

Summary of SC92015, *Mercy Hospitals East Communities, f/k/a St. John's Mercy Health System v. Missouri Health Facilities Review Committee and James K. Tellatin, Patients First Community Hospital*

Appeal from the St. Louis County circuit court, Judge Richard C. Bresnahan
Argued and submitted Jan. 5, 2012; opinion issued April 17, 2012

Attorneys: St. John's was represented by Dudley W. Von Holt, Bruce D. Ryder, Allen D. Allred, Jeffery R. Fink and Lisa M.N. Debord of Thompson Coburn LLP in St. Louis, (314) 552-6000; the committee was represented by Kevin Hall, William S. Vanderpool and John Phillips of the attorney general's office in Jefferson City, (573) 751-3321; and Patients First was represented by Richard B. Walsh Jr., Evan Z. Reid and Anne R. Kerns of Lewis, Rice & Fingersh LLC in St. Louis, (314) 444-7600.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A hospital appeals the trial court's dismissal of its challenge to a rule exempting hospitals costing less than \$1 million from the statutory requirement that healthcare facilities obtain a certificate of need showing that the facility serves a healthcare need in the community before being allowed to build a new facility or expand an existing one. In a unanimous decision written by Chief Justice Richard B. Teitelman, the Supreme Court of Missouri affirms the judgment, modifying it to deny relief to the hospital. Because the health facilities review committee determined, after the case was dismissed, that an applicant need not obtain a certificate of need, the hospital's challenge to the rule is ripe for judicial review, and it has shown it has standing (the right to sue). The challenged rule does not conflict with the statute, which applies in part to new facilities and in part to existing facilities, and the commission was within its authority to promulgate the rule.

Judge Michael W. Manners, a circuit judge in the 16th Judicial Circuit (Jackson County), sat by special designation in place of Judge George W. Draper III.

Facts: Sections 197.300 to 197.366, RSMo Supp. 2006, make the construction of a new healthcare facility or expansion of an existing healthcare facility conditional on the Missouri Health Care Review Commission issuing a certificate of need, which requires a showing that the facility serves a healthcare need in the community. One rule governing the commission is 19 CSR 60-50.400(6)(F)1 (the new hospital rule), which exempts new hospitals costing less than \$1 million from the certificate-of-need requirement. In April 2010, Patients First Community Hospital filed a letter of intent with the commission requesting a non-applicability certificate-of-need letter to build a new three-bed facility at an estimated cost of \$953,700. St. Johns Mercy Health System sued the commission, seeking a declaratory judgment that the new hospital rule is invalid and an order enjoining the commission from applying the rule and granting Patients First an exemption from the certificate-of-need requirement. The trial court dismissed the case, holding that St. John's had not presented a case that was ripe for review because the commission had not yet applied the rules and decided whether Patients First would be exempt. Despite the

dismissal, the court also addressed the merits of the claim and found that the commission had not exceeded its authority in promulgating the new hospital rule. St. John's appeals.

AFFIRMED AS MODIFIED.

Court en banc holds: (1) St. John's challenge to the new hospital rule now presents a controversy that is ripe for judicial review. After the trial court dismissed the case, the commission applied the new hospital rule and determined that no certificate of need was required for the Patients First construction. Further, because it has shown it is aggrieved by the rule because it is an economic competitor with any party in its market that is exempt from obtaining a certificate of need, St. John's also has established that it has standing pursuant to section 536.053, RSMo, to challenge the rule.

(2) Because the trial court analyzed the merits of the claim, and its factual and legal conclusions are clear in explaining why the court found the new hospital rule did not conflict with the certificate-of-need law, remand (sending the case back) is futile. As such, this Court will exercise its discretion pursuant to Rule 84.14 to address the merits of St. John's underlying claims.

(3) St. John's claims are without merit, as the new hospital rule is consistent with the certificate-of-need law and the commission was within its authority to promulgate the rule. New hospitals are not necessarily subject to each of the seven paragraphs of section 197.305(9), as three of the paragraphs – addressing a healthcare facility that “changes” its number of beds, adds services not provided in the “previous” year and on the reallocation of beds by an “existing” facility to a new location – cannot apply to a new hospital. This conclusion is confirmed by the history of sections 95.305 and 197.366. The legislature amended section 197.366 in 1996 by adding new hospitals to the types of facilities qualifying as “health care facilities.” The next year, the legislature amended section 197.305(9) to change the definition of a “new institutional health service” to the development of a new health care facility “costing in excess of the applicable expenditure minimum.” To give the 1997 amendment effect, the legislature must have intended for new hospitals to qualify as new institutional health services only under paragraph (a) of section 197.305 and for paragraphs (b) through (g) to apply only to existing healthcare facilities. The judgment is affirmed as modified to deny relief to St. John's.