRUGGLED WITH IS WHETHER -- YOU SAY THE -- IT WAS

NECESSITATED BY THE VERY UNIQUE EVENTS AT LAWNWOOD AND THEY SAY THAT YOU HAD OTHER RECOURSE TO TAKE OTHER THAN GETTING YOU A LAW PASSED THAT WAS A BROAD LAW APPLICABLE ONLY TO YOU AND I WOULD LIKE YOU TO JUST ADDRESS WHETHER IN JUDGE SCHACK'S OPINION, FROM 2000, HE GAVE THE HOSPITAL THREE OPTIONS AS TO WHAT THEY COULD HAVE DONE TO HAVE -- IF THEY FELT THE MEC, WHICH WAS THE STAFF, WAS NOT DISCHARGING ITS RESPONSIBILITY. DO YOU DISAGREE THAT THOSE WERE OPTIONS THAT --

>> YES.

>> YOU DISAGREE.

>> I DISAGREE AND LET ME TELL YOU WHY.

FILING COMPLAIN WITH THIS DEPARTMENTS OF HEALTH, LET ME TELL YOU, HOSPITALS DO NOTIFY THE DEPARTMENT OF HEALTH WHEN THEY TAKE FINAL ADVERSE DISCIPLINARY ACTION AGAINST

CERTAIN PHYSICIANS AND HOWEVER FILING A COMPLAINT WITH THE DEPARTMENT OF HEALTH IS NOT A SUBSTITUTE FOR RELIABLE INTERNAL DISCIPLINARY ACTION FOR THREE REASONS.

FIRST, LIKE THE SITUATION PRESENTED BY THE PATHOLOGISTS IMMEDIATE INTERNAL ACTION IN THE

FORM OF SUSPENSION OF PRIVILEGES IS NECESSARY.

SECOND, THIS COURT HAS REPEATEDLY RECOGNIZED THAT EFFECTIVE PEER REVIEW IS VITAL TO THE ABILITY OF A HOSPITAL TO PROMOTE QUALITY OF CARE.

THIRD, BY GOING THROUGH THE PEER-REVIEW PROCESS, IT'S SUPPOSED TO WORK UNDER 395, A HOSPITAL HAS THE BENEFIT OF IMMUNITY FROM THE PHYSICIANS AS LONG AS IT'S DONE WITHOUT INTENTIONAL FRAUD.

FILING LAWSUITS IS NOT AN EFFECTIVE SUBSTITUTE.

LITIGATION IS EXPENSIVE AND TIME CONSUMING, AND QUALITY OF CARE WOULD BE SEVERELY COMPROMISED IF EVERY TIME THE MEDICAL STAFF FAILED TO ACT, THE HOSPITAL WOULD HAVE TO RUN TO COURT.

AND AS WE KNOW, ASIDE FROM PATIENTS UNDER AMENDMENT 7, INTERNAL INVESTIGATIONS ARE CONFIDENTIAL AND PRIVILEGED, AND IT WOULD BE HIGHLY INEFFECTIVE FOR A HOSPITAL TO TRY TO CIRCUMVENT THOSE PRIVILEGES BY BRINGING THESE ACTIONS IN LAWSUITS.

>> BEFORE YOU SIT DOWN, WOULD YOU DISCUSS THE IMPAIRMENT CONTRACT ISSUE?

>> SURE.

>> AS DISCUSSED BY THE FIRST DISTRICT.

>> ABSOLUTELY, YOUR HONOR. THERE IS NO IMPAIRMENT IN THE FINANCIAL SENSE.

IN THE HIGHLY-REGULATED HEALTH CARE INDUSTRY, EXISTING CONTRACTS ARE SUBJECT TO FURTHER LEGISLATION.

HERE THE HGL DOES NOT INTRUDE TO A DEGREE GREATER THAN NECESSARY TO PROTECT THE HEALTH AND WELFARE OF THE PUBLIC.

IT ALLOWS THE GOVERNING BOARD TO MONITOR AND POLICE INCOMPETENT PHYSICIANS BY DIMINISHING THE STAFF -- SECTION 6 OF THE HGL, AS I SAID, SIMPLY SETS A REASONABLE TIME FRAME FOR THE

MEDICAL STAFF TO INVESTIGATE AND MAKE A RECOMMENDATION. IT ALSO PROVIDES FULL DUE PROCESS, FAIR HEARING RIGHTS FOR THE PHYSICIANS THAT ARE AFFECTED BY ANY ADVERSE ACTION. FINALLY, THE OPPONENTS MAKE THIS ISSUE, WELL, IT SETS A DIFFERENT STANDARD.

A CAREFULLY-CONSIDERED STANDARD VERSUS A GOOD CAUSE STANDARD. THEY'RE MISTAKEN.

THE CAREFULLY-CONSIDERED STANDARD IS ONLY FOUND IN SECTION FIVE, WHICH JUSTICE QUINCE POINTED OUT, AND IT ONLY EFFECTS OR SETS A STANDARD FOR AMENDING OR REVISING THE MEDICAL STAFF BYLAWS.

AND IF YOU SEVER THAT OUT, THERE IS NO ISSUE.

THE GOOD CAUSE STANDARD IS FOUND IN THE TRUSTEES' BYLAW, AND IT'S STILL THERE WITH RESPECT TO QUALITY OF CARE ISSUES.

AND NOTHING IN THE HGL CHANGES THAT.

