



Alabama Supreme Court Announces Five-Part Test for Application of the Physician Office Exemption Under the Certificate Of Need Rules

On March 2, 2012, the Alabama Supreme Court announced a decision that will provide essential guidance as to when the Physician Office Exemption ("POE") applies under Alabama's Certificate of Need ("CON") rules and regulations. *In Ex parte Sacred Heart Health System, Inc. (in re: "Infirmity Health System and South Baldwin Regional Medical Center v. Sacred Heart Health System, Inc.")*, the court crafted a new five-part test, referred to as "the POE Application Test," which, according to the court, provides "an objective standard that can be used to determine whether the POE applies to any medical practice, whether the practice is solo or group, large or small, specialized or general."

The case arose when Infirmity Health System and South Baldwin Regional Medical Center filed an action seeking a declaratory ruling that Sacred Heart Health System was required to obtain a certificate of need in order to develop a medical building that would accommodate physician offices, an outpatient surgery center, a diagnostic center, a laboratory, and a rehabilitation center. (The surgery center and rehabilitation center were later dropped from the project.)

The trial court held that the part of the building that was to be occupied by Sacred Heart Medical Group physicians qualified for the POE and did not require a CON. The court later amended its judgment to hold that the exemption applied only to the part of the building to which three physicians had previously located their practices. On appeal, the Court of Civil Appeals reversed and remanded, holding that none of the building qualified for the exemption.

The Alabama Supreme Court granted *certiorari* and, in its opinion, noted that the CON Review Board had previously formulated a four-part test to determine whether a proposed project qualifies for the POE. First used in a 2001 administrative ruling, *Re: Heart-Lung Associates of America, P.C.*, and known as the "Heart-Lung Test," the test forms the basic framework for the new POE Application Test. While determining that the Heart-Lung Test is still substantially sound, the court made minor modifications to the test and added a fifth part to address situations in which a proposed project involves both physician offices and services or equipment that may otherwise require CON review. In doing so, the court reversed the judgment of the Court of Civil Appeals and remanded the case for analysis under the new POE Application Test.

Under the POE Application Test, all of the following criteria must be satisfied in order to qualify for the Physician Office Exemption.

1. The proposed services are to be provided, and related equipment used, exclusively by the physicians identified as owners or employees of the physicians' practice for the care of their patients.

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2. The proposed services are to be provided, and related equipment used, at any office of such physicians.
3. All patient billings related to such services are through, or expressly on behalf of, the physicians' practice.
4. The equipment shall not be used for inpatient care, nor by, through, or on behalf of a health care facility.
5. The POE shall not be interpreted to allow a physician to provide any service or to use any equipment for which the law otherwise requires a CON.

The new POE Application Test should provide much needed guidance for developers of projects that involve medical office buildings.

If you have any questions about this development please contact Jim Henry, Colin Luke, Carey McRae, or one of the other attorneys in the [Health Care Practice Group](#) at Bradley Arant Boulton Cummings LLP.

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