UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0211

September Term, 2014

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ALBERT BLUMBERG, ET AL.

v.

MARYLAND BOARD OF PHYSICIANS, ET AL.

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Hotten,
Nazarian,
Friedman,
JJ.

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Opinion by Hotten, J.

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Filed: May 4, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Following the receipt of a complaint regarding the referral practices of Sanford J. Siegel, M.D. ("Dr. Siegel"), the Maryland Board of Physicians ("the Board") entered into a Consent Order with Dr. Siegel, resolving the matter. Appellants, several licensed healthcare providers, brought suit against the Board in the Circuit Court for Baltimore County, seeking both an administrative mandamus and a declaratory judgment regarding the Board's interpretation of the Maryland Patient Referral Act. The Board filed motions to dismiss the action and Dr. Siegel, not a party before the circuit court, filed a motion to intervene. The circuit court granted the Board's motions and thereafter, denied Dr. Siegel's motion as moot. Appellants appealed, presenting the following questions for our review, which we have rephrased[1]:

I. Whether the circuit court erred in dismissing appellants' petition for writ of administrative mandamus.

II. Whether the circuit court erred in dismissing the petition for declaratory ruling.

[1] Appellants original questions were:

> I. Whether the circuit court erred in dismissing the petition for writ of administrative mandamus when an administrative agency, in dereliction of its duty and in violation of the Maryland Patient Referral Law, entered into an agreement with one health care entity it regulates agreeing not to enforce Maryland Law and the agency's own declaratory rulings against only that entity, and refusing to exercise its discretion to interpret and enforce applicable Maryland Law and agency declaratory rulings with respect the other health care entities it regulates.
>
> II. Whether the circuit court erred in dismissing the petition for declaratory ruling without determining whether there was an existing justiciable dispute between the parties.

Dr. Siegel noted a cross-appeal, presenting one question for our review, which we have also rephrased[2]:

I. Whether the circuit court erred in denying Dr. Siegel's motion to intervene as of right.

For the reasons that follow, we shall affirm the circuit court's judgment.

## FACTUAL AND PROCEDURAL HISTORY

The Health Occupations Article of the Maryland Code, (1981, Repl. Vol. 2014), §1-301 *et seq.,* [hereinafter Health Occ.] governs medical patient referrals in the State. Known as the Patient Referral Law, it provides that:

> Except as provided in subsection (d) of this section, a health care practitioner may not refer a patient, or direct an employee of or person under contract with the health care practitioner to refer a patient to a health care entity:
>
> > (1) In which the health care practitioner or the practitioner in combination with the practitioner's immediate family owns a beneficial interest;
> >
> > (2) In which the practitioner's immediate family owns a beneficial interest of 3 percent or greater; or
> >
> > (3) With which the health care practitioner, the practitioner's immediate family, or the practitioner in combination with the practitioner's immediate family has a compensation arrangement.

Health Occ. § 1-302(a).

[2] Dr. Siegel's original question was:

1. Whether the [c]ircuit [c]ourt erred in denying Dr. Siegel's Motion to Intervene as of Right filed in the declaratory judgment action pursuant to Maryland Rule 2-214(a) because Appellant's claims were not justiciable, thereby denying Dr. Siegel and opportunity to be heard where he was otherwise entitled to intervene under law.

In November 2007, several health care providers, not appellants, filed a complaint with the Board raising concerns that Dr. Siegel and Chesapeake Urology Associates ("CUA"), an affiliate of Dr. Siegel's practice, were violating the Patient Referral Law. In January of 2012, while this investigation was still pending because they were not parties to the original complaint, appellants filed a separate complaint alleging the same violations. Appellants are three entities licensed to provide medical services in Maryland. Albert Blumberg, M.D. ("Dr. Blumberg") is a radiation oncologist, Maryland Hospital Association ("MHA"), is a licensed state regulated health care provider, and the University of Maryland Medical System ("UMMS") is a hospital health system. On March 27, 2012, the Board entered into a Consent Order[3] with Dr. Siegel. Appellants sought judicial review of the Consent Order, but the circuit court dismissed the petition, finding that appellants lacked standing. On June 18, 2013, appellants filed a petition for a Declaratory Ruling with the Board, seeking a ruling clarifying self-referrals and fee splitting under Maryland law. The Board denied the petition.

