



# Tuttle v. New Hampshire Medical Malpractice Joint Underwriting Association

## 992 A.2d 624 (N.H. 2010)

Topics Covered: Taxation of Physicians

### **Issue**

The issue in this case is whether the New Hampshire legislature can appropriate funds contributed by physicians and other health care providers and held in trust for payment of medical liability.

### **AMA Interest**

The AMA opposes the imposition of selective taxes on physicians.

### **Case Summary**

In 1975, the State of New Hampshire, by statute, created the New Hampshire Medical Malpractice Joint Underwriting Association (JUA), which provides professional liability insurance for physicians and other health care providers who practice in New Hampshire.

Under the terms of the JUA insurance policies, if there is a financial shortfall in its insurance operations the JUA can assess its policyholders for and the policyholders are obligated to pay any additional premiums required to cover the shortfall. Conversely, if the JUA has an excess, beyond what it needs to cover its operations, the JUA can declare a dividend, payable to the policyholders.

The JUA accrued a surplus in excess of its current needs - approximately \$150 million. Faced with a budgetary shortfall, the New Hampshire legislature enacted a law by which the state would appropriate \$110 million of the JUA surplus for the state's general purposes. When the JUA policyholders became aware of the contemplated raid on the JUA surplus, they filed a class action lawsuit to enjoin the threatened appropriation of funds. The lead plaintiff in the suit is Georgia Tuttle, MD, a past president of the New Hampshire Medical Society.

The New Hampshire Superior Court declared the law unconstitutional, as it would appropriate private property for state purposes, without just compensation, and it would impair the policyholders' contracts with the JUA. The state appealed this decision to the New Hampshire Supreme Court.

The New Hampshire Supreme Court affirmed the trial court, holding in Dr. Tuttle's favor. It found that the New Hampshire law would impair the contracts between the policy holders and JUA, thus making it unconstitutional.

### **Litigation Center Involvement**

The Litigation Center and the New Hampshire Medical Society filed an *amicus curiae* brief to support Dr. Tuttle.

New Hampshire Supreme Court brief