IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

BROADMEADOW INVESTMENT, LLC,	)	
	)	
Appellant,	)	
	)	C.A. Nos. 11A-08-011 JAP
v.	)	& 11A-10-009 JAP
	)	
DELAWARE HEALTH RESOURCES BOARD and HEALTHSOUTH MIDDLETOWN REHABILITATION HOSPITAL, LLC,	)	
	)	
Appellees.	)	

MEMORANDUM OPINION

Appearances:

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In Delaware someone desiring to construct and operate a new health care facility must first obtain a certificate of public review ("CPR") from the Delaware Health Resources Board (the "Board"). In this case the Board granted a CPR to HealthSouth Middletown Rehabilitation Hospital, LLC permitting HealthSouth to construct and operate a rehabilitation facility in the Middletown area. Broadmeadow Investment, LLC, ("Broadmeadow") operates a nursing home in the same general area. It unsuccessfully opposed Heath South's application to the Board and has now twice appealed the Board's decision. Presently before the court are motions to dismiss those appeals on the ground that Broadmeadow lacks standing. The court agrees with movants, and Broadmeadow's appeals will be dismissed.

A. Facts and procedural history.

In 1996 Broadmeadow was granted a certificate of need (the equivalent of a CPR) to construct and operate a rehabilitation and nursing home facility in the Middletown area. Construction was completed in 2005 and the facility has been in operation ever since then. In November, 2010 Health South filed an application with the Board for a CPR which would enable it to build and operate a 34 bed freestanding rehabilitation hospital near the Broadmeadow facility. "Any person" is permitted to object to an application before the Board.[1] Fearing competition from the new facility, Broadmeadow opposed HealthSouth's application before the Board. There were other objectors to the

[1] 16 *Del.C.* §9305(6).

HealthSouth application but, unlike Broadmeadow, they have not sought to appeal to this court.

The Board's procedures provide for a Review Committee which reviews applications and makes a recommendation to the Board. In the instant matter the Review Committee recommended against issuing a CPR to HealthSouth, and in June, 2011 the Board agreed and voted not to approve HealthSouth's application. Shortly after the Board's vote several changes were made in the Board's composition. At the Board's next regularly scheduled meeting the Board reversed itself and approved HealthSouth's application.

Broadmeadow asked the Board to reconsider its approval of the application, but the Board lacked a quorum at its August, 2011 meeting and therefore could not act on Broadmeadow's request. It then filed the first of its two appeals to this court. The following month the Board denied Broadmeadow's request for reconsideration, whereupon Broadmeadow filed its second appeal. In its appeal Broadmeadow seeks to attack the Board's July, 2011 decision granting a CPR to HealthSouth on several grounds. It contends that the new Board members were not impartial, the Board's vote did not comply with the Freedom of Information Act and there was no substantial basis for deviating from the Review Committee's recommendation of denial of a CPR.

The Department of Justice, on behalf of the Board, and HealthSouth have both moved to dismiss the instant appeals on the basis that Broadmeadow lacks standing to bring them under 16 *Del. C.* § 9305. Broadmeadow responds that it has standing under section 9305. Alternatively

it argues that the Fourteenth Amendment and Article I, sec. 9 of the Delaware Constitution both require that it be given standing.

B. Analysis

There is no inherent standing to appeal to this court. Rather standing must be conferred by either legislative enactment[2] or by the constitution. Broadmeadow contends that it has standing under the statutory scheme governing proceedings before the Board, and, as mentioned earlier, under the federal and state constitutions. Whenever possible, courts seek to resolve disputes involving both statutory and constitutional claims on the basis of the statutory claims.[3] "[I]t is well-established in Delaware that 'a constitutional question will not be decided unless its determination is essential to the disposition of the case.'"[4] The initial inquiry here, therefore, is whether, under the relevant statutory scheme, Broadmeadow is granted standing to appeal the Board's decision. The court concludes that that scheme does not give Broadmeadow such standing. Accordingly the court must also reach the constitutional claims.

1. The statutory scheme does not grant standing to Broadmeadow.

The crux of the debate here is whether 16 *Del. C.* § 9305 gives Broadmeadow standing to appeal. That section provides:

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[2] *See In the Matter of Santa Rebecca Hulliger*, 1966 WL 87208 (Del. Super. 1966).
[3] *Downs v. Jacobs*, 272 A.2d 706, 708 (1970).
[4] *New Castle County Council v. BC Development Associates,* 567 A.2d 1271, 1278 (Del. 1989) (quoting *Downs*, 272 A.2d at 708).