Appellants then filed a petition for writ of administrative mandamus in the circuit court, requesting that the Board be compelled to issue a declaratory ruling because its refusal to provide guidance was arbitrary and capricious. Three months later, appellants also filed a Declaratory Judgment action, asserting similar claims. The Board filed a motion to dismiss as to each action, contending that appellants lacked standing to pursue a remedy through the courts. Up until this point, Dr. Siegel had not been a party. In January

[3] The specifics of the Consent Order are not relevant to the issues presented on appeal, but its primary result was that it permitted Dr. Siegel to continue to refer patients to CUA.

of 2014, he filed a motion to intervene in the declaratory judgment action. The circuit court consolidated both of appellants' actions and in an order dated February 25, 2014, dismissed both. The court ultimately found that appellants lacked standing because they failed to establish a substantial right which the Board had prejudiced. In this same order, the court concluded that Dr. Siegel's motion to intervene was moot because it was dismissing the declaratory action.

Appellants noted a timely appeal, challenging the court's dismissal of both actions. Dr. Siegel noted a cross-appeal challenging the court's finding that his motion to intervene was moot. Additional facts shall be provided, *infra*, to the extent they prove relevant in addressing the issues presented.

## STANDARD OF REVIEW

In reviewing a trial court's grant of a motion to dismiss, "we accept all well-pled facts in the complaint, and reasonable inferences drawn from them, in a light most favorable to the non-moving party." *Converge Servs. Group, LLC v. Curran*, 383 Md. 462, 475 (2004). We then determine whether the trial court was "legally correct in its decision to dismiss." *Washington Suburban Sanitary Comm'n v. Phillips*, 413 Md. 606, 618 (2010) (quoting *McDaniel v. Am. Honda Fin. Corp*., 400 Md. 75, 83 (2007))." *Kendall v. Howard Cnty*., 431 Md. 590, 601-02 (2013).

## DISCUSSION

### I. Did the Circuit Court Err in Dismissing Appellants' Administrative Mandamus Action?

Appellants contend that the court erred in granting the Board's motion to dismiss their administrative mandamus action. Although in their briefs appellants raised all of the allegations of error they advanced before the trial court,[4] the court's findings were based exclusively upon appellants' lack of a substantial right as required by Rule 7-403. Therefore, we shall only address that finding.

The Maryland Rules provide guidelines for when a party may seek a writ of administrative mandamus. Specifically, Maryland Rule 7-401 "govern[s] actions for judicial review of a quasi-judicial order or action of an administrative agency where review is not expressly authorized by law." Maryland Rule 7-403, provides:

> The court may issue an order denying the writ of mandamus, or may issue the writ (1) remanding the case for further proceedings, or (2) reversing or modifying the decision if any substantial right of the plaintiff may have been prejudiced because a finding, conclusion, or decision of the agency:
>
> (A) is unconstitutional,
>
> (B) exceeds the statutory authority or jurisdiction of the agency,
>
> (C) results from an unlawful procedure,

[4] One argument raised by appellants before the circuit court was that the Board's act was quasi-judicial. However, a review of the record indicates that the circuit court did not question or allege that the requirements Md. Rule 7-401 were not met. Appellants also include arguments in support of their contention that the Board acted arbitrarily or capriciously. The issue on appeal however is restricted to whether the circuit court improperly dismissed their petition, and therefore, we shall not decide whether the Board acted properly in denying their request for a declaratory judgment, as that is not an issue on appeal.

> (D) is affected by any error of law,
>
> (E) is unsupported by competent, material, and substantial evidence in light of the entire record as submitted,
>
> (F) is arbitrary or capricious, or
>
> (G) is an abuse of its discretion.

Additionally, regarding a writ of mandamus action, this Court has explained:

> The common law writ of mandamus is an original action and not an appeal. A writ of mandamus is a summary remedy, for the want of a specific one, where there would otherwise be a failure of justice. It is based upon reasons of justice and public policy, to preserve peace, order and good government. [T]he authority to issue mandamus rests within the sound discretion of the court, but that discretion must be exercised under the rules long recognized and established at common law. We have acknowledged that the power to issue an extraordinary writ of mandamus is one which ought to be exercised with great caution.

