IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 00-3403

PENNSYLVANIA PSYCHIATRIC SOCIETY,

Plaintiff-Appellant,

v.

GREEN SPRING HEALTH SERVICES, INC.,
MAGELLAN HEALTH SERVICES, INC.,
HIGHMARK, INC., KEYSTONE HEALTH PLAN WEST, INC.,
KEYSTONE HEALTH PLAN CENTRAL, INC., and
KEYSTONE HEALTH PLAN EAST, INC.

Defendants-Appellees.

BRIEF OF THE AMERICAN MEDICAL ASSOCIATION AND PENNSYLVANIA MEDICAL SOCIETY AS *AMICI CURIAE* IN SUPPORT OF APPELLANT

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UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Corporate Disclosure Statement and Statement of Financial Interest

No. 00-3403

Pennsylvania Psychiatric Society		**Green Spring Health Services, Inc., Magnellan Health Serv ices, Inc. Highmark, Inc., Keystone Health Plan West, Inc., Keystone Health Plan Central, Inc., and Keystone Health Plan East, Inc.**
	V.	

Instructions

Pursuant to Rule 26.1 Federal Rules of Appellate Procedure any nongovermental corporate party to a proceeding before this Court must file a statement identifying all of its parent corporations and listing any publicly held company that owns 10% or more of the party's stock.

Third Circuit LAR 26.1(b) requires that every party to an appeal must identify on the Corporate Disclosure Statement required by Rule 26.1, Federal Rules of Appellate Procedure, every publicly owned corporation not a party to the appeal, if any, that has a financial interest in the outcome of the litigation and the nature of that interest. This information need be provided only if a party has something to report under that section of the LAR.

In all bankruptcy appeals counsel for the debtor or trustee of the bankruptcy estate shall provide a list identifying: 1) the debtor if not named in the caption; 2) the members of the creditors' committee or the top 20 unsecured creditors; and, 3) any entity not named in the caption which is an active participant in the bankruptcy proceedings. If the debtor or the bankruptcy estate is not a party to the proceedings before this Court, the appellant must file this list. LAR 26.1(c).

The purpose of collecting the information in the Corporate Disclosure and Financial Interest Statements is to provide the judges with information about any conflicts of interest which would prevent them from hearing the case.

The completed Corporate Disclosure Statement and Statement of Financial Interest Form must, if required, must be filed upon the filing of a motion, response, petition or answer in this Court or upon the filing of the party's principal brief, whichever occurs first. An original and three copies must be filed. A copy of the statement must be included in the parties principal brief the table of contents regardless of which the statement has previously been filed. Rule 26.1(b) and (c), Federal Rules of Appellate Procedure.

If additional space is needed, please attach a new page.

Pursuant to Rule 26.1 and Third Circuit LAR 26.1, **American Medical Association and Pennsylvania Medical Society** (Name of Party) makes the following disclosure:

1) For non-governmental corporate parties please list all parent corporations:

N/A

2) For non-governmental corporate parties please list all publicly held companies that hold 10% or more of the party's stock:

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3) If there is a publicly held corporation which is not a party to the proceeding before this Court but which has a final interest in the outcome of the proceeding, please identify all such parties and specify the nature of the financial interest or interests:

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4) In all bankruptcy appeals counsel for the debtor or trustee of the bankruptcy estate must list: 1) the debtor, if not identified in the case caption; 2) the members of the creditors' committee or the top 20 unsecured creditors; and 3) any entity not names in the caption which is active participant in the bankruptcy proceedings. If the debtor or trustee is not participating in the appeal, this information must be provided by appellant.

N/A

Richard G. Reulein (Signature of Counsel or Party)

Dated: July 12, 2000

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BRIEF OF THE AMERICAN MEDICAL ASSOCIATION AND PENNSYLVANIA MEDICAL SOCIETY AS *AMICI CURIAE* IN SUPPORT OF APPELLANT

The American Medical Association and Pennsylvania Medical Society respectfully submit this brief as amici curiae in support of plaintiff-appellant Pennsylvania Psychiatric Society.