THERE IS ALSO THE ARGUMENT, AND IT'S SET FORTH IN OUR BRIEF, THAT AT THE TIME THE TRIAL COURT DECLARED THE HGL UNCONSTITUTIONAL, THERE WAS NO EXISTING CONTRACT BETWEEN ANY MEMBER OF THE MEDICAL STAFF AND THE HOSPITAL WHICH WAS THE SUBJECT OF THE HGL.

>> WHICH ASKS THE QUESTION IN MY MIND, WHAT CONTRACT ARE WE TALKING ABOUT?

[INAUDIBLE]

WE'RE NOT TALKING ABOUT EACH INDIVIDUAL DOCTOR.

AREN'T WE TALKING ABOUT FOR THE MEDICAL STAFF, NOT EACH PERSON ON THE STAFF?

>> I THINK, JUSTICE QUINCE, UNDER FLORIDA LAW THE MEDICAL STAFF BYLAWS CONTRACT IS DEEMED TO BE A CONTRACT BETWEEN THE HOSPITAL AND EACH MEMBER OF THE MEDICAL STAFF.

I BELIEVE THAT'S THE CASE.

NOW, OUR OPPONENT SUGGESTS WE DID NOT RAISE THAT ISSUE AT THE

TRIAL COURT LEVEL AND,
THEREFORE, WAIVED IT.
BUT AS THIS COURT HAS
CONSISTENTLY RULED, IT HAS THE
DUTY TO CONSIDER ALL POSSIBLE
REASONS FOR UPHOLDING THE
VALIDITY OF A STATE STATUTE IF
THERE ARE GROUNDS TO DO SO.
I'LL RESERVE THE REST OF MY
TIME.

>> THANK YOU.
GOOD MORNING.
MAY IT PLEASE THE COURT, MAY
NAME IS MAJOR HARDING.
I'M HERE WITH HAL MARTINBORO.
I WOULD REFER YOU TO PAGE 3 OF
THE REPLY BRIEF, JUSTICE
PARIENTE.
IT SAYS THE ATTENDING PHYSICIANS
WERE GONE BEFORE THE HGL, AND I
THINK THAT THAT IS --
>> [INAUDIBLE]
>> YES.

>> [INAUDIBLE]
>> THE BOARD WAS PASSED.
THAT'S MY UNDERSTANDING.
AND I WOULD ALSO LIKE TO TAKE
ISSUE WITH THE STATEMENT MADE BY
COUNSEL THAT THESE BYLAWS ARE
NOT TYPICAL.
THERE IS NOTHING IN THE RECORD
TO REFLECT ONE WAY OR THE OTHER
WHAT OTHER HOSPITAL BYLAWS ARE.
WE'RE DEALING WITH THESE
PARTICULAR BYLAWS IN THIS
PARTICULAR ENTITY.
>> DO YOU WANT TO TAKE ISSUE
WITH THE CHARACTERIZATION OF THE
TRUSTEES AS BEING THIS VOLUNTEER
GROUP THAT IS -- BECAUSE I
UNDERSTOOD IN ONE OF THE BRIEFS
THAT, NO, THAT THE TRUSTEES
REALLY ARE MADE UP OF THE CEO
AND PEOPLE APPOINTED BY THE
HOSPITAL.
IS THERE ANYTHING ON THAT IN THE
RECORD?
>> THERE ARE NINE, I THINK AT
THE TIME OF THIS, NINE MEMBERS
THE MAJORITY OF WHOM WERE LAY
PEOPLE.
THERE WERE DOCTORS ON THE

HOSPITAL BOARD OF TRUSTEES, AND,
BUT THEY ARE PREDOMINANTLY A LAY
BOARD.

AND THAT IS ONE OF THE
SIGNIFICANT REASONS THAT THE
ARRANGEMENT MADE BY THE 1993
BYLAWS THAT WERE APPROVED BY THE
MEDICAL STAFF AND ADOPTED AND
APPROVED BY THE BOARD, AND THAT
WAS ONE OF THE REASONS WHY THAT
DEALT AND GAVE CREDENCE AND
PREFERENCE TO THE MEDICAL STAFF
DEALING WITH THE PRACTICE OF
MEDICINE.

AND SET A STANDARD -- EXCUSE ME,
SIR.

>> WOULD YOU ADDRESS YOUR
DEFINITION OF PRIVILEGE?

>> YES.
THE PRIVILEGE REFERRED TO BY THE
DISTRICT COURT AS DEFINING
THE -- OF FREE EXISTING
CONTRACTUAL OBLIGATION, AND THAT
IS THE DEFINITION THE SUPREME
COURT USED.

BUT THE PRIVILEGE IS ALSO
BECAUSE THIS IS THE ONLY
HOSPITAL, OR THESE TWO HOSPITALS
IN THE ST. LUCIE COUNTY OWNED BY
THE SAME CORPORATION, ARE THE
ONLY HOSPITALS AND THE ONLY
CORPORATION AFFECTED BY THIS
LEGISLATION.

>> SO YOUR DEFINITION OF
PRIVILEGE WOULD PROHIBIT THE
LEGISLATURE FROM PASSING A LAW
THAT WAS UNIQUE TO A
CORPORATION?

>> IF IT GRANTED A PRIVILEGE OR
IMPAIRED A CONTRACT.

>> THAT SEEMS TO ME SOMEWHAT
CIRCULAR.

>> I'M SORRY.

>> SOMEWHAT CIRCULAR, IS IT A
PRIVILEGE BECAUSE IT GRANTS TO
ONE CORPORATION A UNIQUE RIGHT?

