IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

PENNSYLVANIA CHIROPRACTIC ASSOCIATION, et al.,	:	AUGUST TERM, 2000
Plaintiffs	:	No. 2705
v.	:	COMMERCE PROGRAM
INDEPENDENCE BLUE CROSS, et al.,	:	
Defendants	:	Control No. 080850

OPINION

Presently before this court is the plaintiffs' Motion for Reconsideration of this court's Order dated July 16, 2001, dismissing the claims of plaintiffs, the Pennsylvania Chiropractic Association ("PCA") and the Southern New Jersey Chiropractic Society ("SNJCS"), for lack of standing, and defendants' response in opposition thereto.

For the reasons set forth, this court is denying the Motion for Reconsideration.

DISCUSSION

"Motions for reconsideration are discouraged unless the facts or law not previously brought to the attention of the court are raised." S.A. Arbittier et al., Philadelphia Court of Common Pleas Civil Practice Manual, § 7-2.8 (10th ed. 2000). A court has inherent power to reconsider its own rulings. Moore v. Moore, 535 Pa. 18, 25, 634 A.2d 163, 167 (1993); Hutchison v. Luddy, 417 Pa.Super. 93, 108, 611 A.2d 1280, 1288 (1992). See 42 Pa.C.S.A. § 5505 (trial court may reconsider its own order within thirty days of entering the order). The statute limiting the time for reconsideration of orders to thirty (30) days applies only to final, appealable orders. Hutchison, 417 Pa.Super. at 108, 611 A.2d at 1288. "Where an order does not effectively place the litigant out of court or end the lawsuit, it is within the trial court's discretion to entertain a motion to reconsider the interlocutory order outside the thirty day time limit set forth

in 42 Pa.C.S.A. § 5505." Id.[1]

Applying this standard to the present case, this court finds that plaintiffs have not set forth sufficient grounds for granting their motion for reconsideration and holding that the associations have standing to sue for injunctive relief on behalf of their members.

This class action involves defendants' alleged policy and practice of denying allegedly medically necessary chiropractic care in contravention of defendants' contractual obligations with its in-network health care providers and its subscribers in order that defendants may reduce their medical expenses and maximize profitability. This court in its previous 35-page Opinion addressed defendants' Preliminary Objections to the plaintiffs' First Amended Complaint, sustaining the objections in part and overruling the objections in part. See Pennsylvania Chiropractic Association, et al. v. Independence Blue Cross, et al., August 2001, No. 2705 (C.P. Phila. July 16, 2001)(Herron, J.). Specifically, in five pages of that Opinion, this court addressed the issue of lack of standing of the PCA and the SNJCS as associations to pursue breach of contract claims on behalf of their members, even though the associations only seek injunctive relief. Slip Op. at 30-35. The court held that the PCA and the SNJCS lacked standing under the third prong of the Hunt test because resolution of the breach of contract claims requires participation from the individual members, even though the associations only seek injunctive relief on behalf of those members. Id. at 35. See Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333, 343 (1977)(setting forth three-part test for associational standing: (1) when its members would otherwise have standing to sue in their own right; (2) when the interests it seeks to protect are germane to the organization's

[1]Here, plaintiffs' motion for reconsideration is of an order which is interlocutory in nature, and, thus, the thirty-day time limit does not apply though the motion was filed within that time limit.

purpose; and (3) when neither the claim asserted nor the relief requested requires participation of the individual members).

Plaintiffs, in their present motion, argue that this court improperly held that the PCA and SNJCS lacked standing as associations because they lacked contractual privity with Independence Blue Cross ("IBC") or its affiliates. Further, plaintiffs again argue that resolution of the breach of contract claim does not require the participation from the individual members of these associations because the provider contracts are substantially identical and the alleged breaches involve defendants' general policies and internal guidelines, resulting in the denial of coverage and payment for allegedly medically necessary procedures. This court disagrees with both arguments.

First, plaintiffs misconstrue this court's holding in its previous Opinion. It is true that this court noted that "the PCA and SNJCS do not have contractual privity with IBC or its affiliates and cannot pursue either breach of contract claim on behalf of their members, even though these associations only seek injunctive relief." Slip Op. at 33. However, this finding was not the primary reason for holding that the PCA and the SNJCS did not have standing but was part of the court's dicta. Rather, this court found that the PCA and SNJCS failed to meet the third prong of the Hunt test because their claim for injunctive relief was based on the alleged breach of contracts which requires the individual participation of the members in order to resolve the matter. This court based its holding on Pennsylvania Psychiatric Society v. Green Spring Health Services, Inc., 2000 WL 33365907 (W.D.Pa. Mar. 24, 2000)(adopting Magistrate's Recommendation as opinion). Green Spring involved claims by a plaintiff association against the defendant HMO for monetary, declaratory and injunctive relief based on a variety of alleged breaches of contracts which included refusing to credential physician applicants, imposing overly-burdensome administrative

requirements, failing to timely pay member psychiatrists for services rendered, giving overly-restrictive treatment authorizations and making determinations for patient care based on criteria other than medical necessity. 2000 WL 33365907, at *4. These actions were allegedly taken by the HMOs to maximize its profits at the expense of its members and of HMO subscribers. Id. at *2. The court held that even if the sole claims made by the association sought non-monetary relief in the form of "broad-based" changes in the HMO's procedures, that the association would have to establish that the alleged abuses occurred by demonstrating specific instances of the types of allegedly improper conduct. Id. at *4. Therefore, the court found that the association failed to meet the third prong of the Hunt test. Id.

