

## Judge: Hospital can't bar rival's doctors

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ARKANSAS DEMOCRAT-GAZETTE

A Pulaski County circuit judge Friday cleared a legal cloud that has put in jeopardy the ability of doctors at Little Rock Cardiology Clinic to practice at the largest health system in the state for the past six years.

Judge Collins Kilgore dealt a blow to the Baptist Health policy that bars doctors from

serving on the staff or having privileges at the hospital system if they own a stake in a competing facility.

An order was issued by Kilgore that permanently bars Baptist Health from denying the clinic's doctors from serving on the staff or having privileges in the system, including at Baptist Health Medical Center in Little Rock. The doctors are investors

in Arkansas Heart Hospital in Little Rock.

Baptist Health, through its policy, has violated the Arkansas Deceptive Trade Practices Act, which prohibits engaging in an "unconscionable" act or practice in business, Kilgore said in his order.

The American Medical Association praised the decision as preserving choice of hospital.

"What this will do is allow my patients the freedom to make the choice of where they want me to take care of them," Dr. Bruce E. Murphy, president of the cardiology clinic, said Friday.

Kilgore wrote that the heart of this case is the patient-physician relationship.

"The relationship is entitled to exceptional protection," he said.

Murphy said Friday that he hoped the ruling would deter large corporations and governments from interfering with the relationship, which he said is an underpinning of good medicine and affects patient outcomes.

Because of the court's findings, the Arkansas Medical Society does not believe that the policy can be legally enforced

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against any Arkansas physician, said Emily Sneddon, an attorney for the physician trade group, which intervened in the case on the doctors' side.

"The Court found that the Economic Credentialing Policy violated public policy, tortiously interfered with contracts and business expectancies, and was an unconscionable trade practice under Arkansas law," Sneddon said in a prepared statement.

Kilgore's judgment decides a bench trial, one with no jury, that ended last March over the 6-year-old policy.

In a prepared statement, Baptist Health said it is still evaluating whether to appeal.

The "economic credentialing" policy at Baptist Health, Kilgore wrote, "affronts the sense of justice, decency and reasonableness because it impinges on

fundamentally important public policies without adequate countervailing justification."

Among public policies he cited were those that protect a patient's right to choose his doctor; those favoring creation of specialty hospitals; and those that don't support the suppression of competition.

"When you are faced with a corporation that is trying to make unilateral decisions in public policy areas, it's worth the attempt to try and stop them," Murphy said Friday.

He and other clinic doctors had continued to treat patients at Baptist thanks to a temporary injunction issued in 2004.

Policies that protect the institution of marriage were a final public policy cited by Kilgore. Baptist Health at one point attempted to bar a gynecologist whose husband owned a stake in Arkansas Surgical Hospital. The gynecologist, Janet Cathey, reached a settlement and continued work at Baptist Health.

Baptist Health has acknowledged that the policy was adopted to suppress competition from specialty hospitals, Kilgore wrote. Such actions "will harm consumers," he added.

Hospitals nationwide have been looking at the Baptist Health case and others to decide whether to proceed with economic credentialing policies, said Rebecca Patchin, chairman-elect of the American Medical Association board of trustees.

Baptist declined to respond to questions Friday, instead issuing a statement that it was disappointed in Kilgore's ruling.

The hospital said it believes "the decision by our Board to protect our communities long term access to a broad range of healthcare services was correct and responsible.

"Our Board's decision reflects our steadfast belief that there is an inherent conflict of interest for a physician who has privileges at Baptist Health to also have a fi-

nancial investment in a competing hospital in which they personally profit from their referrals to that hospital," Baptist said.

The clinic doctors and their attorneys at the Williams & Anderson law firm issued a release saying Baptist claimed the policy was necessary to protect patients and the hospital's ability to provide charity care.

"The Court found instead that Baptist's justifications were a pretext, and that the real reason Baptist passed the Economic Credentialing Policy was to deter competition and to punish doctors who competed with Baptist," the release said.

Kilgore wrote that society has a "great need" for hospitals like Baptist and a strong interest in ensuring that it remains economically viable.

However, he found no evidence that the system's ability to provide unprofitable services has been affected by specialty hospitals.