>> WE THINK SO.

>> SO, BECAUSE I'M INTERESTED IN
THAT.

AND, OF COURSE, WE HAVE NO CASES
ON THIS PROHIBITION THAT CAME

INTO EFFECT IN THE 1968
CONSTITUTION.

BUT JUDGE FARRIS IN HER ORDER
SUGGESTS THAT, YOU KNOW, WHETHER
A SPECIAL ACT IS A
CONSTITUTIONALLY-PERMISSIBLE
METHOD FOR AFFECTING THE
INTERNAL BUSINESS AFFAIRS OF A
PRIVATE CORPORATION.

AND YOUR ARGUMENT WOULD BE THAT,
NO, THAT'S NOT WHAT A SPECIAL
LAW WAS INTENDED TO DO, THAT YOU
CAN'T USE THE LEGISLATURE TO
TAKE, GO IN AND TAKE ONE PLACE
WHERE THE HOSPITAL DOESN'T LIKE
THE WAY THE CONTRACT HAS BEEN
NEGOTIATED AND ALLOW THE
LEGISLATURE TO SAY WE'RE GOING
TO CHANGE THE WAY THIS CONTRACT,
THESE CONTRACTUAL RELATIONSHIPS
ARE THERE.

IS THAT YOUR POSITION?

>> WE THINK THAT THAT'S THE
APPROPRIATE ANALYSIS, YES.

>> IS THERE ANY EXAMPLE?

I MEAN, DO YOU KNOW OF ANY OTHER
LAW IN THIS STATE SINCE 1968 ON
THAT ACTUALLY HAS WHETHER
CHALLENGED OR UNCHALLENGED THAT
DID SOMETHING LIKE THIS?

>> NO.

>> [INAUDIBLE]

>> IF THEY ARE INTERTWINED AS
THE DISTRICT COURT INDICATED,
JUSTICE BELL THERE, INTERTWINED,
THE PRIVILEGE IS GRANTED BECAUSE
IT TAKES AWAY THE PRE-EXISTING
CONTRACTUAL RIGHTS OF THE, OF
THE CONTRACTING -- PRE-EXISTING
CONTRACTUAL OBLIGATIONS.

>> BUT I HAVE PROBLEMS WITH THAT
ONE.

I MEAN, THAT IS THAT IF, IF
THERE'S A GAP IN THE LAW WHICH
IS WHAT DO YOU DO WHEN A MEDICAL
STAFF REFUSES, LET'S JUST ASSUME
THAT'S WHAT HAPPENED, REFUSES TO
INITIATE PEER REVIEW PROCESS.
THEY WANT TO PROTECT TWO,
OBVIOUSLY, BAD DOCTORS FOR THEIR
OWN REASON.
AND IF THE LEGISLATURE INSTEAD
OF DOING THIS HAD MADE THIS

GENERALLY APPLICABLE TO ALL THE HOSPITALS AND ALL THE STAFF IN THE STATE, WOULDN'T, WOULD YOU BE SAYING THAT ALL THOSE CONTRACTS WERE IMPAIRED? THAT THE LEGISLATURE WOULD BE POWERLESS TO CHANGE WHAT MAY BE A GAP IN THE LAW?

>> THAT MAY WELL BE, AND MR. MARTINBORO IS GOING TO ADDRESS THAT.

BUT I THINK JUDGE SCHACK IN HIS ORDERS IN THE NUMBER OF CASES THAT WENT BEFORE HIM POINTED OUT WHAT THE HOSPITAL COULD HAVE DONE.

AND WHILE MY OPPOSING COLLEAGUE SAYS THAT THAT IS NOT CORRECT, THAT WAS AFFIRMED BY THE DISTRICT COURT OF APPEALS.

>> WELL, ONE OF THEM WAS ASKING THE STATE OF FLORIDA FOR AN EMERGENCY SUSPENSION OF THE PHYSICIAN'S LICENSE.

WAS THAT -- ISN'T THAT WHAT EVENTUALLY THEY DID?

>> THE, THERE WAS AN INVESTIGATION, AND THE LICENSE WAS SUBSEQUENTLY --

>> SO THEY TOOK, SO THAT'S, I GUESS --

>> AND THEY WERE GONE BY THE TIME THE HGL --

>> SO THAT IS, AND AGAIN, THESE ARE DOCTORS THAT ARE, THEY'RE NOT EMPLOYEES OF THE HOSPITAL, CORRECT?

>> NO.

>> THESE ARE DOCTORS THAT HAVE STAFF PRIVILEGES.

>> CORRECT.

>> THERE'S NOTHING THAT -- MANY HOSPITALS HAVE STAFF, ANESTHESIOLOGISTS ON STAFF, I DON'T KNOW IF MANY, BUT -- IF THESE HAD BEEN DOCTORS THAT WERE ON STAFF, THAT IS EMPLOYEES, DOES A MEDICAL REVIEW PROCESS PROHIBIT THE HOSPITAL FROM TERMINATING THEIR OWN EMPLOYEES?

>> QUITE FRANKLY, I'M NOT AWARE OF WHAT THE CONTRACTUAL RELATIONSHIP WITH THOSE DOCTORS --

>> BUT THOSE WOULD BE SEPARATE CONTRACTS BETWEEN HOSPITAL -- WE'RE NOT TALKING ABOUT THAT. WE'RE TALKING ABOUT A CLASS OF DOCTOR THAT IS NOT REALLY UNDER MOST CIRCUMSTANCES THE HOSPITAL WOULDN'T EVEN BE VICARIOUSLY LIABLE FOR THEIR ERRORS, CORRECT?

