



**IN THE SUPREME COURT OF THE STATE OF DELAWARE**

ROBERT C. VILLARE, M.D. and )  
DELAWARE VALLEY PHYSICIANS )  
& SURGEONS, PA, )  
)  
Plaintiffs Below, ) No. 292,2014  
Appellants, )  
)  
v. ) On Appeal from the Superior Court of  
) the State of Delaware, In and For New  
BEEBE MEDICAL CENTER, INC.; ) Castle County,  
) C.A. No. 08C-10-189 (JRJ)  
Defendant Below, )  
Appellee. )

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**BRIEF OF *AMICUS CURIAE* ASSOCIATION OF AMERICAN  
PHYSICIANS & SURGEONS IN SUPPORT OF APPELLANT ROBERT C.  
VILLARE, M.D., AND IN SUPPORT OF REVERSAL OF THE DECISION  
BELOW**

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Dated: July 23, 2014

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**STATEMENT OF THE IDENTITY OF THE *AMICUS CURIAE*,  
ITS INTEREST IN THIS CASE,  
AND THE SOURCE OF ITS AUTHORITY TO FILE**

Founded in 1943, the Association of American Physicians & Surgeons, Inc. (“AAPS”) is an association of thousands of physicians in virtually every specialty, including members in Delaware. AAPS is dedicated to ethical standards in the practice of medicine, including the sanctity of the patient-physician relationship. AAPS has filed numerous *amicus curiae* briefs in noteworthy cases like this one. *See, e.g., Springer v. Henry*, 435 F.3d 268, 271 (3d Cir. 2006) (“the *amicus curiae*, the Association of American Physicians and Surgeons, argues that the issue transcends the relationship between the parties and instead impacts thousands of patients damaged as a result of hospital errors, incompetence, wrongdoing, and cover-ups”). The *Springer* case arose from Delaware, and the U.S. Court of Appeals for the Third Circuit sided with AAPS’s position in its decision.

The disposition of this appeal will almost certainly affect the rights of members of AAPS. Under the ruling below that medical staff bylaws do not constitute a contract, physicians and their patients lose essential protections against wrongful conduct, bad faith dealing, discrimination, and retaliation by administrators at hospitals as well as by physicians who commit wrongdoing against other physicians for competitive advantage. The lower court ruling gives, in effect, a blank check in the hospital setting for anyone to act wrongfully to

destroy the career of a physician who is standing up for his patients or otherwise providing much-needed medical care to the public. Removing the restraints secured by medical staff bylaws will have an immense chilling effect against physicians who would otherwise stand up for their patients to obtain the care those patients need.

Medical staff bylaws must be accepted as contractually enforceable, or else they become a dead letter, with nothing to replace them. No meaningful accountability typically exists in a hospital setting other than that provided by medical staff bylaws, and an affirmance of the lower court decision would have a profoundly negative impact on the practice of medicine, on the availability of quality care to the public, and on the ability of members of AAPS to fulfill their ethical obligations while working in hospitals. Accordingly, *Amicus* AAPS has a strong interest in filing this brief in support of Appellant Robert C. Villare, M.D. (“Villare”) to seek reversal of the decision below.

Appellant Villare, through his counsel, has consented to the filing of this *amicus* brief by AAPS in support of him and for reversal of the decision below. Counsel for Appellee Beebe Medical Center, Inc., does not object to AAPS’s request to file an *amicus* brief here. A motion for leave to file accompanies this brief.

## **SUMMARY OF ARGUMENT**

Medical staff bylaws are the necessary framework for ensuring accountability by all in a hospital setting. The Joint Commission, the leading accrediting body for hospitals, properly attaches much significance to the medical staff bylaws at a hospital. But if those bylaws are not contractually enforceable, then they become ineffective to safeguard against wrongful conduct such as discrimination or retaliation against physicians who stand up for patients or merely provide much-needed competition for the benefit of consumers. Many states recognize that medical staff bylaws are contractually enforceable, and the State of New York provides for the assistance of state administrative review. The Court should reverse the ruling of the trial court, which denied the contractual enforceability of medical staff bylaws, and instead establish a clear precedent for Delaware that, as in its neighboring states and many others throughout the nation, medical staff bylaws are contractually enforceable.