*Homes Oil Co., Inc. v. Maryland Dept. of Environment*, 135 Md. App. 442, 455 (2000). (internal citations and quotations omitted). Appellees contend that an administrative mandamus is not appropriate when an agency exercises its discretionary authority. In response, appellants cited *State Dept. of Health v. Walker*, 238 Md. 512 (1965), in support of their argument that this assertion is incorrect. There, Walker applied to the Department of Health, seeking permits for water supply and sewage disposal in relation to several large tracts of land he owned. *Id*. at 516. The Department denied his application and Walker petitioned the court for a writ of mandamus alleging that the denial was arbitrary and lacked justification. *Id*. at 517. The circuit court agreed with Walker, and granted his petition for mandamus. *Id*. at 519. The Department appealed, challenging in part the court's issuance of the writ of mandamus. *Id*. Regarding that issue, the Court stated:

> In the past, this Court has held that judicial review could properly be sought by a petition for writ of mandamus where there was no statutory provision for hearing or review and where public officials were alleged to have abused the discretionary powers reposed in them. *Heaps v. Cobb*, 185 Md. 372, 45 A.2d 73; *Hecht v. Crook*, 184 Md. 271, 40 A.2d 673. While as a general rule mandamus is not proper to review non-ministerial acts of public officials or agencies, this Court has recognized that such will lie to remedy arbitrary abuses of discretion. *Walter v. Montgomery County*, 180 Md. 498, 25 A.2d 682. . . .

*Id*. at 522-23. The Court continued, explaining that acts contrary to law or unsupported by evidence are not within the sound exercise of discretion and accordingly, a petition for writ of mandamus is an appropriate remedy. *Id*. at 523.

More than three decades later, this Court reaffirmed the principle that a party may seek administrative mandamus when alleging an abuse of discretionary power. In *Homes*, *supra*, 135 Md. App. at 457 we stated:

> In [*Goodwich v. Nolan*, 343 Md. 130 (1996)], the Court of Appeals stated that "judicial review is properly sought through a writ of mandamus 'where there [is] no statutory provision for hearing or review and where public officials [are] alleged to have abused the discretionary powers reposed in them.'" *Id*. at 146, 680 A.2d 1040 (quoting *State Department of Health v. Walker*, 238 Md. 512, 522–23, 209 A.2d 555 (1965)). [] "Thus, prior to granting a writ of mandamus to review discretionary acts, there must be both a lack of an available procedure for obtaining review and an allegation that the action complained of is illegal, arbitrary, capricious or unreasonable." *Goodwich*, 343 Md. at 146, 680 A.2d 1040. In *Prince George's County v. Carusillo*, 52 Md. App. 44, 50, 447 A.2d 90 (1982), we stated, "the writ will lie if no statutory provision for a hearing or review exists and public officials are alleged to have abused their discretion."

*Id*. at 457. Notwithstanding the fact that appellants are correct that a circuit court is permitted to issue a writ of mandamus challenging the discretionary acts of an agency, they still fail to overcome a major hurdle – the lack of standing for failure to establish a substantial right that was violated.

*Maryland Ins. Com'r v. Cent. Acceptance Corp.,* 424 Md. 1, 15-16 (2011) provides:

> When reviewing an agency's departure from its procedures, the court looks to whether a "substantial right" of a party was violated and whether that party was prejudiced by the procedural irregularities. *Pollock v. Patuxent Inst. Bd. of Rev.*, 374 Md. 463, 469 n. 3, 823 A.2d 626, 630 n. 3 (2003) (citing *Bernstein v. Real Estate Comm'n of Md*., 221 Md. 221, 230, 156 A.2d, 657, 662 (1959)), *appeal dismissed*, 363 U.S. 419, 80 S.Ct. 1257, 4 L.Ed.2d 1515 (1960) (stating that the function of a reviewing court is to reverse or modify and order if "substantial rights of a petitioner have been improperly prejudiced by a departure from procedures").

In *Perry v. the Department of Health and Mental Hygiene*, 201 Md. App. 633, 635 (2011), the plaintiff was an employee of a county health department. She applied for a promotion, but was denied because she did not meet the requirements. *Id*. at 636. She later filed a grievance with the Department of Health and Mental Hygiene ("DHMH"), challenging the denial of her promotion. *Id*. At the hearing on her grievance, the plaintiff was informed that it was being denied because she failed to allege an illegal act. *Id*. at 637. The plaintiff then filed a petition for administrative mandamus. *Id.* The circuit court granted DHMH's motion to dismiss, finding that the plaintiff had failed to allege a substantial right that she was deprived of not being promoted. The plaintiff appealed to this Court, and we considered whether appellant had a substantial right in the promotion she originally sought. *Id*. at 640. Citing other cases from this Court,[5] we held that the plaintiff did not have a substantial right in a position she never held. *Id*. We also explained that DHMH's decision was entirely discretionary, and therefore, a substantial right could

[5] *See Oltman v. Md. State Bd. Of Physicians*, 182 Md. App. 65 (2008).

not exist. *Id*. at 641. Since she had established no right or property interest which she had been denied, we held that the circuit court did not err in dismissing her petition. *Id*.