>> THAT'S CORRECT.

>> WAS THIS A SITUATION WHERE THE MEDICAL STAFF REFUSED TO TAKE ANY ACTIONS, OR DID THE MEDICAL STAFF ACTUALLY LOOK INTO THIS SITUATION AND MAKE A DETERMINATION THAT THERE WAS NO CAUSE TO ACTUALLY DISCIPLINE THESE TWO DOCTORS?

>> I THINK THE RECORD REFLECTS THAT THEY NEVER REFUSED TO CONDUCT A PEER REVIEW, AND THERE WAS SOME UNHAPPINESS IN THE WAY THE HOSPITAL BOARD WAS HANDLING THIS MATTER, AND THEY ULTIMATELY TOOK THE ACTION OF, I THINK, SUSPENDING THE DOCTORS.

>> WASN'T THERE SOME PRIOR LITIGATION ABOUT THIS ISSUE? THE HOSPITAL TAKES THIS MATTER --

>> THERE HAS BEEN, YES, SEVERAL, SEVERAL LITIGATIONS IN REGARD TO THE ACTIONS TAKEN BY THE HOSPITAL, AND IN ALL SEVEN OF THOSE LITIGATIONS, THE HOSPITAL HAS LOST.

>> [INAUDIBLE]
HOW DOES THE DEPARTMENT OF HEALTH GET INVOLVED IN THE SITUATION?

>> WITH ALL DUE RESPECT, I CANNOT GIVE YOU THE EXACT ANSWER.
BUT I THINK IT WAS CALLED TO THEIR ATTENTION, AND THEY, AND THEY ULTIMATELY TOOK, DID AN INVESTIGATION AND TOOK ACTION.

>> SO WHAT DO YOU FEEL IS THE WORST PART OF THIS PIECE OF LEGISLATION?

HOW -- WHAT IS IT ABOUT THIS LEGISLATION, WHAT PART OF IT TRULY IMPAIRS THE CONTRACT BETWEEN THE HOSPITAL AND THE MEDICAL STAFF?

>> FIRST OF ALL, THE 1993 BYLAWS WERE ENACTED BY THE MEDICAL STAFF AND APPROVED BY THE HOSPITAL BOARD PURSUANT TO LAW AND PURSUANT TO THE RULES AND REGULATIONS RELATING TO CREDENTIALING AND LICENSING.

>> SO THE HOSPITALS HAVE TO APPROVE THE BYLAWS TO HAVE MEDICAL STAFF?

>> THEY DID.
AND THAT IS, THEY CONCEDE THAT THAT CREATES A CONTRACT.

>> [INAUDIBLE]
>> THERE HAVE BEEN AMENDMENTS, AS I UNDERSTAND, TO THE, TO THE BYLAWS FROM TIME TO TIME THAT HAVE BEEN ULTIMATELY APPROVED BY THE BOARD, BUT THEY CONTINUE UNTIL THEY'RE AMENDED.

>> IT'S 60 PERCENT REQUIREMENT, CORRECT?
>> YES.

>> OF THE STAFF HAS TO APPROVE --
>> YES.
>> -- THE AMENDMENT.

>> [INAUDIBLE]
>> CONTROLS THE AMENDMENT AT SOME --
>> YES.
>> AND THE BOARD OF TRUSTEES ARE RESPONSIBLE FOR THE [INAUDIBLE]
>> THEY HAVE THE OPPORTUNITY TO APPROVE, AS THEY DID IN 1993.
HUH?

>> DID THEY JUST APPROVE OF IT?
YOU SAID THEY HAVE AN OPPORTUNITY TO APPROVE OF THIS AMENDMENT.
CAN THEY ALSO DISAPPROVE OF AN AMENDMENT?
>> WHY, CERTAINLY.
IF THEY HAVE A DISAGREEMENT AS TO THE TERMS OF THE BYLAWS, THEN

THING GO BACK AND WORK IT OUT
AND NEGOTIATE TO, ULTIMATELY,
COME TO A CONTRACT, AS THEY DID.

>> DO YOU SEE THIS AS -- IT'S
ONLY BEEN BROUGHT UP BY ONE OF
THE -- BUT SOMEHOW WHEN I LOOK
AT JUDGE SCHACK'S ORDERS THAT,
YOU SAY, WAS AFFIRMED, IT
APPEARS THAT THEY DIDN'T LIKE
THE RESULTS OF THESE TRIAL COURT
RULINGS, AND THEY DECIDED TO
INSTEAD GO THE LEGISLATURE.
NOW, THAT TO ME RAISES SOME
SEPARATION OF POWERS CONCERNS,
BUT THAT YOU WOULD AGREE HAS
NEVER BEEN RAISED BY ANYBODY AS
FAR AS ANY OF THE PARTIES TO
THIS?

>> NO.

THE -- AND TO ADD TO THAT ISSUE,
I THINK IT'S MOST UNUSUAL THAT
YOU COME TO COURT TO ASK THE
COURT TO DECLARE A LAW
CONSTITUTIONAL.
AND THEN WHEN THE COURT DOES NOT
GRANT YOUR WISH IN THAT REGARD,
THEY, THE BRIEF SAYS THAT THE
COURT RULING WAS SUPERFICIAL
WITHOUT PROPER ANALYSIS,
OVERSTEPPED ITS AUTHORITY --

>> IN ALL FAIRNESS, ISN'T THE
MEDICAL STAFF -- DIDN'T THE
MEDICAL STAFF PUT THE HOSPITAL
ON NOTICE THEY DID NOT BELIEVE
THE STATUTE WAS
UNCONSTITUTIONAL --

>> YES.