> 8) Appeal -- Applicant. --A decision of the Board following review of an application pursuant to subdivision (5) of this section, an administrative reconsideration pursuant to subdivision (7) of this section, or the denial of a request for extension of a Certificate of Public Review pursuant to § 9307 of this title, may be appealed within 30 days to the Superior Court. Such appeal shall be on the record.[5]

The catchline—"Appeal—Applicant"—is not considered as part of the substantive law.[6] Thus section 9305(8) is ambiguous because its text does not provide who may appeal.[7] It is therefore necessary to examine the legislative history to determine who has standing to appeal under the statute.

While on his second tour of duty in this court, former Supreme Court Justice and Chancellor William Quillen had occasion to consider this very question in *Arbor Health Care v. Delaware Health Resources Board.*[8] Ironically in *Arbor Health* it was Broadmeadow which was seeking to dismiss an appeal by Arbor Health from the Board's decision granting Broadmeadow a certificate of need. Broadmeadow now finds itself on the wrong end of its successful argument in *Arbor Health*.

The *Arbor Health* court carefully traced the evolution over time of the statutory scheme. According to the court, the preceding versions of the statute "made it absolutely clear in the text itself that appeals to the Superior Court were limited to the [Health Systems Agency ("HSA")] . . . and the applicant."[9] HSA made recommendations on proposed new health services to the Board's

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[5] 16 *Del. C.* § 9305.
[6] 1 *Del. C.* § 306.
[7] Broadmeadow argues that it is the presence of the catchline which creates the ambiguity. This is not the case. Rather it is the silence of the statute which creates that ambiguity.
[8] 1997 WL 817874 (Del. Super.).
[9] *Id.* at *3 (citing 61 *Del. Laws* ch. 393 at 1059-60).

predecessor.[10] In 1987, the legislature removed the appeal rights of HSA's successor agency and limited appeals to the applicant.[11] The General Assembly tinkered with the statute in 1991, but continued to limit appeals to applicants.[12] The legislature rewrote Ch. 93 of the code in 1994 and dropped the explicit reference to "applicant only in the text of the statute."[13] But while dropping the reference in text, the General Assembly added "applicant" to the heading.[14] The *Arbor Health* court explained:

> While that language may not have the force of law under 1 *Del. C.* § 306, the Court has no doubt, in light of the entire history of Chapter 93, that by its inclusion the General Assembly intended, consistent with prior enactments of § 9305(8), to grant only an applicant the right to appeal the Board's decision to the Superior Court, and not grant that right to anyone else.[15]

The *Arbor Health* court's consideration of a heading appearing in the bill before the General Assembly is consistent with the Delaware Supreme Court's jurisprudence on the matter. In *Speilberg v. State*[16] the court concluded that it was appropriate to consider headings which were before the General Assembly when a bill was enacted into law when determining the intent of the General Assembly. The *Speilberg* court observed that "[c]onsideration of headnotes to determine legislative intent is not unprecedented even in the face of interpretive statutory guidelines to the contrary."[17]

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[10] *See Arbor*, 1997 WL 817874, at *3.
[11] *See id.* at *4.
[12] *See id.*
[13] *See id.*
[14] *See id.*
[15] *Id.*
[16] 558 A.2d 291 (Del. 1989).
[17] *Id.* at 595.

This court revisited the issue in *Nanticoke Memorial Hospital, Inc. v. Delaware Health Resources* Board,[18] wherein it noted that the legislature amended the statute after *Arbor Health* but did not alter it so as to change the result reached in *Arbor Health.* "By declining to do so, this Court is entitled to infer that the General Assembly has ratified the interpretation set forth in *Arbor*."[19] That inference can be drawn because "it is presumed that the General Assembly is aware of existing law when it acts."[20] The court considers this to now be settled law and follows the reasoning in *Arbor Health* and *Nanticoke*. The General Assembly only intended for Applicants to have a right to appeal Board decisions to Superior Court, and therefore Broadmeadow does not having standing under 16 *Del. C.* § 9305(8) to appeal the Board's decision.