INTEREST OF AMICI CURIAE

Amici are private, voluntary, nonprofit organizations of physicians. The American Medical Association ("AMA") was founded in 1847 to promote the science and art of medicine and the improvement of public health. Its nearly 300,000 members practice in all fields of medical specialization throughout the United States, including Pennsylvania.[1] The Pennsylvania Medical Society ("PMS") is the largest physician organization in the Commonwealth of Pennsylvania. Like the AMA, it represents physicians in all medical specialties.

The AMA and PMS actively pursue litigation on behalf of their members and their members' patients. For example, in recent years the AMA and PMS have brought cases involving the interpretation of federal regulations

[1] The AMA joins this brief as representative of the Litigation Center of the American Medical Association and the State Medical Societies. The Litigation Center was formed in 1995 as a coalition of the AMA and private, voluntary, nonprofit state medical societies to represent the views of organized medicine in the courts. In addition to the AMA, forty-nine state medical societies participate in the Litigation Center.

concerning medical treatment of handicapped newborns, Bowen v. American Hospital Association, 476 U.S. 610 (1986); calculation of Medicare and Medicaid reimbursement rates, Pennsylvania Medical Society v. Snider, 29 F.3d 886 (3d Cir. 1994); federal preemption of state law, Pennsylvania Medical Society v. Marconis, 942 F.2d 842 (3d Cir. 1991); governmental intrusion on the practice of medicine, American Medical Association v. Weinberger, 395 F. Supp. 515 (N.D. Ill. 1975); Pennsylvania Medical Society v. State Board of Medicine, 546 A.2d 720 (Pa. Commw. 1988); and other important health policy issues. In bringing these and other lawsuits, AMA and PMS have proceeded based on a well-established line of precedents recognizing the ability of professional and trade associations to represent their members' interests in the courts. See, e.g., International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America v. Brock, 477 U.S. 274 (1986); Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333 (1977); Hospital Council of Western Pennsylvania v. City of Pittsburgh, 949 F.2d 83 (3d Cir. 1991). These precedents reinforce the importance in our judicial system and our system of government of permitting associations to litigate claims of systematic wrongdoing on behalf of their members.

In this case, the district court, applying an overly restrictive view of associational standing, dismissed claims brought by the Pennsylvania Psychiatric

Society ("PPS") against several managed care organizations. In particular, the district court found that PPS did not satisfy the third prong of the three-part test established in Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333 (1977) – i.e., that "neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." Id. at 343. According to the district court, this prong is not satisfied if a suit calls for the participation of *even one* member of the association. See Magistrate's Report and Recommendation ("Op.") at 9-10. The ruling of the district court conflicts with decisions of the Supreme Court and this Court, and poses a significant obstacle to the enforcement of the rights of amici's members in cases involving important questions of health policy.

Of equal significance, the district court refused to permit the PPS to represent the interests of patients treated by members of PPS. Despite a general prudential rule against third party standing, courts have long recognized an exception where physicians are asserting the interests of patients who might otherwise be unable to enforce their rights. See, e.g., Singleton v. Wulff, 428 U.S. 106 (1976); American College of Ostetricians & Gynecologists v. Thornburgh, 737 F.2d 283, 290 n.6 (3d Cir. 1984), aff'd 476 U.S. 747 (1986). Allowing physicians to serve as surrogates for their patients preserves the patients' medical privacy and avoids the problem of imminent mootness faced by plaintiffs with a temporary

medical condition. These considerations are particularly compelling in the mental health context in light of the acutely sensitive and potentially stigmatizing nature of psychiatric illness.

The need for physicians to act as a strong advocate for their patients' interests is particularly acute in the current era of managed health care. As this Court recognized in Brokerage Concepts, Inc. v. U.S. Healthcare, Inc., 140 F.3d 494, 501 (3d Cir. 1998):

> Perhaps the most significant development [in health care today] is the ascendancy of managed-care driven health maintenance organizations . . . whose hold over a large number of subscribers has permitted them to wield considerable economic power over health care providers.

With the emergence and growth of managed care, AMA and PMS believe that permitting medical associations to assert in litigation the rights of their members and patients is more important today than ever.

Unless reversed, the district court's decision will pose a serious threat to the ability of the AMA and PMS to represent the interests of their members and of patients in quality medical care. Amici therefore submit this brief in support of appellant PPS. They urge the Court to reverse the decision of the court below.