## ARGUMENT

### I. MEDICAL STAFF BYLAWS SHOULD BE ENFORCEABLE AS A CONTRACT, AS IN MANY OTHER STATES.

The lower court held that the “Appointment Policy” is synonymous with medical staff bylaws (“Bylaws”), and then ruled that Bylaws are *not* contractually enforceable in Delaware. The court then dismissed Villare’s claims for, *inter alia*, breach of contract and breach of the duty of good faith and fair dealing, but this was in error.<sup>1</sup>

Medical staff bylaws are contractually enforceable in all of Delaware’s neighboring states – Pennsylvania, New Jersey and Maryland. The Joint Commission, which is the leading entity that accredits hospitals nationwide, supports contractual enforcement of medical staff bylaws by prohibiting unilateral amendment of medical staff bylaws by either the medical staff or the hospital governing body. *See* Joint Commission Standard MS.01.01.03 of the *Comprehensive Accreditation of Manual for Hospitals*.

The enforceability of medical staff bylaws is essential to preserving a proper dynamic in the hospital environment, so that physicians have sufficient autonomy to care for patients without fear of undue interference by non-physicians. But the

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<sup>1</sup> *Amicus* AAPS supports reversal of the trial court’s decision on all the grounds raised by Appellant Villare in his appeal, but *Amicus* AAPS focuses on the issue of the contractual enforceability of medical staff bylaws.



only meaningful protection of physician autonomy over the practice of medicine in a hospital setting and the only real check and balance against interference are the medical staff bylaws. If those bylaws are not enforceable as contractual obligations, then there is no meaningful limitation on corporate control over the practice of medicine.

The trial court found that Delaware and New York both follow “traditional contract law principles” of “an offer, an acceptance, and consideration,” but then held that those principles somehow do not support the contractual enforceability of medical staff bylaws. (Villare Br. Exh. A, 7-8, inner quotations omitted) Yet many states – including all of Delaware’s neighboring states and numerous others – properly recognize and hold that medical staff bylaws *are* contractually binding on both sides.

In a decision widely followed in Pennsylvania and other jurisdictions, Pennsylvania state court explained one reason why medical staff bylaws are contractually enforceable, just as the bylaws of other voluntary associations are:

While [the physician’s] relationship to the hospital was not that of membership in a voluntary organization, nevertheless he and the hospital had, in legal contemplation, entered into a contract whereof the provisions of the staff by-laws, as approved by the hospital’s board of directors, constitute the legally binding terms. In the circumstances present, *the defendant corporation is bound by the staff by-laws just as much as a voluntary association is bound by the provisions of its by-laws*. In both instances, the respective organizations have enacted and approved the by-laws which are

an integral part of the contractual relationship between such organizations and their members or ones holding under them.

*Berberian v. Lancaster Osteopathic Hospital Ass'n*, 149 A.2d 456, 459 (Pa. 1959) (emphasis added).

A medical staff is conceptually similar to other voluntary associations and corporate shareholder relationships for which bylaws are contractually enforceable. A physician agrees to join the staff of a medical facility, as Appellant Villare did, based on the rights and privileges set forth in the medical staff bylaws. This is offer and acceptance, and there is consideration: the physician serves patients there, and the hospital provides support services. Thus there are all the elements of a contract, and the contract should be enforceable by either side. Given the added need to preserve physician autonomy in a hospital setting, there is greater reason to enforce medical staff bylaws than in other voluntary associations.

In New Jersey, the contractual enforceability of Bylaws was confirmed when a physician was initially denied access to examine hospital witnesses in its internal peer review proceeding. The Chancery Court held that the Bylaws provisions establish a contractually enforceable right. *In re Mossavi*, 334 N.J. Super. 112, 120 (Ch. Div. Monmouth Co. 2000). Specifically, the Court held that compelling the attendance of witnesses is required by “the express terms of the parties’ agreement” – *i.e.*, the medical staff bylaws. *Id.* at 122. By ordering witnesses to

appear, “[t]he court is merely compelling the recalcitrant witnesses to appear for the hearing as a means of enforcing the right, granted to [the physician] by the hospital’s bylaws, to ‘call’ these witnesses.” *Id.* Likewise, in another case, the Appellate Division in New Jersey held that:

the allegations of the complaint setting forth a failure to give plaintiff the hearing due him under the by-laws – taken in conjunction with the allegations charging certain defendants with malice in connection with his failure of reappointment or removal – clearly make out a cause of action ... the action may be said to arise out of a breach of a contract between plaintiff and the hospital set out in its constitution and the by-laws of the medical staff.