In *Barson v. Maryland Board of Physicians*, 211 Md. App. 602 (2013), the plaintiff was an anesthesiologist who entered into a consent order with the Board, after allegations that she improperly issued narcotic pain medication prescriptions. *Id.* at 604. She agreed to have her license to practice medicine suspended for 90 days, to be placed on probation for two years, to forfeit two registration numbers related to the ability to prescribe narcotic painkillers and not reapply for them. *Id.* at 606-07. After the agreement was entered into, the plaintiff requested that it be revised to permit her to reapply for the two registration numbers at the conclusion of her probation. *Id*. at 608. She claimed that the consent order was entered into with an understanding by both parties that she would be able to resume practicing anesthesiology at some point in the future, but she could not do so without the registration numbers. *Id*. at 609. The Board disagreed and declined her request. *Id.* The plaintiff then resorted to the circuit court, seeking an administrative mandamus, claiming that the Board's decision not to revise the agreement was arbitrary and capricious. *Id*. at 610. The circuit court granted the Board's motion to dismiss her petition and the plaintiff appealed. *Id*.

The plaintiff claimed that she was entitled to administrative mandamus because the agency's action prejudiced her substantial right to the registration numbers. This Court disagreed. *Id*. at 618. We explained that a court *may* reverse if jurisdiction exists – meaning that there must be a substantial right that the agency's finding, conclusion or decision violated. *Id*. By entering into the consent order, the plaintiff had waived whatever

right she may have had in the registration numbers. She could not later assert that the Board's action had prejudiced her, because she had agreed to it. *Id*. Accordingly, we affirmed the circuit court's dismissal for lack of jurisdiction. *Id*. at 620.

Returning to the case at bar, appellants contend that they possess several substantial rights that were prejudiced by the Board's actions. They maintain that they had a substantial right in 1) providing effective health care in an economically and legally appropriate manner; 2) an unambiguous interpretation of how relevant laws will be applied to them and to competitors in the future; 3) protecting patients from potentially unnecessary and costly treatment; and 4) a declaratory ruling from the Board that set forth a clear interpretation of the Patient Referral Law and consistent enforcement of its rules and policies. They argue that unlike *Perry* and *Barson*, Maryland law does not prohibit the rights they assert from sufficing as "substantial rights." Dr. Siegel responds that appellants seek to compel the Board to take action regarding another party's actions rather than their own, and Maryland law does not permit a party to gain standing by challenging administrative sanctions against another party. The Board contends that the court did not err because the decision to issue a declaratory ruling was completely discretionary, and therefore not subject to an administrative mandamus.

A substantial right is a protected property interest. *See Perry,* 201 Md. App. at 640 (citing *Oltman v. Md. State Bd. Of Physicians*, 182 Md. App. 65, 72 (2008)). In order for appellants to establish a substantial right, they had to assert some property interest they were entitled to that was prejudiced by the Board's failure to issue a declaratory ruling. Unlike *Perry* and *Barson*, the Board did not act against appellants directly. Rather,

appellants sought a ruling to generally clarify the Board's interpretation of the Patient Referral Law. The alleged rights asserted by appellants were speculative.[6] We are not persuaded that appellants had a protected property interest in the Board's interpretation of a statute that was not directly enforced against them; or in the general ability to prevent hypothetical patients from potentially unnecessary and costly treatment; or in the general ability to provide economical healthcare throughout the State of Maryland. Additionally, appellants noted that they could be subject to increased and unfair economic competition with Dr. Siegel. Even if this were true, appellants do not have a protected property interest to be free from economic competition.

The crux of appellants' petition is that they were entitled to a declaratory ruling because they desired one. However, a strong desire for a ruling is not sufficient to create a substantial right. The Board's decision to issue a ruling is discretionary. Therefore, akin to *Perry* where the decision to promote the plaintiff was discretionary, appellants cannot possess a substantial right to the declaratory ruling. Accordingly, we conclude that the circuit court did not err in granting the Board's motion to dismiss the administrative mandamus petition for lack of standing.