STATEMENT OF THE CASE

PPS is a medical society comprised of psychiatrists practicing in the Commonwealth of Pennsylvania. In May 1999, PPS brought this action on behalf

of its member psychiatrists and their patients against six managed care organizations ("MCOs"): Green Spring Health Services, Inc. ("Green Spring"), Magellan Health Services, Inc. ("Magellan"), Highmark, Inc. ("Highmark"), and three Keystone health plans (the "Keystone HMOs"). Highmark is a corporate affiliate of the Keystone HMOs.

According to the amended complaint, the Keystone HMOs – like other HMOs – contract with employers and other purchasers of health coverage to supply comprehensive medical services for an insured population (the plan's "subscribers"). In exchange, the Keystone HMOs receive a fixed, prepaid premium. See 42 U.S.C. 300(e). This arrangement gives the HMOs a financial incentive to reduce the amount and cost of medical services provided to the plans' subscribers. See Pegram v. Herdrich, 120 S. Ct. 2143, 2145 (June 12, 2000) ("inducement to ration care goes to the very point of any HMO scheme").

For behavioral health and substance abuse services, the Keystone HMOs subcontract with Green Spring and its parent company, Magellan. Together, Green Spring and Magellan create provider networks of psychiatrists and contract with health plans to manage the risk of providing mental health services. Under their contracts with the Keystone HMOs, Green Spring and Magellan accept all or part of the risk for providing mental health services for subscribers in the

Keystone plans. Thus, like the HMOs themselves, Green Spring and Magellan have a financial incentive to drive down costs by reducing services.

The amended complaint alleges that the MCOs – Green Spring, Magellan, the Keystone HMOs, and Highmark – systematically restrict the quality and level of care available to subscribers, in violation of the MCOs' contractual, common-law, and statutory responsibilities. The MCOs do this in two principal ways: First, they make coverage decisions based on arbitrary criteria, rather than medical necessity. (Am. Compl., ¶¶ 71-73). Second, they apply arbitrary and unfair standards in determining which psychiatrists to include in their provider networks.

In particular, the amended complaint states that the MCOs create burdensome paper work and administrative requirements that make timely, medically appropriate treatment of patients virtually impossible. In addition, they fail to pay psychiatrists for services rendered, or delay payment beyond the limits required by Pennsylvania law. (Am. Compl. ¶ 14). While the MCOs market themselves to subscribers as providing a full network of physicians who treat mental illness and substance abuse, they refuse to credential some psychiatrists for

arbitrary reasons. (Am. Compl. ¶ 15). To redress these violations, PPS sought injunctive and declaratory relief.[2]

On February 15, 2000, the magistrate issued a report and recommendation that the MCOs' motion to dismiss the amended complaint be granted. In an order dated March 24, 2000, the district court adopted the magistrate's report and recommendation. This appeal followed.

ARGUMENT

Like other trade and professional associations, medical societies long have been permitted to seek equitable relief on behalf of their members in the federal courts. The doctrine of associational standing promotes judicial efficiency and facilitates a just resolution by enabling an association to present issues to the courts that members may be unable to litigate individually. The district court's decision, however, erects inappropriate barriers to the ability of associations to represent their members in court.

At the same time, the district court also failed to address the considerations which counsel in favor of permitting a medical society to represent the interests of patients. These considerations include the patients' strong interest in maintaining their medical privacy and the fact that their medical conditions may

[2] Although the amended complaint asserts a claim for damages, PPS has not appealed the dismissal of this claim. This brief therefore does not address PPS's standing to seek a damages remedy on behalf of its members or their patients.

be temporary and therefore evade judicial review. In light of these considerations, the court erred in finding that PPS lacked standing to represent the patients affected by the defendant MCOs' alleged practices.[3]

I. THE PENNSYLVANIA PSYCHIATRIC SOCIETY HAS STANDING TO SEEK DECLARATORY AND INJUNCTIVE RELIEF ON BEHALF OF ITS MEMBERS

Under the test established in Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333 (1977), associational standing is not defeated if the participation of *some* association members is required in order for the suit to proceed. As long as a suit does not require participation of all or substantially all the association's members, the third prong of the Hunt test is satisfied. See Hospital Council of Western Pennsylvania v. City of Pittsburgh, 949 F.2d 83, 89 (3d Cir. 1991); see also Warth v. Seldin, 422 U.S. 490, 511 (1975). Accordingly, the district court should have denied the motion to dismiss and permitted PPS's lawsuit to proceed.

