

IN THE SUPREME COURT OF FLORIDA

CASE NO.66,502

FLORIDA PATIENT'S COMPENSATION FUND,

Petitioner,

vs.

ELVERA ISABELLA and ALBERT ISABELLA,

Respondents.

ON APPEAL FROM THE FOURTH DISTRICT COURT OF APPEAL
CASE NO. 84-747

RESPONDENTS' BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

The trial court, based on the First District Court of Appeal's decision in Owens v. Florida Patient's Compensation Fund, 428 So.2d 708 (Fla. 1st DCA 1983), held that the statute of limitations applicable to health care providers barred Albert and Elvera Isabella's claim against the Florida Patient's Compensation Fund (the "Fund"). It entered summary judgment.

The Fourth District Court of Appeal, relying on decision in Florida Patient's Compensation Fund v. Tillman, 453 So.2d 1376 (Fla. 4th DCA 1984), reversed the summary judgment.

The Fourth District's decision conflicts with the decisions of other District Courts of Appeal.

POINT INVOLVED ON APPEAL

WHETHER THE FOURTH DISTRICT'S DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH THE FOLLOWING DISTRICT COURT DECISIONS: Taddiken v. Florida Patient's Compensation Fund, 449 So.2d 956 (Fla. 3d DCA 1984); Burr v. Florida Patient's Compensation Fund, 447 So.2d 349 (Fla. 2d DCA 1984); Owens v. Florida Patient's Compensation Fund, 428 So.2d 708 (Fla. 1st DCA 1983); and Fabal v. Florida Keys Memorial Hospital, 452 So.2d 946 (Fla. 3d DCA 1984).

SUMMARY OF ARGUMENT

The Fourth District's decision in this case conflicts with decisions from the First, Second, and Third District Courts of Appeal. The Fourth District's decision correctly rejected other district courts' application of the two-year statute of limitations for health care providers (Florida Statute §95.11(4)(b)) to bar actions against the Fund.

ARGUMENT

THE FOURTH DISTRICT DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH THE FOLLOWING COURT DECISIONS; Taddiken v. Florida Patient's Compensation Fund, 449 So.2d 956 (Fla. 3d DCA 1984); Burr v. Florida Patient's Compensation Fund, 447 So.2d 349 (Fla. 2d DCA 1984); Owens v. Florida Patient's Compensation Fund, 428 So.2d 708 (Fla. 1st DCA 1983); and Fabal v. Florida Keys Memorial Hospital, 452 So.2d 946 (Fla. 3d DCA 1984).

The decision below conflicts with Taddiken v. Florida Patient's Compensation Fund, 449 So.2d 956 (Fla. 3d DCA 1984); Burr v. Florida Patient's Compensation Fund, 447 So.2d 349 (Fla. 2d DCA 1984); Owens v. Florida Patient's Compensation Fund, 428 So.2d 708 (Fla. 1st DCA 1983); and Fabal v. Florida Keys Memorial Hospital, 452 So.2d 946 (Fla. 3d DCA 1984).

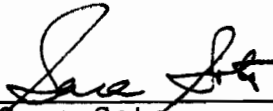
This Court has jurisdiction.

The Third District has certified this issue to this Court in Taddiken. The Fourth District also expressly acknowledged conflict in Tillman. Respondents respectfully request that they be allowed, should this Court decide to exercise its existing discretionary jurisdiction here, to brief and argue the issue before this Court renders decision in Taddiken or Tillman.

CONCLUSION

This Court has jurisdiction.

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By 
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Respondents' Brief on Jurisdiction was mailed this 26th day of February, 1985, to: Betsy E. Gallagher, Esq., 701 City National Bank Building, 25 West Flagler Street, Miami, Florida 33130; Martin Davis, Esq., 3300 Ponce de Leon Boulevard, Coral Gables, Florida 33134; and to Norman Klein, Esq., 2750 N.E. 187th Street, North Miami Beach, Florida 33180.


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