## II. Did the Circuit Court Err in Dismissing Appellants' Declaratory Action?

Appellants also assign error to the circuit court's dismissal of their declaratory action, claiming that a justiciable dispute existed between the parties that the court was

[6] *See Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972) ("To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it.").

required to resolve. Appellants are correct that it is rarely appropriate for a court to dismiss a declaratory judgment action. *Roper v. Camuso*, 376 Md. 240, 246–47 n.3 (2003). However, dismissal is proper "when the party seeking such judgment has no standing and there is no justiciable controversy properly before the court." *Id.*

In *Hamilton v. McAuliffe*, 277 Md. 336, 339-40 (1976), the Court of Appeals explained a justiciable controversy:

> That the existence of a justiciable controversy is a prerequisite to the maintenance of a declaratory judgment in Maryland is well settled. *Prince George's Co. v. Bd. of Trustees*, 269 Md. 9, 304 A.2d 228 (1973). A controversy is justiciable "when there are interested parties asserting adverse claims upon a state of facts which must have accrued wherein a legal decision is sought or demanded." *Patuxent Co. v. Commissioners*, 212 Md. 543, 548, 129 A.2d 847, 849 (1957). It is thus clear that the declaratory judgment process is not available to decide purely theoretical questions or questions that may never arise, *Prince George's Co. v. Chillum-Adelphi*, 275 Md. 374, 340 A.2d 265 (1975); *Liss v. Goodman*, 224 Md. 173, 167 A.2d 123 (1961), or questions which have become moot, *Eberts v. Congress'l Country Club*, 197 Md. 461, 79 A.2d 518 (1951), or merely abstract questions, *Davis v. State*, 183 Md. 385, 37 A.2d 880 (1944). That the declaratory judgment process should not be used where a declaration would not serve a useful purpose or terminate a controversy is equally well settled. *Liss v. Goodman*, *supra*; *Bachman v. Lembach*, 192 Md. 35, 63 A.2d 641 (1949); *Staley v. Safe Deposit & Trust Co.*, 189 Md. 447, 56 A.2d 144 (1947).

The requirement that there be an existing "live" controversy is intended to avoid the issuance of advisory opinions instead of resolving actual disputes. *See Hatt v. Anderson*, 297 Md. 42, 46 (1983) ("Indeed, the addressing of non-justiciable issues would place courts in the position of rendering purely advisory opinions, a long forbidden practice in this State.") (citing *Planning Commission v. Randall*, 209 Md. 18 (1956); *Tanner v. McKeldin*, 202 Md. 569 (1953); *Hammond v. Lancaster*, 194 Md. 462 (1950). In *Hatt*, a fireman brought suit against the county fire department and other entities, seeking a declaratory

judgment that a certain regulation was unconstitutional. *Hatt*, 297 Md. at 43. Both parties moved for summary judgment, and the circuit court denied the fireman's motion and granted the county's. *Id*. The fireman appealed, and the Court of Appeals vacated the circuit court's judgment, remanding the case and instructing the circuit court to dismiss the fireman's action for lack of a justiciable controversy. *Id*. at 47. The Court observed that nowhere in his complaint did the fireman allege that the regulation had directly impacted him. *Id*. at 45. It concluded that there was no evidence that the existence of the regulation created an actual dispute between the parties, and that there did not exist a live dispute which a declaratory judgment could resolve. *Id*. at 46. The Court explained that the county had not ordered the fireman to perform or refrain from any act, and that his complaint merely speculated regarding how the regulation could be enforced in the future. *Id*. In the absence of an actual direct controversy, the Court held that the fireman's assertions were not sufficient to sustain a declaratory action. *Id.*

The case at bar is similar to the circumstances in *Hatt*. Here, appellants are challenging the Board's refusal to issue a declaratory ruling regarding its interpretation of the Patient Referral Law. Nowhere do they assert that the Board had issued (or failed to issue) a ruling as to any of them individually. Furthermore, they contend that a declaratory ruling from the Board is necessary in order to prevent hypothetical and abstract consequences *in the future*. The facts alleged in appellants' complaint did not sufficiently assert a current dispute between the parties which could be remedied through a declaratory judgment. Accordingly, we hold that the circuit court did not err in dismissing their action.