>> SO THE HOSPITAL IN REACTION
TO THAT, YOU KNOW, WAS THEN
[INAUDIBLE]

>> THE, THE HOSPITAL WAS PUT ON
NOTICE THAT, BY THE MEDICAL
STAFF, THAT THEY THOUGHT THE LAW
WAS UNCONSTITUTIONAL, AND THAT
WAS THE REASON THEY WENT TO
COURT HERE IN LEON COUNTY, TO
HAVE IT DECLARED CONSTITUTIONAL.

>> ONE OF THE MOST STARTLING
PARTS, THOUGH, BECAUSE WE TALK
ABOUT WHETHER IT AFFECTS THE
CONTRACT, BUT THEN, YOU KNOW,
YOU'RE LISTENING TO OUR READING
THE BRIEF, THE VERY COMPELLING

BRIEF OF LAWNWOOD, WE SEE THIS SITUATION OF THESE DOCTORS THAT HAD A 20, 25 PERCENT ERROR RATE. IS THAT FIGURE, THAT IS THAT THEY WERE NOT JUST, YOU KNOW, FRAUDULENT DOCTORS BUT THEY WERE COMPLETELY INCOMPETENT, IS THAT IN OUR RECORD AS AN UNCONTRADICTED FACT?

>> IT IS, IT WAS NEVER BROUGHT UP IN THE TRIAL COURT, IT WAS NEVER ALLEGED THAT THERE WAS A PUBLIC HEALTH CRISIS.

AND AS COUNSEL SAID, THERE WAS AN AFFIDAVIT, SELF-SERVING FILE BUT, NONETHELESS, AS YOU HAVE INDICATED, THE COURT DETERMINED ON SOME REJUDGMENT THAT THE LAW, IN FACT, WAS ON ITS FACE AND AS APPLIED UNCONSTITUTIONAL.

>> WHAT ABOUT, THOUGH, AND THIS IS, YOU KNOW, BECAUSE NEITHER SIDE SOUGHT AN EVIDENTIARY HEARING, WHERE DOES THE PRESUMPTION OF CONSTITUTIONALITY AND THE DEFERENCE TO THE LEGISLATURE'S FINDING THAT THERE WAS A NECESSITY FOR THIS LAW, WHERE DOES THAT COME INTO OUR ANALYSIS?

>> JUSTICE PARIENTE, THE CAREFUL ANALYSIS OF THE DISTRICT COURT IN TALKING ABOUT THE PLAIN MEANING OF THE CONSTITUTION, THE PLAIN MEANING OF THE STATUTE AND COMPARING THOSE TWO INDICATES A CAREFUL ANALYSIS AND THAT THEY WOULD NOT, THAT THE PRESUMPTION EXISTS.

>> BUT I GUESS YOU'RE SAYING THAT IT IS, THAT PRIVILEGE IS MORE THAN ECONOMIC, AND MR. BRONIS AGREES WITH THAT, BUT THE WAY TO REALLY UNDERSTAND WHAT IT DOES OR DOESN'T DO, THIS SPECIAL LAW, IS TO REALLY UNDERSTAND ON THE GROUNDS WHAT ADVANTAGES IT GIVES TO THE HOSPITAL THAT THE HOSPITAL DIDN'T HAVE BEFORE.

AND COULD YOU GIVE US THE, I GUESS YOU MIGHT HAVE SAID IT,

BUT MR. BRONIS SAID HE'D AGREE WITH THE SEVERANCE OF THAT LAST SENTENCE, WHAT'S THE MOST FROM, AS YOU SAY THE STAFF POINT OF VIEW, SORT OF THE MOST OUTRAGEOUS ADVANTAGE THAT THE HOSPITAL RECEIVED AS A RESULT OF THE SPECIAL LAW?

>> WELL, AS THEY POINT OUT IN THEIR BRIEF IN SECTION ONE, IN THE EVENT OF A CONFLICT BETWEEN THE HOSPITAL AND THE MEDICAL STAFF, THE HOSPITAL PREVAILS. FLAT.

THAT'S IT.

AND IN SECTION FIVE, A HOSPITAL'S AUTHORITY IS NOT LIMITED BY THE MEDICAL STAFF AUTHORITY.

AND THAT JUST COMPLETELY UNDOES THE CONTRACTUAL RELATIONSHIP THAT'S EXISTED SINCE 1993.

>> AND [INAUDIBLE]

>> NO, THE MEDICAL STAFF DOES NOT CONTROL, AND I NEED TO SAVE SOME TIME FOR MR. MARTINBORO, IF YOU WILL, AND LET ME ANSWER YOUR QUESTION.

THE HOSPITAL, UNDER THE BYLAWS, HAS ABSOLUTELY AUTHORITY IN ALL MATTERS RELATING TO BUSINESS. IT IS ONLY THE MATTERS RELATING TO THE PRACTICE OF MEDICINE THAT THERE IS ANY LIMITATION, AND THAT LIMITATION IS THAT THE MEDICAL STAFF'S RECOMMENDATION IN REGARD TO CREDENTIALING, PEER REVIEW, OR ANY OF THOSE THINGS RELATED TO THE PRACTICE OF MEDICINE CANNOT BE OVERTURNED BY THE HOSPITAL UNLESS IT IS REASONABLE AND FOR GOOD CAUSE. AND THOSE ARE LEGAL STANDARDS THAT CAN BE TESTED BY, AND AS JUDGE SCHACK HAS DONE, BY THE COURT.