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[3] Amici concur in PPS's position that the district court erred in dismissing PPS's claims based on the arbitration provision in the defendants' physician participation agreements. The defendants' determinations of medical necessity, which are at the core of this lawsuit, are expressly excluded from the scope of the arbitration provision. In any event, to the extent that PPS has standing to assert the claims of patients, see Argt., § II, infra, those patients are not parties to the participation agreement and therefore are not bound by the arbitration provision.

A. The District Court Misconstrued the Third Prong of the Hunt Test

In Hunt, the Supreme Court summarized its prior holdings on associational standing as establishing a three-part test. Under that test, an association has standing to bring suit on behalf of its members when:

(a) "its members would otherwise have standing to sue in their own right";

(b) "the interests it seeks to protect are germane to the organization's purpose"; and

(c) "neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit."

Id. at 343. In this case, the defendants conceded – and the district court agreed – that PPS met the first two prongs of the Hunt test. Op. at 6.

Thus, the only issue is whether PPS satisfied the third prong. On this issue, the decision of this Court in Hospital Council of Western Pennsylvania v. City of Pittsburgh, 949 F.2d 83 (3d Cir. 1991), is squarely on point. Based on a close examination of the Hunt decision and the precedents on which it was based, this Court held that the need for participation by some – but not all – association members does not defeat associational standing. Put another way, the mere fact that the lawsuit requires testimony or other evidence from some association members does not bar the association from proceeding with the suit.

In Hospital Council, a hospital association sued several municipal entities alleging that the defendants were attempting to coerce the association's hospital members to make voluntary payments in lieu of taxes. The association alleged that the defendants threatened the association's members with a variety of arbitrary actions – such as challenges to their tax-exempt status and difficulties in obtaining zoning approvals – if the members refused to make the payments. Holding that the association had failed to meet the first and third prongs of the Hunt test, the district court dismissed the complaint.

This Court reversed. In so doing, the Court noted that, under the third prong of the Hunt test, standing is "inappropriate if the claim or request for relief requires 'the participation of individual members in the lawsuit.'" Id. at 89 (quoting Hunt, 432 U.S. at 343). The Court held, however, that this language does not foreclose associational standing as long as participation by *each* member of the association is not required.

The Court acknowledged that, "[v]iewed alone," the third prong of Hunt "could be interpreted to mean that associational standing is not permitted if participation by any members of the association would be necessary." 949 F.2d at 89. However, the Court recognized that the third prong of Hunt was simply a short-hand version of "a more detailed statement," id., first made by the Supreme Court in Warth v. Seldin, 422 U.S. 490 (1975). As set forth by the Supreme Court

in Warth – and quoted both in Hunt and Hospital Council – the more detailed statement provides:

> So long as this can be established [that one or more members are suffering immediate or threatened injury], and so long as the nature of the claim and of the relief sought *does not make the individual participation of each injured party indispensable to proper resolution of the cause,* the association may be an appropriate representative of its members, entitled to invoke the court's jurisdiction.

422 U.S. at 511. Based on this analysis, the Court concluded in Hospital Council that "an association may assert a claim that requires participation by *some* members." 949 F.2d at 89

Turning to the facts, the Court found that the hospital association's claims would require participation by *some* association members. Id. at 89. In particular, the association's claims of arbitrary practices by the defendants "would likely require that member hospitals provide discovery, and trial testimony by officers and employees of member hospitals might be needed as well." Id. at 89. Nevertheless, this Court concluded that "since participation by each (allegedly) injured party would not be necessary, we see no ground for denying associational standing." Id. at 90 (internal quotation marks omitted).

Thus, Hospital Council makes clear that the mere fact that a lawsuit brought by an association requires testimony from *some* members as to the defendants' alleged unlawful conduct does not defeat associational standing.