## III. Is there a private right of action in the Patient Referral Law?

Further support of our conclusion that the circuit court did not err in dismissing appellants' action is found in the fact that no private right of action exists in the Patient Referral Law. The United States Supreme Court provided the general rule for determining whether a statute contains an implicit right of action in *Cort v. Ash*, 422 U.S. 68, 78 (1975):

> In determining whether a private remedy is implicit in a statute not expressly providing one, several factors are relevant. First, is the plaintiff 'one of the class for whose especial benefit the statute was enacted,' – that is, does the statute create a [] right in favor of the plaintiff? Second, is there any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one? Third, is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff?[7]

(internal citations omitted). The Court of Appeals adopted this rule in *Erie Ins. Co. v. Chops*, 322 Md. 79, 91 (1991) ("Although the presence or absence of an indication of legislative intent to create a private remedy is a very important factor to be considered by a court in determining whether to recognize a tort duty or a new private right of action, it is not the only factor. While more recent decisions of the Supreme Court have indicated that implication of a private right of action 'is limited solely to determining whether Congress intended to create the private right of action,' the earlier cases refer to other relevant factors.") (internal citations omitted).

[7] The final factor, not relevant to this case because we are deciding state law is whether "the cause of action one [is] traditionally relegated to state law, in an area basically the concern of the States, so that it would be inappropriate to infer a cause of action based solely on federal law?" *Cort*, 422 U.S. at 78.

In *Baker v. Montgomery County*, 427 Md. 691 (2012), the Court of Appeals applied the *Cort* rule to determine whether Maryland Code (1977 Repl. Vol. 2012), Transportation Article §21-809[8] [hereinafter "Section 21-809"] contained an implicit private right of action. In *Baker*, the plaintiffs were recipients of speeding monitoring citations given by use of speed cameras. *Id*. at 696. They brought suit in the circuit court, challenging the issuance of the tickets and alleging that Montgomery County had violated Section 21-809 as a result of its contract with the speed camera contractor. *Id*. The circuit court granted Montgomery County's summary judgment, finding that the statute did not provide a private cause of action. *Id*. The plaintiffs appealed to this Court and we affirmed. *Id*. at 696-97. The Court of Appeals granted *certiorari*, and observed that "[a] private cause of action in favor of a particular plaintiff or class of plaintiffs does not exist simply because a claim is framed that a statute was violated and a plaintiff or class of plaintiffs was harmed by it." *Id*. at 708-09 (citing *Touche Ross & Co. v. Redington*, 442 U.S. 560, 568 (1979)). After reciting the *Cort* rule, the Court of Appeals noted that the primary inquiry is whether the legislature intended to create a private cause of action.

> Courts discern legislative intent whether a private cause of action was intended by analyzing the language of the statute to identify its purpose and intended beneficiaries, reviewing the statute's legislative history, and determining whether the statute provides otherwise an express remedy.

[8] (j)(1) An agency or an agent or contractor designated by the agency shall administer and process civil citations issued under this section in coordination with the District Court.

> (2) If a contractor in any manner operates a speed monitoring system or administers or processes citations generated by a speed monitoring system on behalf of a local jurisdiction, the contractor's fee may not be contingent on a per-ticket basis on the number of citations issued or paid.

*Id*. at 710. Applying the above, the Court began with the language of Section 21-809 to ascertain whether the statute provided a right to a particular class of persons or if there was a strong inference that the legislature intended to do so. *Id*. As illustration, the Court of Appeals referenced several federal statutory provisions, such as "no person shall be denied the right to vote"[9] and "[e]mployees shall have the right to organize and bargain collectively,"[10] as examples of statutes intended to confer rights in individuals. *Id*. at 711 (citing *Cannon v. Univ. of Chicago*, 441 U.S. 677, 691 (1979)). It explained that when a statute is framed as a general prohibition or command to a governmental entity or another group, then there is a decreased likelihood the legislature intended to create a private right of action. The Court then concluded that Section "21-809 is framed as a prohibitive command and does not confer rights on a class of persons." *Id*. Next, the Court considered the purpose of the statute and observed that its purpose was to provide rules and procedures for Montgomery County to operate its speed camera system. *Id*. at 713. Consequently, the Court concluded that the purpose was not to create a private cause of action. *Id*. After also remarking that there is an "assumption that legislative bodies know how to 'salt the mine' for the enablement of implied private causes of action," the Court held that the General Assembly did not intend to do so with Section 21-809 and therefore, affirmed the circuit court's grant of summary judgment. *Id.* at 715.