*Joseph v. Passaic Hospital Ass’n*, 118 A.2d 696, 700 (App. Div. 1955).

Courts in Pennsylvania likewise recognize that medical staff bylaws are contractually enforceable:

Under Pennsylvania law, ***the Staff Bylaws of Lankenau Hospital constitute a contract between the hospital and the staff.*** *Berberian v. Lancaster Osteopathic Hospital Association*, 395 Pa. 257, 149 A.2d 456 (1959); *Miller v. Indiana Hospital*, 277 Pa. Super. 370, 419 A.2d 1191 (1980). ... Posner contends that because the defendants’ refusals to grant Medical Staff membership to any of his prospective associates were made in furtherance of the defendants’ anti-competitive objectives, defendants breached the contract set out in the Bylaws. Each party to a contract has an implied duty under Pennsylvania law to act in good faith and deal fairly with the other parties to the contract during the performance and enforcement of the contract.

*Posner v. Lankenau Hospital*, 645 F. Supp. 1102, 1106 (E.D. Pa. 1986) (emphasis added). The federal district court then held that “[s]ince the record indicates that questions of fact exist concerning the reasons why Posner’s reappointment was

denied, I will deny defendants' motion" for summary judgment on the breach of contract (bylaws) issue. *Id.* at 1108.

In Maryland, there is no doubt about whether medical staff bylaws constitute a contract. ***"It is well settled that hospital bylaws have the force and effect of an enforceable contract."*** *Anne Arundel General Hospital, Inc. v. O'Brien*, 432 A.2d 483, 488 (Md. Ct. Spec. App. 1981) (emphasis added). Medical staff bylaws are considered to be contracts in many other jurisdictions also, such as South Dakota:

[T]he 1947 medical staff bylaws do constitute a contract which is, by its express terms, subject to amendment when the amendment is agreed to by both the medical staff and the medical center. The principles which governs the construction of contracts also govern the construction and interpretation of corporate bylaws.

*St. John's Hosp. Medical Staff v. St. John Regional Medical Ctr.*, 90 S.D. 674, 679 (1976) (emphasis added).

"The general rule elsewhere is that ... hospital bylaws can constitute a contract between it and one of its staff physicians." *Bass v. Ambrosius*, 520 N.W.2d 625, 627 (Wis. Ct. App. 1994) (citing *Lewisburg Community Hospital, Inc. v. Alfredson*, 805 S.W.2d 756, 759 (Tenn. 1991) (assembling cases); *Soentgen v. Quain & Ramstad Clinic, P.C.*, 467 N.W.2d 73, 82-83 (N.D. 1991); *Balkissoon v. Capitol Hill Hospital*, 558 A.2d 304, 307-08 (D.C. App. 1989) (assembling cases); *Pepple v. Parkview Memorial Hospital, Inc.*, 536 N.E.2d 274, 276 (Ind. 1989); *Bouquett v. St. Elizabeth Corp.*, 43 Ohio St. 3d 50, 538 N.E.2d 113, 115

(Ohio 1989) (assembling cases); *Eidelson v. Archer*, 645 P.2d 171, 178 (Alaska 1982)). “To hold that a hospital did not have to comply with its bylaws would, of course, render them essentially meaningless ... much ‘sound and fury, signifying nothing.’” *Bass*, 520 N.W.2d at 627.

Fundamental contractual principles include a duty of good faith and fair dealing between the parties, which was lacking in the treatment of Villare by Beebe Medical Center. The trial court erred in holding, contrary to voluminous authority in other States, that Delaware would not automatically recognize medical staff bylaws as a contract. From that mistaken premise, the trial court did not fully address the breach of those contractual requirements by Defendant. A reversal and remand is necessary for this case to proceed to trial on the issue of medical staff bylaws as a contract.