2. The federal constitution does not require Broadmeadow be given standing.

Broadmeadow argues that the due process and equal protection clauses of the Fourteenth Amendment require that it be given standing to appeal. These arguments fail because Broadmeadow has not been deprived of "property" as contemplated by the Due Process clause and has not been treated differently than similarly situated persons for purposes of the Equal Protection clause.

[18] C.A. No. 07A-12-005 RFS (Del. Super. Dec. 30, 2008).
[19] *Id.* at 9.
[20] *Hudson Farms, Inc. v. McGreelis*, 620 A.2d 215, 218 (Del. 1993) (citing *Giuricich v. Emtrol Corp.*, 449 A.2d 232, 239 n.13 (Del. 1982).

(a). Broadmeadow has not been deprived of due process of law because it has not been deprived of any property.

In order to make out a due process claim Broadmeadow must make three showings: (1) that it had a property interest; (2) that it was deprived of that property interest; and (3) the deprivation was without due process of law. In the instant case Broadmeadow can not make the requisite showing of a deprivation of life, liberty, or property,[21] and therefore its claim fails.

The language of the Due Process clause of the Fourteenth Amendment is familiar: "nor shall any State deprive any person of life, liberty, or property without due process of law." Necessarily, a predicate of successful invocation of that clause is a showing that the State has deprived it of "life, liberty or property." As the Second Circuit Court of Appeals put it: "[i]n order for a person to establish that the state has deprived him of property without due process, he must first identify a property right, second show that the state has deprived him of *that* right, and third show that the deprivation was effected without due process."[22] This court must therefore determine the precise nature of Broadmeadow's property interest, if any, and whether Broadmeadow has been deprived of that interest.

Broadmeadow claims that it will lose revenue if the CPR issued to HealthSouth is allowed to stand. There is no doubt that this matter is of considerable importance to Broadmeadow, but the significance to Broadmeadow does not, by itself, create a property interest within the meaning

[21] *Mehta v. Surles*, 905 F.2d 595, 598 (2nd Cir. 1990).
[22] *Id.* (emphasis in original).

of the Fourteenth Amendment. In the proverbial seminal case of *Board of Regents v. Roth*[23] the United States Supreme Court considered whether a non-tenured professor had a property right in continued employment which implicated the Fourteenth Amendment. In language which resounds here the Court observed:

> Undeniably, the respondent's re-employment prospects were of major concern to him-concern that we surely cannot say was insignificant. And a weighing process has long been a part of any determination of the form of hearing required in particular situations by procedural due process. But, to determine whether due process requirements apply in the first place, we must look not to the 'weight' but to the nature of the interest at stake. We must look to see if the interest is within the Fourteenth Amendment's protection of liberty and property.[24]

This court must look to state law to determine the nature and extent of Broadmeadow's property interest.

The United States Supreme Court concluded in *Cleveland Board of Education v. Loudermill*[25] that "[p]roperty interests are not created by the Constitution, 'they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law ....' "[26]. Broadmeadow's property interest as defined by state law is relatively narrow. The certificate of need granted Broadmeadow by the Board merely allowed Broadmeadow to construct and operate a nursing care facility in Middletown. Nothing in the certificate gave Broadmeadow any right of exclusivity. The question, therefore, is whether the issuance of the CPR to

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[23] 408 U.S. 564 (1972).
[24] *Id.* at 570-71 (internal citations omitted).
[25] 470 U.S. 532 (1985).
[26] *Id.* at 577 (*quoting Roth,* 408 U.S. at 577).

HealthSouth deprived Broadmeadow of its right to operate a nursing home facility under its certificate of need. Needless to say, it does not.

Broadmeadow does not argue that it has somehow lost its right to operate its facility. Rather the thrust of Broadmeadow's argument is that, by allowing alleged competition from HealthSouth, the Board has diminished the value of its right to operate its facility. According to Broadmeadow, patients who would have used its facility may be siphoned off by HealthSouth's facility, thereby causing Broadmeadow economic harm and thus reducing the value of its right to operate its facility. But the diminishment of the economic value of Broadmeadow's Certificate of Need is not a taking of property under the Fourteenth Amendment.