Contrary to plaintiffs' position, Green Spring is sufficiently analogous to the present case. Similarly, here, the plaintiffs-associations' claim for injunctive relief is based on defendants' alleged breaches of the provider contracts based on defendants' alleged policy of limiting compensation to the first three of five S-codes, thereby refusing to provide compensation for services presenting symptoms of moderate to high severity, even where medically necessary. See Am.Compl., ¶¶ 46-49. Plaintiffs also claim that defendants improperly restrict certain "medically necessary" secondary treatment and deny coverage for other treatment which it deems as "chronic. See id. at ¶¶ 50-62. In order to establish their right to injunctive relief to enjoin defendants from their alleged improper conduct, plaintiffs will have to demonstrate specific instances of such conduct. Therefore, the individual participation of the associations' members is required.

Additionally, plaintiffs rely on out-of-state cases for the proposition that an association need not have contractual privity in order to have standing. These cases are not persuasive or controlling and involve different types of claims than the present case. See American Chiropractic Ass'n , Inc. v. Trigon

Healthcare, Inc., 151 F.Supp.2d 723, 730-31 (W.D.Va. 2001)(chiropractic association had standing to seek injunctive relief, but not money damages, on behalf of their members for allegedly violating state and federal law by refusing to cover services provided by chiropractors due to anti-chiropractic bias, but associations did not have standing to bring anti-trust action); Guckenberger v. Boston University, 957 F.Supp. 306, 319 (D.Mass. 1997)(organization had standing to challenge violation of the American Disabilities Act and the Massachusetts Constitution);Texas State Employees Union/CWA Local 6184 v. Texas Workforce Comm'n., 16 S.W.3d 61, 69 (Tex.Ct.App. 2000)(union had standing to seek to enjoin any further transfers of state property where such transfers allegedly violate the Texas Constitution); and Organization of Minority Vendors, Inc. v. Illinois Central Gulf Railroad, 579 F.Supp. 574, 587 (organization had standing only to seek injunctive relief on counts involving the federal Civil Rights Act, the Clayton Act and the Railroad Revitalization and Regulation Reform Act of 1976).

This court does not disagree with the proposition that the doctrine of associational standing helps to allow people to pool their capital, interests and activities in order that the association may collectively vindicate the interests of all of its members. See International Union, United Automobile, Aerospace and Agricultural Implement Workers of America v. Brock, 477 U.S. 274, 290 (1986). It is also true that an association **may** have standing to sue for injunctive or declaratory relief on behalf of its members where individualized proof is not necessary. See Hunt, 432 U.S. at 343-44. However, it is not always true that an association, which meets the first two prongs of the Hunt test, has standing simply because it seeks only injunctive relief. See Green Spring, 2000 WL 33365907, at *4. Moreover, since this case is a class action, any injunctive relief could inure to the entire class after it passes the certification stage. It would be premature of this court to comment on whether the class will be certified. Nonetheless, a finding that the

associations have standing to pursue the claim for injunctive relief while they cannot pursue the claim for monetary damages for breach of contract appears contradictory and may otherwise hinder the certification process. It would also be redundant to allow the associations to have standing to pursue the claim for injunctive relief and then certify a class with different named representatives, one on behalf of the providers and one on behalf of the subscribers, to pursue the breach of contract claim which seeks monetary damages.

Plaintiffs have presented no new facts nor any controlling case law which compels this court to reconsider its original Order and Opinion on the issue of the associations' standing to sue.

CONCLUSION

For the reasons set forth above, this court is issuing a contemporaneous Order denying the plaintiffs' Motion for Reconsideration.

BY THE COURT:

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JOHN W. HERRON, J.

Dated: September 14, 2001

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Plaintiffs	:	No. 2705
v.	:	COMMERCE PROGRAM
INDEPENDENCE BLUE CROSS, et al.,	:	
Defendants	:	Control No. 080850

ORDER

AND NOW, this 14th day of September, 2001, upon consideration of plaintiffs' Motion for Reconsideration of this court's Order and Opinion dated July 16, 2001, dismissing the claims of plaintiffs, the Pennsylvania Chiropractic Association ("PCA") and the Southern New Jersey Chiropractic Society ("SNJCS"), for lack of standing, defendants' response in opposition thereto, the respective memoranda, and in accord with the Opinion being filed contemporaneously with this Order, it is hereby **ORDERED** that the Motion for Reconsideration is **Denied**.

BY THE COURT:

JOHN W. HERRON, J.