THEY HAVE SUBSTITUTED THAT BY SAYING, ONE, WE CAN DO WHATEVER WE WANT TO WITH THE MEDICAL STAFF BYLAWS, AND IF WE HAVE A DISAGREEMENT WITH THEM, WE WILL GIVE IT CAREFUL CONSIDERATION. AND WE WOULD SUGGEST THAT THAT IS NO STANDARD AT ALL, AND IF

THE COURT PLEASED, I WOULD LIKE TO DEFER TO MR. MARTINBORO FOR THE REMAINDER.

>> THANK YOU.

>> THANK YOU.

>> MR. MARTINBORO?

>> MAY IT PLEASE THE COURT, I'M WITH THE FIRM HERE IN TALLAHASSEE.

I'M REPRESENTING THE FLORIDA MEDICAL ASSOCIATION AND THE AMERICAN MEDICAL ASSOCIATION IN THIS CASE, AND AS YOU KNOW, WE FILED A BRIEF --

>> MAKE SURE THAT WE FULLY UNDERSTAND THAT THIS RELATIONSHIP BETWEEN MEDICAL STAFF AND THE HOSPITAL, IT'S INTERACTIVE IN MANY, MANY WAYS. HOW ABOUT, FOR EXAMPLE, WITH REGARD TO [INAUDIBLE] ON BEHALF OF THE MEDICAL STAFF THEY CAUSED THE HOSPITAL TO LOSE PAYMENTS FOR MEDICAID, MEDICARE, WHAT HAVE YOU, BUT YOU'RE SAYING [INAUDIBLE] THOSE ARE STILL PROTECTED?

THE HOSPITAL WOULD STILL HAVE A BASIS TO REJECT [INAUDIBLE] OR OVERTURN THESE DECISIONS. THAT WOULD BE THE KIND [INAUDIBLE]

>> IT'S HARD TO ANSWER A QUESTION LIKE THAT WITHOUT KNOWING MORE FACTS, BUT CERTAINLY FACTS THAT START LIKE THAT MAY ESTABLISH THE GOOD CAUSE REQUIRED FOR THE HOSPITAL, FOR THE BOARD ON ONE SIDE TO NOT GO ALONG WITH MEDICAL STAFF DECISIONS ON THE OTHER SIDE. I THINK ONE OF THE MOST IMPORTANT THINGS WE'VE GOT TO PUT BACK INTO CONTEXT HERE IS THAT WHILE THIS CASE DOES PUT, OBVIOUSLY, SHOWS A HOSPITAL AND A STAFF AT ODDS AT LEAST ON THIS PARTICULAR ISSUE, THESE DECISIONS THAT WE'RE TALKING ABOUT, MEDICAL DECISIONS, ARE ONES THAT ARE MADE TOGETHER. THE HOSPITAL STAFF HAS A SIGNIFICANT, SIGNIFICANT ROLE IN

THE DECISIONS THAT HAVE TO DO WITH PATIENT CARE, AND THEY SHOULD.

THAT'S EXACTLY WHEY THE AMA AND THE FMA ASKED ME TO FILE THE BRIEF AND ARGUE IN THIS CASE. BECAUSE THEIR POSITION THAT ANYTHING DEALING WITH THE PATIENT CARE SHOULD BE, THE DECISION SHOULD BE MADE PRIMARILY BY DOCTORS, NOT BY HOSPITAL BOARDS.

>> THE IRONY IS THESE BYLAWS WERE REQUIRED AS A POSITION OF CREDENTIALING, THE 1993 LAWS, CORRECT?

>> THROUGH --

>> THROUGH THE JOINT COMMISSION --

>> ABSOLUTELY, YOUR HONOR. EXACTLY.

BYLAWS ARE REQUIRED -- THE EXACT NATURE OF THEM HAS TO BE APPROVED, AND THESE WERE. ONE OF THE PROBLEMS THAT WE HAVE IN THIS CASE IS THAT THERE'S A LOT OF SUGGESTIONS ABOUT THESE BYLAWS MAYBE BEING DIFFERENT OR BAD COMPARED TO THE REST OF THE STATE.

CERTAINLY, TO BE FAIR I DON'T THINK THE RECORD IS CLEAR ON THAT ON EITHER SIDE, BUT MY CLIENT'S POSITION, THE REASON WE'RE HERE, IS THAT THEY HAVE TAKEN A POSITION NATIONWIDE THAT WHENEVER BYLAWS EXIST IN A HOSPITAL, THERE SHOULD BE SIGNIFICANT PROTECTION OF PATIENT CARE BY HAVING A DOCTOR SIGNIFICANTLY INVOLVED IN THE DECISION MAKING.

I THINK, I SEE I'M OUT OF TIME.

>> [INAUDIBLE]

>> THANK YOU, YOUR HONOR.

WHEN THESE KINDS OF DECISIONS ARE GOING TO BE MADE, THEY'RE GOING TO BE MADE BY BOTH THE STAFF AND THE HOSPITAL.

THEY'RE NOT GOING TO ALWAYS AGREE.

THEY'RE DIFFERENT PEOPLE AT TIMES.