In *BAM Historic District Ass'n v. Koch*[27] the United States Court of Appeals for the Second Circuit considered an argument similar to Broadmeadow's. The City of New York proposed to operate a men's homeless shelter at a site near the Brooklyn Academy of Music ("BAM"). The BAM Historic District Association, a group of local property owners dedicated to preserving that neighborhood, filed suit in federal court contending that the City's decision deprived them of their right to due process because it would diminish the value of their properties. The Second Circuit rejected their argument, reasoning that even though the City's decision might reduce the value of their properties, it was not a "deprivation of property" under the Fourteenth Amendment:

[27] 723 F.2d 233 (2nd Cir. 1983).

> The second due process claim fails because there has been no deprivation of plaintiffs' property interest and plaintiffs have no cognizable liberty interest in preventing the location of a shelter for the homeless in their neighborhood. Plaintiffs are not claiming that their property has been taken or their use of it so drastically regulated as to destroy its value. Their complaint is that the City's operation of the shelter in the vicinity of their property will cause a decline in property values. **Governmental action of that sort has never been held to "deprive" a person of property within the meaning of the Fourteenth Amendment**.[28]

The Court of Appeals concluded:

> The Fourteenth Amendment does not impose upon states and localities either an Administrative Procedure Act to regulate every governmental action nor an Environmental Policy Act to regulate those governmental actions that may affect the quality of neighborhood life. Whether notice and hearing procedures should be instituted to broaden public participation in governmental decisions of the sort challenged in this case remains a matter for consideration by state and local legislative bodies.[29]

The local federal court similarly concluded that a diminution in the value of property did not constitute a taking of "property" for purposes of the Due Process clause. In *MacNamara v. County Council of Sussex*[30] the district court was confronted with a claim that Sussex County's approval of a zoning change to allow an electrical substation deprived nearby property owners of due process. The owners theorized that the substation would reduce the value of their properties and thus they had been deprived of "property" within the meaning of the Fourteenth Amendment. The District of Delaware rejected this theory. "[O]n the issue of property values, the court finds that, while property

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[28] *Id.* at 237 (internal citation omitted; emphasis added).
[29] *Id.*
[30] 783 F. Supp. 134 (D. Del. 1990).

values might be considered a property interest, a diminution in those values is not recognized as a Fourteenth Amendment property deprivation"[31]

Cases interpreting the Fifth Amendment are instructive here. Although perhaps best known for its prohibition of compelled self incrimination, the Fifth Amendment also provides that no person shall "be deprived of life, liberty, or property." There is a long history of Supreme Court cases interpreting this provision holding that the diminution of the value of property by some action of the government does not constitute a taking of "property."[32] The court can see no meaningful distinction between the aforementioned cases and the instant matter.

Broadmeadow relies upon *Delmarva Power & Light Co. v. City of Seaford,*[33] wherein the Delaware Supreme Court found that due process was required when a portion of DP&L's designated service area was taken from it and DP&L lost existing customers within that area. That case is easily distinguishable because DP&L had an exclusive right to service the area in question, whereas Broadmeadow has no such right. Consequently *Delmarva* does not support the proposition that Broadmeadow has a property right and an attendant right to due process.

In sum, the issuance of a CPR to HealthSouth does not deprive Broadmeadow of the limited rights granted to it under its Certificate of Need. There being no deprivation of property within the meaning of the Fourteenth

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[31] *Id.* at 142.
[32] *See, e.g., Penn Central Transportation Co. v. City of New York,* 438 U.S. 104 (1978); *Village of Euclid v. Ambler Realty Co.,* 272 U.S. 365 (1926); *Hadacheck v. Sebastian,* 239 U.S. 394 (1915).
[33] 575 A.2d 1089 (Del. 1990).

Amendment, the court holds that the Due Process Clause does not require that Broadmeadow be granted standing.

b. Broadmeadow's equal protection argument fails because (1) Broadmeadow has not been subject to disparate treatment and (2) any disparate treatment has a rational basis.

Broadmeadow alleges that it was denied equal protection of the laws. It contends that it was a party to the proceedings before the Board and the allowance of an appeal to one party (the applicant) and not to others (Broadmeadow) constitutes a denial of equal protection. This argument fails because Broadmeadow was not similarly situated to HealthSouth because it had no legally cognizable stake in the outcome of the Board's determination. Therefore it was not subjected to disparate treatment.