The trial court relied heavily on New York, but that State is unusual with its unique administrative system for handling breaches of medical staff bylaws, known as the Public Health and Health Planning Council of the Department of Health of the State of New York (“PHHPC”), which by statute must review disputes over medical staff privileges that occur in New York. NY CLS Pub Health § 2801-b(1),(3) (“the public health council shall make a prompt investigation in connection” with allegations that “a hospital ... den[ie]d or with[e]ld from a physician ... staff membership or professional privileges in a

hospital”). But even with that special administrative review process, physicians may still assert breach-of-contract claims based on the medical staff bylaws after the completion of the administrative review: ““medical staff by-laws may form the basis of a claim for breach of contract or intentional interference with contractual relations independent of any claim arising under the Public Health Law.”” *Falk v. Anesthesia Assocs.*, 644 N.Y.S.2d 237, 239 (N.Y. App. Div. 1st Dep't 1996) (quoting *Chuz v St. Vincent's Hosp.*, 186 A.D.2d 450, 451 (N.Y. App. Div. 1<sup>st</sup> Dep't 1992)).

The trial court cited a few decisions from other jurisdictions that declined to hold that medical staff bylaws constitute a contract, but they are exceptions rather than the rule. In the Minnesota case cited below, for example, the decision has been appealed, numerous medical societies filed an *amicus* brief urging its reversal, and the Minnesota Supreme Court has accepted the case for its reconsideration (no decision yet). *See Medical Staff of Avera Marshall Reg'l Med. Ctr. v. Marshall*, 2013 Minn. LEXIS 474 (Minn. Oct. 15, 2013) (attached hereto as Exh. A). The other decisions cited below against finding medical staff bylaws as a contract should likewise not be controlling here. *See, e.g., Kessel v. Monongalia County Gen. Hosp. Co.*, 215 W. Va. 609, 615, 622 (W. Va. 2004) (deciding *in favor of* “the right of physicians to practice in the public hospitals of this State,” and merely holding that because state law required hospitals to have medical staff

bylaws there was an absence of the consideration necessary for contract formation, but that medical staff bylaws would still be enforceable in many situations). Villare's appellant brief cites numerous precedents confirming that medical staff bylaws should be treated as contracts. (Villare Br. 16 n.9)

Finally, the history of Defendant Beebe Medical Center itself, along with public policy, weigh heavily in favor of holding that its medical staff bylaws constitute a contract. It was two physician brothers in the Beebe family, Drs. James Beebe and Richard C. Beebe, who founded Defendant, and it serves the community on a non-profit basis.<sup>2</sup> Today there are no founders, owners, shareholders or publicly elected officials to oversee the conduct of its operations in an objective manner, in order to ensure its fidelity to its historic mission. The only independent eyes and ears present in this type of non-profit facility are physicians on its medical staff. The only means available to them for ensuring fairness and competition for the benefit of the patients and the community are the medical staff bylaws. These bylaws should not be rendered a dead letter by the decision below, but should be recognized here as constituting an enforceable contract.

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<sup>2</sup> <http://www.beebehealthcare.org/about-beebe-healthcare> (viewed July 21, 2014).

## II. THE TRIAL COURT DENIAL OF THE ENFORCEABILITY OF MEDICAL STAFF BYLAWS AS A CONTRACT IS CONTRARY TO DELAWARE PRECEDENT THAT CORPORATE BYLAWS ARE CONTRACTUALLY ENFORCEABLE.

The trial court ruling against the contractual enforceability of medical staff bylaws casts unwanted doubt on the continuing vitality of the body of case law in Delaware establishing full contractual enforceability of bylaws in other contexts. For example, in enforcing a forum selection clause in corporate bylaws, the Chancery Division explained that, “[i]n *an unbroken line of decisions dating back several generations*, our Supreme Court has made clear that the bylaws constitute a binding part of the contract between a Delaware corporation and its stockholders.” *Boilermakers Local 154 Retirement Fund v. Chevron Corp.*, 73 A.3d 934, 955 (Del. Ch. 2013) (emphasis added). The Delaware Chancery court explained further:

the court finds that the bylaws are valid and enforceable contractual forum selection clauses. As our Supreme Court has made clear, the bylaws of a Delaware corporation constitute part of a binding broader contract among the directors, officers, and stockholders formed within the statutory framework ....

*Boilermakers Local 154 Retirement Fund*, 73 A.3d at 939.

