



Pennsylvania Medical Society v. Commonwealth of Pennsylvania, 77 A.3d 587 (Pa. 2013)

39 A.3d 267 (Pa. 2012)

Topics Covered: Taxation of Physicians

Outcome: Favorable

Issue

The issue in this case was whether the State of Pennsylvania's actions (and inactions) effectively impose a discriminatory tax on physicians.

AMA Interest

The AMA opposes the imposition of selective revenue taxes on physicians and other health care providers.

Case Summary

Physicians in Pennsylvania were required to carry \$1 million in professional liability insurance coverage. In response to a medical liability crisis in the early 2000s, Pennsylvania enacted a statute known as the Abatement Law, to restructure the burden of physicians' insurance premiums, particularly for high risk specialties. Under the Abatement Law, physicians were required to purchase \$500,000 of primary malpractice coverage from the private market and purchase \$500,000 of secondary coverage from either a state sponsored insurance plan known as Mcare or from the private market.

The Abatement Law also created a Health Care Provider Retention (HCPR) Program, which would be used to pay part of the Mcare expenses. The HCPR program was to be funded by taxes on cigarettes and surcharges on violators of motor vehicle laws.

Through 2005, the Pennsylvania government used the money in the HCPR account to abate the Mcare premiums as contemplated in the Abatement Law and its various amendments. After that, government officials refused to pay the money to Mcare, citing a state budgetary shortfall. In 2009, pursuant to a special legislative enactment, the Pennsylvania government transferred \$100 million from the Mcare fund to Pennsylvania's General Fund.

This action (and inaction) prompted the Pennsylvania Medical Society (PMS) and various health care providers to file two separate lawsuits against the State of Pennsylvania and several state

agencies. The first lawsuit sought an order to compel the state to pay the money in the HCPR Account to the Mcare Fund. The second lawsuit sought restoration of the \$100 million taken from the Mcare Fund. PMS and the other plaintiffs sought summary judgment in both cases.

The trial court granted summary judgment in favor of PMS and the other plaintiffs. Both cases were then appealed directly to the Pennsylvania Supreme Court.

On February 29, 2012, the Pennsylvania Supreme Court reversed the lower court ruling on the obligation to pay money in the HPCR Account to the Mcare Fund. The court found it was within the State's discretion whether to pay that money.

The remaining appeal concerned restoration of the \$100 million taken from the Mcare fund. On September 25, 2013, the Pennsylvania Supreme Court, in a split decision, decided various procedural issues, all in favor of PMS and the other plaintiffs. As to the merits, it held that if the money taken from Mcare fund could be deemed a "surplus," there would be no right to require restoration of that money. However, if the money was needed for the fund to pay its ongoing obligations, there would be a right of recovery. It reversed the lower court and remanded for a factual determination of the proper characterization of the money taken from the fund. It also held that, on this issue, the Pennsylvania government would have the burden of proving that the funds it had taken were actually a surplus.

Litigation Center Involvement

The Litigation Center contributed toward the PMS legal expenses and filed an *amicus curiae* brief in the Pennsylvania Supreme Court to support PMS.

Pennsylvania Supreme Court brief