Generally speaking, the equal protection clause requires that "all persons similarly situated should be treated alike.[34] There are two ways for a plaintiff to make out an equal protection claim. First, a plaintiff may show that he or she was treated differently because he or she is a protected class, such as race.[35] There is no suggestion, nor could there be, that Broadmeadow is a member of a protected class. This leads the court to the second way to establish a denial of equal protection. In cases in which the plaintiff is not a member of a protected class, it is still open to plaintiff to show that he or she was treated differently than similarly situated individuals and that there was no rational basis for

[34] *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985).
[35] *See Grutter v. Bollinger*, 539 U.S. 306, 326 (2003) (citations omitted).

such disparate treatment.[36] In order to succeed under such a theory, plaintiff must show each of the following: (1) plaintiff was a member of an identifiable class; (2) plaintiff was intentionally treated differently than others similarly situated; and (3) there is no rational basis for the differing treatment.[37]

Broadmeadow's argument fails because it cannot show that it was treated differently than others who were similarly situated.[38] Although Broadmeadow portrays itself as a "party" to the hearing below, it had no legally cognizable stake in the outcome of the Board's determination. As discussed in the court's analysis of Broadmeadow's due process claim, Broadmeadow has no exclusive right to operate a facility in the Middletown area. It therefore has no cognizable stake in the Board's decision and therefore is not similarly situated to HealthSouth. Rather, Broadmeadow is similarly situated to the other objectors, none of whom has standing to appeal. Thus it has been treated no differently than others who are similarly situated and therefore has not been denied equal protection of the laws.

But even assuming there is some form of disparate treatment, the court cannot say there is no rational basis for it. Both the General Assembly and the courts have long understood that courts are often less equipped than administrative boards to resolve matters before those boards because courts

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[36] *Village of Willowbrook v. Olech*, 528 U.S. 562 (2000); *San Antonio School District v. Rodriguez*, 411 U.S. 1 (1973).

[37] *Village of Willowbrook*, 528 U.S. at 564.

[38] Broadmeadow cites to *Du Pont v. Family Court for New Castle County* 153 A.2d 189 (Del. 1959) for the proposition that the right of appeal to one litigant with an accompanying failure to make the same grant to the other is in law discrimination and, as such, a violation of both the Federal and State Constitutions. *Du Pont* is inapposite to the instant case. In *Du Pont* the petitioner was a party to a suit dividing marital assets. As discussed in the text, Broadmeadow was not a party to the hearing before the Board.

generally lack the technical expertise that the administrative board possesses. Accordingly the General Assembly has acted to severely limit this court's appellate jurisdiction in various administrative matters, and this court has zealously adhered to those limitations. The Board's determination whether to grant a CPR can often be exceedingly complex, involving weighing of many competing interests and making highly technical projections. It is reasonable to conclude that the General Assembly thought it wise to severely limit this, or any, court's intrusion into the Board's decision-making process. One way to minimize judicial intervention is to limit the scope of persons who may seek aid of the courts, and that is what it has done here. The goal (limiting judicial intervention in the CPR process) is legitimate and the means (limiting persons who may seek such intervention) is rationally related to that goal. Therefore any assumed disparate treatment of Broadmeadow does not give rise to an equal protection claim.

3. The state constitution does not require that Broadmeadow be given standing.

Broadmeadow also argues that it has a due process right to appeal under Del. Const. Art. I § 9. Its argument fails for the same reason that Broadmeadow cannot establish a claim under the Due Process clause of the Fourteenth Amendment.

Article I section 9 of the Delaware Constitution—often referred to as an open courts and due process provision--provides:

> All courts shall be open; and every man for an injury done him in his reputation, person, movable or immovable possessions, shall

> have remedy by the due course of law, and justice administered according to the very right of the cause and the law of the land, without sale, denial, or unreasonable delay or expense. Suits may be brought against the State, according to such regulations as shall be made by law.[39]

Delaware courts have often stated that this provision is to be applied in the same manner as the federal Due Process clause. In *Sheehan v. Oblates of Saint Francis de Sales*[40] the Delaware Supreme Court recently wrote that "Delaware constitutional due process is coextensive with federal due process."[41] Similarly the Court of Chancery observed that the "protection of section 9 is essentially the same as the corresponding right of 'due process of law' afforded individuals by the Fourteenth Amendment to the Federal Constitution."[42]