YOU'VE GOT FOLKS THAT DEAL

SPECIFICALLY WITH PATIENTS,
FOLKS WHO ARE DEALING WITH THE
BUSINESS SIDE OF THE HOSPITAL.
NO ONE IS SAYING THE BUSINESS
SIDE ISN'T IMPORTANT.
WHAT WE ARE SAYING IS THERE
SHOULD BE NO LEGISLATIVE FIX IN
A SINGLE COUNTY THAT GIVES ONE
CORPORATION THAT OWNS TWO
HOSPITALS THE POWER TO MAKE
DECISIONS WITHOUT REGARD TO WHAT
THE DOCTORS SAY.

AND WHATEVER ELSE IS BEING
SUGGESTED HERE, DID ACT, GIVING
SIGNIFICANTLY MORE POWER TO THE
HOSPITAL THAN EVER EXISTED UNDER
THE BYLAWS, AND BY ITS OWN TERMS
SPECIFICALLY SAID THE HOSPITAL
BOARD IS NOT BOUND BY WHAT THE
DOCTORS SAY.

WE SHOW CLEARLY THAT LAST
SECTION IN SECTION FIVE DOOMS
THE ENTIRE STATUTE.

>> WHY IS IT --

>> BECAUSE IT ESSENTIALLY
GOVERNS THE ENTIRE NATURE OF
THE -- IF YOU SEVER THAT OUT,
THERE'S STILL A SIGNIFICANT
CHANGE TO THE CONTRACTUAL
ARRANGEMENT, AND IT STILL GIVES
THE HOSPITAL THE AUTHORITY TO DO
THINGS WITHOUT -- I SEE I'M
REALLY RUNNING BEYOND.

>> YOU'RE SAYING THAT THIS BILL
PASSED UNANIMOUSLY?

>> WELL, IT'S EASY -- WELL, WHEN
YOU HAVE A BILL THAT'S BEING
PRESENTED THAT'S ONLY AFFECTING
ONE COUNTY, WITH ALL DUE RESPECT
TO THE LEGISLATURE, WE DON'T
BELIEVE THAT'S A FULLY-VETTED
BILL, AND THAT'S PART OF THE --

>> NO SPECIAL ACTS PASSING.

>> RIGHT.

THIS ISN'T A VERY COMPLICATED
THING FROM THAT SIDE, BUT FROM
OUR SIDE IT'S VERY SUSPECT.
BECAUSE THE FACT IF THIS WAS
PROPOSED, AS YOU SUGGESTED,
JUSTICE PARIENTE, AS A GENERAL
LAW TO THE ENTIRE STATE, WE
BELIEVE THAT DOCTORS ACROSS THE
STATE WOULD HAVE BEEN UP IN
ARMS, AND THERE CERTAINLY WOULD

HAVE BEEN LEGISLATIVE INVOLVEMENT BY FOLKS LIKE MY CLIENT.

AND MANY OTHER PHYSICIANS' GROUPS, BY THE WAY, WOULD HAVE BEEN FIGHTING THIS TOOTH AND NAIL BECAUSE IT DOES REPRESENT SUCH A DRASTIC CHANGE.

BEFORE I SIT DOWN, I DO WANT TO POINT OUT WITH RESPECT TO THE CONSTITUTIONAL QUESTION THE STAFF ANALYSIS THAT'S CITED IN THE REPLY BRIEF SIMPLY SAYS THAT THE HOSPITAL REPORTS, NOW THIS ISN'T A FINDING BY THE LEGISLATURE, JUST SAYS THE HOSPITAL REPORTS IT HAS BEEN UNABLE TO BRING DISCIPLINARY ACTION AGAINST TWO PHYSICIANS DUE TO THE FAILURE OF MEDICAL STAFF TO INITIATE PEER PROCEDURES AS REQUIRED.

THERE IS NO FINDING OF A PUBLIC HEALTH CRISIS.

IT ESSENTIALLY SAYS IN THE STAFF ANALYSIS THAT THE HOSPITAL AND THE DOCTORS ARE NOT GETTING ALONG WITH RESPECT TO MAKING ONE DECISION.

NOW, WE BELIEVE THAT IS FACTUALLY WRONG ANYWAY, BUT EVEN IF YOU GIVE THE LEGISLATURE COMPLETE DEFERENCE IN THAT ANALYSIS AND LOOK AT THE ACT THAT WAS ACTUALLY PASSED WHERE THERE'S NO FINDING, THIS ISN'T THE KIND OF THING WHERE THERE ARE FINDINGS THAT THERE WAS A COMPELLING PUBLIC HEALTH INTEREST OR ANYTHING LIKE THAT THAT REQUIRED THIS.

ALL IT SAYS, IN FACT, IF YOU READ THE ACT ITSELF, IT PURPORTS TO, QUOTE, CLARIFY THE DELINEATION OF AUTHORITY AND GOES ON TO SUGGEST THAT IT IS NOT CHANGING ANY EXISTING LAWS.

AND THAT'S SIMPLY NOT ACCURATE. IT IS ADDING SIGNIFICANT BENEFITS TO THE HOSPITAL, TAKEN THEM AWAY FROM THE DOCTORS, AND I'M DEFINITELY OVER MY TIME. THANK YOU, YOUR HONORS.

>> [INAUDIBLE]

>> WITH RESPECT TO THE ISSUE OF WHETHER, WHAT THE MEDICAL STAFF DID WITH RESPECT TO THE -- THE RECORD'S QUITE CLEAR.

