

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

No. 215 EAL 2002
No. Misc.2002

MARK P. SOLOMON, M.D., and REGIONAL NEUROSURGICAL
ASSOCIATES, PC

Petitioners

v.

UNITED STATES HEALTHCARE SYSTEMS OF PENNSYLVANIA, INC.
and AETNA, INC.

Respondents

**APPLICATION OF *AMICI CURIAE* THE AMERICAN MEDICAL ASSOCIATION
AND THE PENNSYLVANIA MEDICAL SOCIETY FOR LEAVE TO ADVISE THE
COURT OF NEW AUTHORITY PERTINENT TO THE COURT'S DETERMINATION
WHETHER TO GRANT THE PETITION FOR ALLOWANCE OF APPEAL**

The American Medical Association and the Pennsylvania Medical Society, *amici curiae* in support of Petitioners in the Superior Court, respectfully move, pursuant to Rules 123 and 2501, Pa.R.A.P., that they be granted leave to advise the Court of the recent decision of the United States Supreme Court in *Gonzaga University v. John Doe*, No. 01—679 (June 20, 2002), which *amici* believe is pertinent to the Court's determination whether to grant the pending Petition for Allowance of Appeal. In support of this request, *amici* aver as follows.

1. *Amici* have previously filed an Application seeking leave to participate in the Court's consideration of the pending Petition for Allowance of Appeal to the limited extent of advising the Court of its views regarding the importance of the issues the Petition presents. That Application is now pending.

2. Among the issues presented by the Petition for Allowance of Appeal that *amici* believe warrants review is whether physicians and other medical providers have a private right of action to enforce against HMOs the prompt payment (within 45 days of submission of a "clean claim") and enhanced interest (10%) mandates of §2166 of Pennsylvania's Quality Health Care Accountability and Protection Act, 40 P.S. §991.2166(a).

3. In *Gonzaga University v. John Doe*, the United States Supreme Court considered whether there was a private right of action under a federal spending statute, the Educational Rights and Privacy Act of 1974, 20 U.S.C. §1232g (“FERPA”).

4. The result in *Gonzaga* is not pertinent here because of the substantial differences between the statutes involved there and in this case. But the reasons the Supreme Court granted certiorari are applicable here. In granting certiorari, the Supreme Court explained:

Like the Washington Supreme Court and the state court of appeals below, other state and federal courts have divided on the question of FERPA’s enforceability under §1983. ... *The fact that all of these courts have relied on the same set of opinions from this Court suggests that our opinions in this area may not be models of clarity. We therefore granted certiorari ... to resolve the conflict among the lower courts and in the process resolve any ambiguity in our own opinions.*

(emphasis supplied).

5. This Court’s analysis of the existence of a private cause of action has generally followed federal case law. *See Witthoeft v. Kiskaddon*, 733 A.2d 623 (Pa. 1999).

6. *Amici* respectfully believe that the considerations that warranted review in *Gonzaga* apply here. If, as the Supreme Court recognized in *Gonzaga*, the federal law has not been entirely clear, then clarification of Pennsylvania law may also be warranted. Moreover, this Court might also consider whether it will follow the reasoning articulated in *Gonzaga*.

7. *Amici* note that another consideration warranting review is that 46 other states have laws analogous to the Pennsylvania statute at issue in this case.

For these reasons, *amici curiae* the American Medical Association and the Pennsylvania Medical Society respectfully seek leave to advise the Court of the recent decision of the United States Supreme Court in *Gonzaga University v. John Doe*, No. 01—679 (June 20,

2002), which *amici* believe is pertinent to the Court's determination whether to grant the pending Petition for Allowance of Appeal in this matter.

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