Like its federal counterpart, section 9 "does not absolutely guarantee a remedy for every wrong done an individual."[43] Rather, as in the case of the federal constitution, anyone seeking to invoke section 9 must make a threshold showing of governmental deprivation of a vested right. Former Judge, and later Chief Justice, Christie found that "the remedy for injury provided by the due process clause of Article I sec. 9 protects only vested rights from abolition by legislative enactments."[44] The notion that section 9 applies only to deprivation of vested rights is not a fanciful one; rather it is derived from the language of the provision itself. It affords a remedy only to "every man for an injury done

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[39] Del. Const. Art. 1 § 9.
[40] 15 A.3d 1247 (Del. 2011).
[41] *Id.* at 1259.
[42] *Artesian Water Co. v. Government of New Castle County*, 1983 WL 17986, *13 (Del. Ch.).
[43] *Sadler v. New Castle County*, 524 A.2d 18, 25 (Del. Super. 1987).
[44] *Cheswold Volunteer Fire Co. v. Lambertson Const. Co.,* 462 A.2d 416, 421 (Del. Super. 1983) (citing *Gant v. Whitaker*, CA 77C-NO-50, (Del. Super. Jan. 6, 1983) (Christie, J).

him in his reputation, person, movable or immovable *possessions*."[45] The use of the term "possessions" in this provision necessarily connotes a claim of entitlement, and therefore it is necessary to inquire what claim of entitlement has been taken from Broadmeadow.

The inquiry is no different than the inquiry under the Fourteenth Amendment. In *Doe v. Cates*[46] the Delaware Supreme Court considered whether a legislative enactment restoring sovereign immunity to state agencies violated the Due Process clause of the Fourteenth Amendment or article I section 9 of the Delaware Constitution. Relying on *Roth*—which was discussed earlier in this opinion—the *Doe* court quickly dispensed of the federal due process claim because the plaintiffs had no vested property rights. Turning to the claim under section 9, the *Doe* court quickly concluded that its analysis of the federal claim also barred the claim brought under section 9:

> However, the expression "the law of the land," in the Delaware constitution, has essentially the same meaning as "due process of law" in the federal constitution. Therefore, **as in our study of federal constitutional due process**, we also reject appellants corresponding state constitutional claim.[47]

The court need not linger long over the question whether Broadmeadow has shown it was deprived of a vested right for purposes of article I section 9 of the Delaware Constitution. The analysis is the same as it is under the Fourteenth amendment, and so is the result. Broadmeadow has failed to make the threshold showing required to invoke section 9.

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[45] Del. Const. Art. 1 § 9 (emphasis added).
[46] 499 A.2d 1175 (Del. 1985).
[47] *Id. a*t 1182 (emphasis added and internal citation omitted).

To the extent that Broadmeadow argues that some inherent right to appeal has been taken from it, the short answer is that no such inherent right exists. More than a half century ago our Supreme Court wrote in *Showell Poultry, Inc. v. Delmarva Poultry Co.,*[48] that the "right of review is not an inherent or inalienable right." Nor does the federal constitution vest Broadmeadow with such a right. In 1894 the first Justice John Marshall Harlan wrote in *McKane v. Durston* "whether an appeal should be allowed . . . are matters for the each state to determine for itself."[49] Later the Court echoed "a State is not required by the Federal Constitution to provide appellate courts or a right to appellate review at all."[50] These venerable principles survive to this day and this court unhesitantly concludes that Broadmeadow did not have some inherent of inalienable right to an appeal which was taken from it.

Conclusion

Broadmeadow lacks standing under the statutory scheme to appeal the Board's decision. It has not been deprived of property for purposes of the Due Process clause of the Fourteenth Amendment or article I, section 9 of the Delaware constitution. Nor has Broadmeadow been treated differently from other objectors to HealthSouth's application. Consequently it lacks standing to appeal the grant of a CPR to HealthSouth. Appellant's Motion to Dismiss for lack of standing is therefore **GRANTED** and the appeals are **DISMISSED.**

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[48] 146 A.2d 794 (Del. 1958).
[49] 153 U.S. 684, 688 (1894).
[50] *Griffin v. Illinois,* 351 U.S. 12, 17 (1956).

It is **SO ORDERED**.

John A. Parkins, Jr.

Dated: March 20, 2012

oc: Prothonotary