THE MEDICAL STAFF REFUSED TO INVESTIGATE OR MAKE ANY RECOMMENDATION.

IN FACT, WHEN THE BOARD SUSPENDED THEM BECAUSE OF THEIR HIGH ERROR RATES IN DIAGNOSIS, JUDGE SCHACK RULED THAT THE BOARD COULD NOT DO THAT IN THE ABSENCE OF A RECOMMENDATION OR INVESTIGATION FROM THE MEDICAL STAFF.

JUSTICE QUINCE, IT'S ONE THING FOR JUSTICE HARDING TO STAND UP HERE AND SAY, WELL, THEY DID INVESTIGATE, BUT -- BUT WHAT? DID THEY RECOMMEND NO ACTION? IF THEY RECOMMENDED NO ACTION BE TAKEN, THEN THE BOARD UNDER THE MEDICAL STAFF --

>> [INAUDIBLE]

>> HUH?

>> WAS IT SOMETHING LITIGATED IN COURT?

>> EXACTLY.

YES.

>> AND THE COURT SAID THAT THE MEDICAL STAFF WHAT?

>> WHAT HAPPENED WAS WHEN THE MEDICAL STAFF REFUSED TO INVESTIGATE OR MAKE A RECOMMENDATION, THE BOARD SAID, ENOUGH.

WE'RE SUSPENDING THESE TWO PATHOLOGISTS' PRIVILEGES.

THEY WENT TO COURT AND SAID YOU CAN'T DO THAT, BOARD, BECAUSE UNDER THE MEDICAL STAFF BYLAWS, YOU CAN'T DO ANYTHING TO US UNLESS THE MEDICAL STAFF INVESTIGATES AND MAKES A RECOMMENDATION.

>> BUT WHAT IF THE MEDICAL STAFF INVESTIGATES AND SAYS WE'RE NOT GOING TO RECOMMEND THIS KIND OF DISCIPLINE?

>> RIGHT.

>> DOES THE HOSPITAL THEN HAVE A

RECOURSE?

>> YES.

THE BOARD THEN COULD HAVE, AFTER CONSIDERING THAT THERE BE NO DISCIPLINARY ACTION, TAKEN THEIR OWN DISCIPLINARY ACTION, SAID WE DON'T CARE ABOUT YOUR RECOMMENDATION, WE'RE GOING TO SUSPEND THEM.

BUT THAT DIDN'T HAPPEN IN THIS CASE BECAUSE THEY DID NOT EVEN INVESTIGATE AND MAKE A RECOMMENDATION.

>> MR. BRONIS, WOULD YOU SPEAK TO SOMETHING THAT BOTHERS ME ABOUT THIS, IS THAT WE HAVE DRIVEN OVER THE YEARS, SINCE 1968, TO MOVE AWAY FROM SPECIAL LAWS.

I MEAN, WE USED TO BEFORE 1968, I GUESS I'M ABOUT THE ONLY ONE THAT REMEMBERS IT, BUT THAT WE USED TO HAVE A LOT OF LOCAL LAWS AND GOVERNANCE IN THIS STATE. BUT ESPECIALLY IN HEALTH CARE AREA, WE MOVED TO UNIFORM LAWS. AND IF YOU CAN DO THIS UNDER OUR CONSTITUTION, AREN'T WE SETTING A BASIS UPON WHICH WE'RE GOING TO HAVE A LOT OF SPECIAL LAWS GOVERNING HOSPITALS IN DADE COUNTY OR IN ESCAMBIA COUNTY THAT ARE VERY DIFFERENT?

>> NO, YOUR HONOR, I DON'T THINK SO.

I THINK THIS WAS A MEASURED RESPONSE TO A CERTAIN SITUATION, AND THIS PARTICULAR LAW DOES NOT IN ANY WAY CONFLICT WITH 3950193.

IT IS TOTALLY CONSISTENT WITH THAT, AND I DEFY ANYONE TO BE ABLE TO SHOW ME WHERE IN THIS LAW IF YOU SEVER THE LAST SECTION OF SECTION FIVE, IT SAYS THE HOSPITAL CAN DO WHATEVER IT WANTS WITHOUT REGARD TO THE DOCTORS.

THEY STILL HAVE THE FULL RESPONSIBILITY AND POWER TO INVESTIGATE AND MAKE RECOMMENDATIONS.

AND THE BOARD THEN ACTS ON THOSE INVESTIGATIONS, RECOMMENDATIONS.

NOTHING IN THE HGL CHANGES THAT
WHATSOEVER.

>> THE ULTIMATE RESPONSIBILITY
[INAUDIBLE]

>> AS IT ALWAYS IS.
THE BOARD.

UNDER FEDERAL AND STATE LAW, THE
BOARD IS ULTIMATELY RESPONSIBLE
FOR THE COMPETENCE OF THE
MEDICAL STAFF AND FOR SEEING
THAT EFFECTIVE AND RELIABLE PEER
REVIEW AND DISCIPLINARY ACTIONS
ARE TAKEN.

THAT IS THE STATE OF THE LAW.
PERIOD.

>> AND WITH THAT, SIR, WE HAVE
WELL EXTENDED BEYOND --

>> I APPRECIATE IT.

>> SO WE THANK BOTH OF YOU FOR
YOUR WONDERFUL ARGUMENTS.

[INAUDIBLE]

WE'LL TAKE THE CASE UNDER
ADVISEMENT.

COURT WILL STAND IN RECESS UNTIL
TOMORROW MORNING.