Other jurisdictions have recognized the connection between the enforceability of bylaws in non-medical organizations and the enforceability of medical staff bylaws. As an appellate court in Arizona explained:



In arguing that the Bylaws constitute a contract, [the physician] finds support in *Bock v. John C. Lincoln Hospital*, 145 Ariz. 432, 437-38, 702 P.2d 253, 258-59 (App. 1985), wherein this court held that hospital bylaws can constitute a contract between a hospital and doctor. In *Bock*, a doctor brought an action seeking injunctive relief for breach of contract because the hospital did not follow its Fair Hearing Plan. We found that the hospital bylaws were sufficient to warrant a breach of contract action. *See id.*

Further, Arizona courts have allowed members of private associations that fail to abide by their own bylaws to bring actions for breach of contract. *See Rowland v. Union Hills Country Club*, 157 Ariz. 301, 304, 757 P.2d 105, 108 (App. 1988) (“The rights of members of a private organization are governed by the articles of incorporation and by-laws, which constitute a contract between the members and the organization ...”); *Savoca Masonry Co. v. Homes & Son Constr. Co.*, 112 Ariz. 392, 395-96, 542 P.2d 817, 820-21 (1975). ***We therefore agree with the trial court that these Bylaws constitute a contract.***

*Samaritan Health Sys. v. Superior Court*, 981 P.2d 584, 588 (Ariz. Ct. App. 1998)

(footnotes omitted, emphasis added).

The ruling below rejecting the contractual enforceability of medical staff bylaws goes against the “unbroken line of decisions dating back several generations,” which establish that bylaws in Delaware do constitute a contract. The trial court decisions to the contrary should be reversed.

## CONCLUSION

For the foregoing reasons and those contained in the brief of Appellant Villare, *Amicus* AAPS respectfully requests that the Court reverse the decisions of the trial court dated March 19, 2014 and May 21, 2014, and remand this case for trial.

Respectfully submitted,

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Dated: July 23, 2014

# **Exhibit A**

Copy of the electronic order in

*Medical Staff of Avera Marshall Reg'l Med. Ctr. v. Marshall,*

2013 Minn. LEXIS 474 (Minn. Oct. 15, 2013)



Neutral

As of: July 22, 2014 12:56 PM EDT

## Medical Staff of Avera Marshall Reg'l Med. Ctr. v. Marshall

Supreme Court of Minnesota  
October 15, 2013, Decided; October 15, 2013, Filed  
A12-2117

**Reporter:** 2013 Minn. LEXIS 474

Medical Staff of Avera Marshall Regional Medical Center on its Own behalf and in its Representative Capacity for its Members, et al., Petitioners, vs. Avera Marshall d/b/a Avera Marshall Regional Medical Center, et al., Respondents.

**Notice:** DECISION WITHOUT PUBLISHED OPINION

**Prior History:** [Medical Staff of Avera Marshall Reg'l Med. Ctr. v. Avera Marshall, 836 N.W.2d 549, 2013 Minn. App. LEXIS 69 \(Minn. Ct. App., 2013\)](#)

### Core Terms

Amici

**Judges:** [\*1] Lorie S. Gildea, Chief Justice.

**Opinion by:** Lorie S. Gildea

### Opinion

ORDER

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the petition of Medical Staff of Avera Marshall Regional Medical Center on its

Own behalf and in its Representative Capacity for its Members, et al. for further review of the decision of the Court of Appeals be, and the same is, granted. The petitioners shall proceed as the appellants, and their brief shall be served and filed in the quantity, form and within the time limitations contained in Minn. R. Civ. App. P. 131 and 132. Counsel will be notified at a later date of the time for argument before this court.

IT IS FURTHER ORDERED that the motions of the American Medical Association and Minnesota Medical Association, the American Academy of Family Physicians, Minnesota Academy of Family Physicians, Minnesota Chapter of the American Academy of Pediatrics, and the American Osteopathic Association for leave to serve and file a joint amici curiae brief in the above-entitled matter in support of appellants be, and the same are, granted. Said brief shall be served and filed in accordance with Minn. R. Civ. App. P. 129 and 132. Amici will not be permitted [\*2] to participate in oral argument.

Dated: October 15, 2013

BY THE COURT:

/s/ Lorie S. Gildea

Chief Justice