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FOR IMMEDIATE RELEASE

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FEDERATED AMBULATORY SURGERY ASSOCIATION FILES FRIEND OF THE COURT BRIEF WITH U.S. SUPREME COURT

Seeks to Preserve Antitrust Protection for ASCs and Free Flow of Information to Patients

ALEXANDRIA, VA (March 13, 2006) — The Federated Ambulatory Surgery Association (FASA) today filed a brief amicus curiae with the United States Supreme Court in an effort to ensure patient access to affordable health care. FASA, together with the American Academy of Ophthalmology, the Pennsylvania Academy of Ophthalmology, the American College of Surgeons and the California Medical Association, is seeking to overturn a decision by the United States Court of Appeals for the Third Circuit. In that decision, the Third Circuit stated that ambulatory surgery centers (ASCs) are not entitled to protection under the antitrust laws until they open, and that efforts by a hospital to limit the dissemination of truthful, non-deceptive comparative information by a physician who was opening his own ASC to compete with the hospital had no meaningful effect on competition.

There are 4,500 ASCs across the country that perform more than 14 million surgeries each year. The vast majority of ASCs are owned by physicians who invest in ASCs to obtain greater professional autonomy and control over their work environment and the quality of care delivered to their patients. These ASCs play a central role in creating a modern, innovative health care system by offering better patient satisfaction and lower costs.

As ASCs have grown in popularity, however, they also increasingly have become the targets of efforts by hospitals to hinder their ability to compete. Among the most common barriers to entry is to deny or restrict staff privileges for the physician owners of ASCs, as was done in this case through broad restraints on the physician's ability to share information with patients about different treatment options. FASA hopes to preserve the protection the antitrust laws afford to ASCs and to ensure that physicians have the full and unfettered ability to speak truthfully to their patients.

“It is important that the Supreme Court review the decision by the Third Circuit. Physicians and ASCs cannot stand by while their rights are whittled away,” said Kathy Bryant, President of FASA. “This misapplication of the existing antitrust law is a threat to a thriving and competitive health care marketplace and can decrease choice resulting in higher costs and decreased quality.”

The lower Court's ruling, on a case in Pennsylvania, stated that because the physician's ASC was only in development and not operational, it could not be considered a competitor of the incumbent hospital. The hospital also sought to limit what truthful and non-deceptive information the physician could provide to his patients about his primary competitor.



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“Medicine is complicated and attempts to muzzle doctors will make it difficult for patients to get the information they need about possible problems, medical choices and risks and benefits of different types and sites of care,” Bryant said. “Restricting what doctors can say to patients is a critical concern to medical organizations. Clearly, the best results occur when there is an open and honest dialogue between patient and physician.”

The Federated Ambulatory Surgery Association, the nation’s largest association of ambulatory surgery centers, is a national, nonprofit association representing the interests of those who operate and seek the services of ambulatory surgery centers throughout the nation. The organization represents more than 1,800 ASCs, the professionals who provide care and services in such ASCs and the patients who seek care there. Visit FASA online at www.fasa.org.

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