



Alabama Court Rules in Favor of Certificate of Need Agency

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The Alabama Court of Civil Appeals ruled on April 24, 2014 that Alabama courts are not permitted to substitute their judgment for that of the Alabama Certificate of Need Review Board as to decisions regarding the weight of the evidence on questions of fact. In *Foley Hospital Corp. v. Gulf Health Hospitals, Inc.*, No. 2120871 & No. 2120943 (Ala. Civ. App. April 24, 2014), the Court of Civil Appeals reversed the Montgomery Circuit Court's order vacating the decision of the Certificate of Need Review Board (the Board).

The Board originally granted a certificate of need (CON) to South Baldwin Regional Medical Center to open a new cardiac catheterization procedure room. Prior to the expansion of cardiac catheterization procedures, Alabama law requires that the provider demonstrate that it met a minimum procedure requirement in the prior two years. Specifically, the provider must demonstrate that in the prior two years, it performed at least 1,000 equivalent procedures. Despite opposition from Thomas Hospital, the Board found that South Baldwin met the procedure requirement. The Board also determined that a less costly alternative did not exist and that patients would experience difficulties obtaining similar care if the expansion did not occur.

After the Board granted the CON to South Baldwin, Thomas Hospital filed a petition for judicial review with Montgomery Circuit Court seeking reversal of the Board's decision. Thomas Hospital opposed the method by which South Baldwin calculated the number of equivalent procedures it had performed in the prior two years. Thomas Hospital also argued that South Baldwin did not present "substantial evidence" that a less costly alternative did not exist and that patients would experience difficulties in obtaining treatment if the expansion of cardiac catheterization procedures did not occur.

The Montgomery Circuit Court agreed with Thomas Hospital and reversed the Board's decision granting the CON. Both South Baldwin and the Alabama State Health and Planning Department appealed the circuit court's decision to the Alabama Court of Civil Appeals.

In reversing the lower court's decision, the Alabama Court of Civil Appeals noted that the scope of its review is limited. Alabama law only permits a court to reverse a decision of the Board for certain reasons. For instance, a court may overturn the Board's decision if it was in excess of its authority or unreasonable in light of the facts.

The Alabama Court of Civil Appeals ruled that the Montgomery Circuit Court erred in reweighing the evidence in the case. In addressing the Montgomery Circuit Court's finding that the Board's decision was unreasonable due to the method by which South Baldwin calculated the number of equivalent procedures, the court found substantial evidence in the record indicating that South Baldwin met the procedure requirement.

The Alabama Court of Civil Appeals emphasized in its decision that courts are not permitted to substitute their judgment for that of the Board as to the weight of the evidence on questions of fact. In other words, courts must show deference to the state agency with regard to factual matters.

The court's decision highlights the challenges that health care providers face when attempting to overturn a state CON agency's decision.

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