Standing is appropriate as long as neither the claim asserted nor the relief sought makes individual participation "of *each injured party* indispensable to proper resolution of the cause." Warth, 422 U.S. at 511 (emphasis added). Other courts have agreed with this conclusion. See pp. 13-14, infra.

Here, the district court dismissed the amended complaint based on an erroneous understanding of the third prong of the Hunt test. In particular, the district court found that PPS's claims of inappropriate managed care practices would require individual participation by *some* association members. Op. at 9 ("PPS will have to establish that the alleged abuses occurred. To do this, proof of specific instances of the types of asserted improper conduct will be necessary."). But the court did not find that the participation of all or even substantially all of the PPS's members would be required. Notably, while the district court opinion includes a perfunctory citation to Hospital Council, it does not include any discussion of this Court's construction of the third prong of Hunt in light of Warth v. Seldin.

Further, the record provides no support for a conclusion that *all* of PPS's members need to participate in the suit. As the district court recognized, PPS's complaint alleges a "broad-based" challenge to the rationing strategies of the defendant MCOs. Op. at 9. The amended complaint focuses on the defendants' alleged techniques for systematically withholding medically necessary services.

The injunctive and declaratory relief sought by PPS would benefit all PPS members affected in their professional livelihoods by those practices. There is simply no reason why testimony or other evidence from all association members would be required in such a case.

In short, the district court erred in dismissing PPS's claim of associational standing. To proceed with a claim, an association is not required to show that *none* of its members need participate in the suit. As in Hospital Council, it is sufficient to show that the association can prove its claims and obtain the requested relief based on evidence provided by some of its members.

B. The Decision of this Court in Hospital Council Sets Forth an Appropriate Rule that Promotes Efficient Judicial Administration and the Just Resolution of Disputes

The rule adopted by this Court in Hospital Council is correct as a matter of law and of sound judicial administration. First, as noted above, this Court correctly recognized that the third prong of the Hunt test is based on a passage in Warth v. Seldin which states:

> [S]o long as the nature of the claim and of the relief sought does not make the individual participation of each injured party indispensable to proper resolution of the cause, the association may be an appropriate representative of its members . . .

422 U.S. at 511. This passage, quoted by the Supreme Court in Hunt just prior to its statement of the three-prong test, eliminates any ambiguity in the Hunt Court's

formulation of the third prong. See Hospital Council, 949 F.2d at 86; see also International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America v. Brock, 477 U.S. 274, 275 (1986).

Second, Hospital Council has been followed by other courts. See, e.g., Retired Chicago Police Ass'n v. City of Chicago, 7 F.3d 584, 601-02 (7th Cir. 1993) ("We believe that the approach of the Third Circuit [in Hospital Council] is a sound one. We can discern no indication . . . that the Supreme Court intended to limit representational standing to cases in which it would not be necessary to take any evidence from individual members of an association."); Scott v. Snider, 1994 U.S. Dist. LEXIS 9859, fn1 (E.D. Pa. 1994) ("Participation by some members does not deprive an organization of standing"); American Booksellers Association, Inc. v. Random House, Inc., 1996 U.S. Dist. LEXIS 12775 (S.D.N.Y. 1996) (same).

Third, the rule in Hospital Council promotes efficient judicial administration and the just resolution of broad-based policy questions. Associational standing serves several important objectives of the judicial system. By joining the claims of many individuals or entities, associational standing eliminates repetitious litigation and therefore conserves judicial resources. See 2 Chaffee, Some Problems of Equity 201-02 (1950). It also reduces the likelihood of inconsistent adjudications in different courts.

Without associational standing, many association members would be deterred from litigating by the risk that they would be subject to retaliatory action by the defendant. This case, like many arising in the medical context, illustrates the point: Physicians who object to the cost-containment strategies of a managed care organization that controls a substantial number of their patients generally are reluctant to initiate legal action for fear of retaliation by the MCO. Indeed, the Keystone HMOs have such a large market share in some regions of Pennsylvania that any physician who might contemplate bringing an individual action against them could do so only at the risk of losing access to a large percentage of the patients in the region. Bringing suit through their association enables the members of PPS to vindicate their rights without risking their professional livelihoods.

