

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
DOCKET NO. _____

_____)
PUNYAMURTULA KISHORE, M.D.,)
Plaintiff,)
)
v.)
)
BOARD OF REGISTRATION IN MEDICINE,)
Defendant)
_____)

MOTION OF THE MASSACHUSETTS PSYCHIATRIC SOCIETY
TO INTERVENE PURSUANT TO MASS.R.CIV.P. 24

The Massachusetts Psychiatric Society, Inc., pursuant to Rule 24(b) of the Massachusetts Rules of Civil Procedure, hereby moves that this Court permit it to intervene in the above-entitled action as a party plaintiff, and to file the attached complaint. In support of this Motion applicant Massachusetts Psychiatric Society, Inc. states the following.

The Massachusetts Psychiatric Society, Inc., ("MPS") is a Massachusetts non-profit corporation established in 1964, having approximately 1,700 members representing a majority of the psychiatrists in the Commonwealth and is a duly recognized branch of the American Psychiatric Association. MPS members are physicians who are committed to providing quality psychiatric care through accurate diagnosis and comprehensive treatment of mental health and emotional illnesses. The MPS seeks to achieve this goal by promoting public and professional education, and legislation that addresses the needs and rights of the mentally and emotionally ill. It also advocates for the allocation of public and private resources for treatment, research and education.

The MPS has a strong interest in upholding the ability of physicians in Massachusetts to apply for emergency psychiatric hospitalization pursuant to G.L. c. 123, § 12(a) under appropriate circumstances. Any diminution in the circumstances under which a physician may be allowed to apply for a person's emergency psychiatric hospitalization will have a profound negative impact on the mental health treatment and protection of patients in the Commonwealth. This is so because oftentimes persons with a severe mental illness do not voluntarily avail themselves of hospitalization precisely when they are at their most vulnerable.

The ability of MPS to protect its interests with respect to the use of G.L. c. 123, § 12(a) by its members and other duly authorized health care professionals may be impaired by the disposition of the instant action. The right and obligation of a physician to apply for hospitalization in an emergency, absent a face-to-face encounter, is permissible under G.L. c. 123, § 12(a). See *McCabe v. Life-Line Ambulance Service, Inc.*, 77 F.3D 540 (1996). The Final Decision and Order from which Dr. Kishore appeals concludes that his filing of the Section 12(a) "without an actual observation of the patients," is a "clear violation of the law." It is the position that Section 12(a) explicitly allows for the application for hospitalization under circumstances when an examination is not possible. The statute allows the physician to base the application for hospitalization on "facts and circumstances." An outcome in the Superior Court that is contrary to this position will impair the MPS and its member physicians in future applications for hospitalizations when an examination is not possible.

The interests of the MPS will not be adequately represented by the existing parties. The MPS does not adopt the position of either Dr. Kishore or The Board of Registration in Medicine for all issues in the instant matter. Further, it is unknown to the MPS what legal posture or trial strategy Dr. Kishore may adopt during the instant matter. As a result, the only effective and

meaningful way for the MPS to ensure that its interests are adequately represented, is to be allowed to intervene and assert its own position.

Mass.R.Civ.P. 24 is intended to protect practical interests, and is not limited strictly to legal or equitable concerns. See *Motor Club of America Ins. Co. v. McCroskey*, 9 Mass.App.Ct. 185, 400 N.E. 2d 269, 271 (1980). As a result, the MPS may properly invoke Rule 24 of the Civil Rules of Procedure and intervene in the instant matter. Additionally, the adjudication of the rights of the original parties will not be unduly delayed or prejudiced by this intervention.

WHEREFORE, Massachusetts Psychiatric Society, Inc. moves that it be permitted to intervene in this action as of right or otherwise at the discretion of this Court as a party plaintiff and for leave to file its proposed complaint.

Respectfully Submitted by
Massachusetts Psychiatric
Society, Inc.

By Its Attorney,

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