Returning to the instant case, we conclude that the Patient Referral Law fails the *Cort* test as applied by the Court of Appeals in *Baker*, and does not create a private right

[9] 52 U.S.C.A. §10304.
[10] 45 U.S.C.A. §152.

of action. Our first inquiry is whether the statute creates a right in a person. We answer that question in the negative. Akin to *Baker*, Health Occ. §1-302 provides a general prohibition, without reference to any class or person to which a right is bestowed. Next, we look to whether a private right of action is consistent with the underlying purposes of the statute. The purpose of Health Occ. §1-302, as well as the Health Occupations Article as a whole, is to provide rules and procedures for the regulation of the various boards. *See* Health Occ. §1-102. Therefore, there is no private right of action in Health Occ. §1-302.

## IV. Did the Circuit Court Err in Declaring Dr. Siegel's Motion to Intervene Moot?

Finally, Dr. Seigel noted a cross-appeal, contending that the circuit court erred in denying his motion to intervene as moot. He contends that the court should have first ruled on his motion to intervene, then ruled on the motion to dismiss the declaratory judgment action.

This Court addressed the denial of a motion to intervene in *Benning v. Allstate Ins. Co.,* 90 Md. App. 592 (1992). *Benning* involved three parties, the driver and passenger in an automobile involved in a car accident, and the driver's insurance company, Allstate. *Id*. at 594. The passenger sued Allstate and the driver filed a motion to intervene. *Id*. at 595. On the date of trial, the circuit court dismissed the passenger's lawsuit and did not rule on the driver's motion to intervene, concluding that since there was no longer a case to intervene in, the motion was essentially moot. *Id*. On appeal, the driver challenged the court's failure to rule first on her motion to intervene before addressing the motion for summary judgment/dismissal. *Id*. at 596. We ultimately concluded that the court abused

its discretion in declining to rule on the motion to intervene because had the court addressed her motion, she was entitled to intervention. *Id*. at 600. The driver had standing to bring suit separately against Allstate but because the court denied intervention, the driver would have to file separate lawsuits resulting in delay, cost and inconvenience. *Id*. at 597. Based on these concerns we held that the court should have permitted intervention and accordingly, vacated the circuit court's judgment and remanded the case for further proceedings. *Id*. at 604.

Based on the circumstances presented in the case at bar, we conclude that Dr. Siegel's motion to intervene should not have been granted, and accordingly, perceive no error in the court's finding that the motion was moot. We explain. Dr. Siegel filed his motion to intervene pursuant to Md. Rule 2-214(a) which provides:

> (a) Of Right. Upon timely motion, a person shall be permitted to intervene in an action: (1) when the person has an unconditional right to intervene as a matter of law; or (2) when the person claims an interest relating to the property or transaction that is the subject of the action, and the person is so situated that the disposition of the action may as a practical matter impair or impede the ability to protect that interest unless it is adequately represented by existing parties.

Dr. Siegel claims in his brief that "Maryland law provides for an 'unconditional right to intervene' for parties whose interests may be 'impair[ed] or impede[d]' by the disposition of the action and who otherwise lack adequate representation by existing parties." This assertion attempts to blur the two provisions of Rule 2-214(a). A party has *either* an unconditional right to intervene as a matter of law *or* is a person with an interest in the transaction who can only protect that interest by being involved in the suit. The underlying lawsuit was brought by appellants against the Board, regarding the Board's refusal to issue

a declaratory ruling concerning the Maryland Patient Referral Law and the Fee Splitting statute. While the Consent Order between the Board and Dr. Siegel was the catalyst for declaratory action, it was not the subject of the petition. Appellants' action seeking revocation of Dr. Siegel and the Board's Consent Order had previously been dismissed by the circuit court in another case and was no longer in question. Consequently, Dr. Siegel did not have an interest that was at risk of being impaired or impeded by the declaratory action. If the circuit court denied appellants' action, as it did, Dr. Siegel's Consent Order remained valid and he was subject to no further action on the matter. Likewise, even if the court had not dismissed appellants' suit, at worst, it would have ordered the Board to issue a ruling as to the statutes in question, which still would not have impacted Dr. Siegel's existing, valid Consent Order. Since there was no risk of Dr. Siegel being affected by the declaratory action as an individual, unlike the case with *Benning*, he had no right to intervene. Accordingly, the circuit court did not err.

**JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY IS AFFIRMED. COSTS TO BE PAID BY APPELLANTS.**