These policy considerations are no less apt simply because individual participation by *some* association members is needed. Association suits challenging a defendants' systematic practices often may benefit from the testimony of individual members who can describe those practices and their effects. Courts have consistently permitted such suits to proceed, particularly when the association is seeking only injunctive and declaratory relief that will benefit even those association members who do not directly participate in the suit. See, e.g., American Hospital Association v. NLRB, 499 U.S. 606 (1991); Wilder v. Virginia Hospital Association, 496 U.S. 498 (1990); Arkansas Medical Society v.

Reynolds, 6 F.3d 519, 528-29 (8th Cir. 1993); Germantown Hospital and Medical Center v. Schweiker, 738 F.2d 631 (3d Cir. 1984), cert. denied, 469 U.S. 1158 (1985).

Like other medical associations, PPS is well positioned to advocate the interests of its members. Medical societies traditionally advocate their members' interests in a variety of legislative, executive, and judicial venues. Indeed, their corporate charters generally set forth such advocacy as a core purpose of the medical society. This history of member advocacy gives medical societies a wellspring of experience and expertise to draw upon which is ultimately beneficial to the court. See International Union, 477 U.S. at 275. For all these reasons, the rule established by this Court in Hospital Council is a good rule which ought not be modified.

II. THE PENNSYLVANIA PSYCHIATRIC SOCIETY HAS STANDING TO REPRESENT THE INTERESTS OF ITS MEMBERS' PATIENTS

The district court further erred in holding that PPS lacked standing to enforce the rights of its members' patients. The patients of PPS's members face significant obstacles to asserting their rights themselves. Their physicians have a sufficiently close relationship to these patients to assure the concrete adverseness that justifies standing.

Despite the general rule against third-party standing, courts have long recognized exceptions for certain categories of relationships – including the unique

relationship between physician and patient. Wright, Miller, & Cooper, Federal Practice & Procedure § 3531.9 at 575-77 & n.64. Thus, physicians have been held to have standing to represent their patients seeking access to contraceptives, Griswold v. Connecticut, 381 U.S. 479 (1965); abortions, Singleton v. Wulff, 428 U.S. 106, 118 (1976); City of Akron v. Akron Center for Reproductive Health, 462 U.S. 416, 422 (1983); and assisted suicide, Compassion in Dying v. State of Washington, 79 F.3d 790, 795 (9th Cir. 1996). Indeed, this Court upheld the standing of a medical society and physicians to represent the interests of patients in American College of Ostetricians & Gynecologists v. Thornburgh, 737 F.2d 283, 290 n.6 (3d Cir. 1984), aff'd 476 U.S. 747 (1986).[4]

The leading case on physician standing to represent patients is Singleton v. Wulff, 428 U.S. 106. In Singleton, the Supreme Court identified two factors to consider in determining third-party standing. The first factor focuses on the relationship between the litigant and the third party: If the relationship is such that the litigant is nearly as effective a proponent of the right as the third party, and the interests of both are consistent, standing should be upheld. The second factor

[4] In the court below, the defendants argued that physician standing is limited to asserting patients' constitutional rights. But nothing in the Singleton line of cases sets forth this limitation. In any event, an individual's interest in obtaining medically necessary health care, and avoiding unwanted care, is of constitutional dimension. See Cruzan v. Missouri Dept. of Health, 497 U.S. 261, 278 (1990); Washington v. Harper, 494 U.S. 210, 221-22 (1990); Vitek v. Jones, 445 U.S. 480, 494 (1980).

is the ability of the third party to assert his or her own rights. If there is a "genuine obstacle" to suit by the third party, standing should be upheld. Id. at 116; see also Amato v. Wilentz, 952 F.2d 742, 749 (3d Cir. 1991).

Here, as in Singleton, these factors weigh in favor of standing. First, the relationship between psychiatrist and patient is a particularly intimate example of the physician-patient relationship. See, e.g., Jaffee v. Redmond, 518 U.S. 1, 15 (1996) (recognizing privilege for psychotherapist-patient communications). Like the relationships at issue in the reproductive rights and end-of-life cases, the psychiatrist-patient relationship involves issues of great sensitivity going to the core of individual liberty. Moreover, there is no conflict between a psychiatrist seeking to provide medically necessary care for a patient, and the patient for whom those services would be provided. The physician is well-situated to comprehend the patient's needs and to advocate the patient's interests.

