

Special to RIMS Members
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Judge finds for the State on provider taxes

In a case that has ramifications for doctors of all specialties and across the nation, a Rhode Island judge has rejected RIMS' challenge to the constitutionality of the state's "surcharges" (provider taxes) on certain medical imaging and ambulatory surgical services.

In a 43-page ruling issued on November 9, Providence District Court Judge Robert Pirraglia found that the Rhode Island provider taxes, which have been in place and under challenge by the Medical Society since their enactment by the General Assembly in June 2007, **do not violate the due process or equal protection provisions of the U.S. and Rhode Island constitutions.** Judge Pirraglia turned back the physician plaintiffs' appeal on every point of RIMS' lawsuit. The suit was filed December 22, 2008, after administrative avenues had been exhausted.

The judge's ruling is disappointing but not surprising. RIMS' leadership and the plaintiff physician groups understood very well from the beginning that they faced an uphill battle. Although Rhode Island's provider taxes are clearly discriminatory and arbitrary, courts are generally deferential to the will of legislatures, especially in tax matters.

Moreover, in contrast to groups that are distinguished by such characteristics as race or gender, physicians are not considered to be a "suspect class" at heightened risk for having their constitutional rights abridged. Therefore, the legislature needed to have only a "rational basis" for discriminating against physicians, and the "rational basis" standard is a very low threshold to overcome. Indeed, a legislature need not even articulate any specific "rational basis" for passing a law that discriminates against a non-suspect class of citizens; moreover, in deciding whether the legislature may have had an unstated, rational basis for denying a class of citizens equal protection, a court may apparently speculate freely (as Judge Pirraglia himself did at length in his decision) with regard to any number of possible "rational bases" that may have been on the legislature's mind to justify the enactment of a discriminatory law.

All in all, it was clear from the outset that existing law and judicial precedent favored the State of Rhode Island over the physicians. Nevertheless, **the medical community in 2007 felt compelled to respond strongly when the General Assembly, desperate for revenue, broke new ground in moving to levy taxes for the first time on professional services** -- particularly on non-emergent medical imaging, ambulatory surgery and endoscopy services performed in physician-owned facilities.

Immediately upon the enactment of the provider taxes in June 2007, the Medical Society created a special Legal Advocacy Fund to support what RIMS anticipated would be a long road to challenge the taxes administratively and judicially. The medical community responded generously and with notable solidarity. Recognizing the broader threat inherent in the precedent set by the legislature, physicians of all specialties and in every part of the state answered RIMS' call for donations.

The **American Medical Association's Litigation Center** also leapt to RIMS' support, contributing twenty thousand dollars to RIMS' Legal Advocacy Fund, which amounted to about 11% of the total cost of the litigation to RIMS. To date, two other national organizations -- the **American Academy of Ophthalmology** and the **American Academy of Dermatology** -- have also responded to RIMS' request for financial support in the provider tax litigation.

RIMS is grateful to all the individuals, medical practices and professional associations that have provided the resources to contest the provider taxes. In addition to the physicians and practices who had an obvious stake in the matter, the supporters also included many others who

were not immediately affected but found the taxes repugnant in principle.

RIMS extends its gratitude to the named plaintiffs, who agreed to lead the charge on behalf of all Rhode Island doctors. They are [Rhode Island Medical Imaging, Inc.](#); [Coastal Medical, Inc.](#); [Rhode Island Urological Specialties](#); [Open MRI of New England, Inc.](#); and [LGLN Cardiology Consultants, LLC](#).

RIMS also thanks its legal counsel, particularly Jeffrey F. Chase-Lubitz, Esq., and Richard Goldstein, Esq., of Donoghue Barrett & Singal, PC, for their diligence in pursuing the case, and for their creative and successful work in consolidating and expediting this complex and lengthy matter.

RIMS' leadership is in the process of consulting with the plaintiffs, other stakeholders and the attorneys regarding the prospects and feasibility of an appeal to the Rhode Island Supreme Court.