Second, the obstacles to enforcement of a psychiatric patient's right to obtain care are substantial. Courts have often noted the stigma associated with mental illness. See, e.g., Parham v. J.R., 442 U.S. 584, 622 (1979); Addington v. Texas, 441 U.S. 418, 425 (1979); Humphreys v. Drug Enforcement Administration, 96 F.3d 658, 662 (3d Cir. 1996) ("psychiatric patients suffer a stigma in society"). The social repercussions of coming forward to litigate a claim seeking access to psychiatric care – as well as the often debilitating nature of

mental illness itself – pose powerful barriers to the enforcement of psychiatric patients' rights. Moreover, a particular patient's psychiatric condition may prove temporary, resulting in mootness of that patient's claim and leaving the lawfulness of the defendant's conduct unresolved.

The district court erred in assuming that standing is lacking unless the patients face an absolute "legal impediment" to enforcement of their rights. Op. at 12 n.2. To the contrary, the cases recognizing physician standing have found the existence of a practical difficulty to enforcement of the right to be sufficient. See, e.g., Singleton, 428 U.S. at 126 (finding patient's interest in medical privacy and in avoiding mootness to be sufficient). In effect, the district court precluded physicians from asserting the rights of patients unless those patients are absolutely barred from enforcing their own rights. This overly-stringent test is not in accordance with law.

To be sure, this case differs from Singleton in that psychiatrists themselves are not parties to the suit. Because PPS has standing to represents its members, however, it can also assert the members' standing to represent patients. Wright, Miller, & Cooper, Federal Practice & Procedure § 3531.9 (2000 Supp. at 781 & n.152.5); see Ohio Ass'n of Independent Schools v. Goff, 92 F.3d 419, 421-22 (6th Cir. 1996), cert. denied, 520 U.S. 1104 (1997) (private school association had standing to assert constitutional right of parents to direct education of their

children); Public Citizen v. FTC, 869 F.2d 1541, 1550 (D.C. Cir. 1989) (health advocacy organization concerned with health warnings on smokeless tobacco products could assert rights not only of members who are parents, but also of the children of those members); see also New York State Ophthalmological Society v. Bowen, 854 F.2d 1379, 1381 (D.C. Cir. 1988) (noting that medical society was bringing claims both on behalf of its members and their patients, but not specifically discussing the standing issue).

The patients of PPS members have a strong interest in obtaining access to the medical care for which they (or their employers) have paid. Because of the social stigma associated with mental illness, however, these patients cannot be expected to assert that interest themselves. The professional organization representing these patients' physicians is committed to advancing that interest and is an effective proponent of it. That organization, therefore, has standing to assert the interests of its members' patients that are at stake in this case. See Ohio Association of Independent Schools, 92 F.3d at 421-22.

CONCLUSION

For the reasons stated above, the district court's decision granting the defendants' motion to dismiss should be reversed and the case remanded to the district court for further proceedings.

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), the undersigned hereby certifies that the Brief of Appellant Pennsylvania Psychiatric Society, complies with the type-volume limitation of Rule 37(a)(7)(B). According to the word processing system used to prepare the Brief, the Brief contains 4,950 words, including both text and footnotes.

Respectfully submitted,

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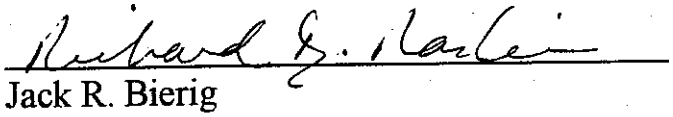
Dated: July 12, 2000

CERTIFICATION OF BAR MEMBERSHIP

Pursuant to Federal Rules 28.3(d) and 46.1(e) of the Rules of this Court, the undersigned counsel certify that Jack R. Bierig and Richard D. Raskin are members of the Bar of this Court.

Respectfully submitted,



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Dated: July 12, 2000

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of July, 2000, I caused to be served two true and correct copies of the foregoing Amici Curiae Brief in Support of Appellant, on the following counsel for both the Plaintiff-Appellants and Defendants-Appellees by first-class mail:.

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